

LAND USE COMMISSION
STATE OF HAWAI'I
Hearing held on May 12, 2021
Commencing at 9:00 a.m

Held via ZOOM by Interactive Conference Technology

I. Call to Order

II. Adoption of Minutes

III. Tentative Meeting Schedule

IV. CONTINUED HEARING AND ACTION

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

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

VI. RECESS

Before: Jean Marie McManus, Hawaii CSR #156

1 APPEARANCES:

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

6

STAFF:

7 LINDA CHOW, ESQ.
Deputy Attorneys General

8

DANIEL ORODENKER, Executive Officer
9 RILEY K. HAKODA, Chief Clerk
SCOTT DERRICKSON, Chief Planner
10 NATASHA A. QUINONES, Program Specialist

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

14

CHRIS DONOHOE, ESQ.
15 LEE STEINMETZ, ESQ.
Kaua'i Corporation Counsel
16 JODI HIGUCHI SAYEGUSA, Kaua'i Planning Dept.
County of Kaua'i

17

WILLIAM YUEN, ESQ.
18 JANNA AHU, ESQ.
For Petitioner A11-791
19 HG Kaua'i Joint Venture LLC

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

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INDEX

HG Kaua'i JOINT VENTURE, LLC:	PAGE
PETITIONER'S WITNESSES:	
Paul Richard (Ricky) Cassiday	
Cross-Examination/County	18
Cross-Examination/OP	35
Cross-Examination/Intervenor	38
Nancy McMahon	
Direct Examination	142
Cross-Examination/County	160
Cross-Examination/State	173
Cross-Examination/Intervenor	197
Redirect Examination/Petitioner	259
Recross-Examination/Intervenor	264

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

3 This is May 12, 2021 Land Use Commission
4 meeting which is being held using interactive
5 conference technology linking video conference
6 participants and other interested individuals of the
7 public via the ZOOM internet conferencing platform.
8 We are doing so, of course, to comply with State and
9 County directives during the still ongoing COVID-19
10 pandemic. Members of the public are viewing the
11 meeting via the ZOOM webinar.

12 For all meeting participants, I really need
13 to stress again the importance of everybody speaking
14 slowly, clearly and directly into your microphone.
15 Before speaking, it's very helpful if you identify
16 yourself for the record. And also please be aware
17 for all meeting participants that this meeting is
18 being recorded on the digital record. Your continued
19 participation is your implied consent to be part of
20 the public record for this event. Should you not
21 wish to be part of the public record, you should exit
22 the meeting now.

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

1 via their own individual personal digital devices.

2 Because of that, please note that due to
3 matters entirely outside of our own control,
4 occasional disruptions to connectivity may occur from
5 time to time for one or more meeting participants.
6 If these disruptions occur, please let us know, and
7 please be patient as we try to restore the
8 audio/visual signals so we can effectively conduct
9 business during the pandemic.

10 If matters come up, which on today's agenda
11 includes approval of the minutes that provide the
12 opportunity for public testimony, and if public
13 witnesses are accessing this meeting via telephone,
14 know that you can raise your hand using the key
15 sequence *9, and also use the key sequence *6 to ask
16 to be unmuted and *6 to mute again.

17 I will repeat this when the time is
18 appropriate.

19 I will also note for everybody that from
20 time to time, approximately ten minutes every hour,
21 we will take breaks.

22 My name is Jonathan Likeke Scheuer, and I
23 have the honor and pleasure of serving as the LUC
24 Chair at this time, along with me Commissioners
25 Edmund Aczon, Dawn Chang, Gary Okuda, Arnold Wong,

1 our Hawaii Island Commissioner Nancy Cabral, making a
2 guest appearance, our Executive Officer, Dan
3 Orodenker, our Chief Planner, Scott Derrickson, our
4 Chief Clerk, Riley Hakoda, our Deputy Attorney
5 General, Linda Chow, and our Program Specialist
6 Natasha Quinones as well as our Court Reporter Jean
7 McManus are all on the Island of Oahu. Commissioner
8 Lee Ohigashi is on Maui, and Commissioner Dan
9 Giovanni is on the Island of Kaua'i. We currently
10 have eight seated Commissioners of a possible nine.

11 Regarding attendance for the course of the
12 day, I will note that Commissioner Chang will need to
13 leave the meeting shortly before 10:00 A.M. and
14 rejoin at approximately 11:00 A.M.; Commissioner Lee
15 Ohigashi will be absent from 9:30 A.M. to
16 approximately 10:30 A.M.

17 Our first order of business on the agenda
18 is the adoption of our April 14 and 15th, 2021
19 minutes as well as the April 28 and 29 minutes. I
20 would like to note the minutes for April 28 and 29
21 are not ready. We will only be taking action on
22 April 14 and 15.

23 Mr. Derrickson or Hakoda, any written
24 testimony regarding adoption of the minutes?

25 CHIEF CLERK: Chair, this is Riley. We

1 have no public testimony on the minutes.

2 CHAIRPERSON SCHEUER: Are there any members
3 of the public who are attending the meeting as an
4 attendee who wish to testify on the adoption of the
5 minutes? If so, if you're calling in, you press *9
6 to raise your hand. If you are accessing the meeting
7 via ZOOM software either on a smartpone, tablet,
8 laptop or desktop, press the raise-hand function
9 which appears at the bottom of your screen.

10 Anybody who wishes to testify on the
11 adoption of the minutes? Seeing none, Commissioners,
12 any comments or corrections on the minutes? Seeing
13 none.

14 Is there a motion to approve the minutes
15 for April 14 and 15, 2021? Commissioner Cabral.

16 COMMISSIONER CABRAL: I'll move to adopt
17 the minutes of April 14th and 15th.

18 CHAIRPERSON SCHEUER: Is there a second?

19 COMMISSIONER WONG: Chair.

20 CHAIRPERSON SCHEUER: I see a hand from
21 Commissioner Ohigashi.

22 COMMISSIONER OHIGASHI: Second.

23 CHAIRPERSON SCHEUER: Any discussion?
24 Commissioner Okuda.

25 COMMISSIONER OKUDA: Thank you, Mr. Chair.

1 Not to butt in, I plan to abstain from this vote
2 because I believe I recused myself, if I'm not
3 mistaken, of the hearings on those dates.

4 CHAIRPERSON SCHEUER: You recused yourself
5 from the matter. You did, of course, appear in part
6 of the minutes prior to recusal, but you may recuse,
7 if you wish.

8 COMMISSIONER OKUDA: I think I should
9 abstain from all of this. Thank you.

10 CHAIRPERSON SCHEUER: Thank you,
11 Commissioner Okuda.

12 Commissioner Ohigashi.

13 COMMISSIONER OHIGASHI: I just have a
14 question. We're doing the 14th and 15 minutes,
15 right?

16 CHAIRPERSON SCHEUER: Correct.

17 COMMISSIONER OHIGASHI: I think the recusal
18 was on the 28th.

19 COMMISSIONER OKUDA: I'm sorry, I think
20 Commissioner Ohigashi is correct. Sorry.

21 CHAIRPERSON SCHEUER: So you're going to
22 vote on these matters, Commissioner Okuda?

23 COMMISSIONER OKUDA: Yes, Mr. Chair.

24 CHAIRPERSON SCHEUER: Given the discussion,
25 Mr. Orodenker, would you please poll the

1 Commissioners?

2 EXECUTIVE OFFICER: Thank you, Mr. Chair.

3 The motion was to adopt the minutes.

4 Commissioner Cabral?

5 COMMISSIONER CABRAL: Yes.

6 EXECUTIVE OFFICER: Commissioner Ohigashi?

7 COMMISSIONER OHIGASHI: Aye.

8 EXECUTIVE OFFICER: Commissioner Aczon?

9 VICE CHAIR ACZON: Aye.

10 EXECUTIVE OFFICER: Commissioner Chang?

11 COMMISSIONER CHANG: Aye.

12 EXECUTIVE OFFICER: Commissioner Giovanni?

13 COMMISSIONER GIOVANNI: Aye.

14 EXECUTIVE OFFICER: Commissioner Okuda?

15 COMMISSIONER OKUDA: Yes.

16 EXECUTIVE OFFICER: Commissioner Wong?

17 COMMISSIONER WONG: Aye.

18 EXECUTIVE OFFICER: Chair Scheuer?

19 CHAIRPERSON SCHEUER: Aye.

20 Mr. Yuen, your office is not muted, so
21 we're picking up your discussion. Mr. Yuen, if you
22 could make sure that you're muted.

23 Our next item is the tentative meeting
24 schedule. Mr. Orodener.

25 EXECUTIVE OFFICER: Tomorrow we will once

1 again be here for the HoKua Place matter, and we will
2 also be having an update on legislative matters that
3 affect the Commission.

4 On May 26th, we will be -- once again, all
5 these meetings are by ZOOM.

6 May 26th we will be taking up the Oahu IAL
7 matter as well as the 27th.

8 On June 9th we will be taking up the
9 Pohakea Maui Special Permit; and on June 10th, we
10 will be taking up AES West Oahu Solar Special Permit
11 and HoKua Place, if necessary.

12 On June 22nd, a special meeting to adopt
13 AES West Oahu Solar Order, if necessary.

14 On July 14th, we will be taking up the Kula
15 Ridge matter on Maui by ZOOM; and on July 15th, if
16 necessary.

17 We have left the remainder of the calendar
18 in flux as we have a number of petitions that have
19 not solidified yet, and we also are not clear as to
20 how much time the Oahu IAL matter is posing.

21 CHAIRPERSON SCHEUER: Any questions,
22 Commissioners, for Mr. Orodenker, regarding our
23 schedule?

24 Mr. Orodenker, I just ask you to clarify if
25 you didn't, right now these are all going to be

1 virtual, unless we announce otherwise?

2 EXECUTIVE OFFICER: That is correct, Mr.
3 Chair.

4 CHAIRPERSON SCHEUER: Okay.

5 Our next agenda item Docket A11-791 HG
6 Kaua'i Joint Venture, LLC - HoKua Place (Kaua'i)
7 Petition to Amend the Land Use District Boundary of
8 Certain Lands Situated at Kapa'a, Island of Kaua'i,
9 State of Hawaii, consisting of 97 acres from the
10 Agricultural District to Urban District, Tax Map Key
11 No. (4) 4-4-003: a portion of Lot 1.

12 I note that the Commission last heard
13 Docket No DR11-791 HG Kaua'i Joint Venture, LLC on
14 April 15, 2021. We will resume our proceedings
15 today.

16 Will the parties please identify yourselves
17 for the record? Hold on. Commissioner Chang.

18 COMMISSIONER CHANG: After the introduction
19 of counsel, if I could ask Mr. Yuen to identify the
20 order of his witnesses, because it is -- I will be
21 leaving the meeting briefly this morning, and I just
22 wanted to make sure to have an opportunity to ask one
23 of his witness, Nancy McMahon, questions.

24 CHAIRPERSON SCHEUER: Thank you,
25 Commissioner Chang.

1 Let's do appearances, Mr. Yuen.

2 MR. YUEN: Can you hear me?

3 CHAIRMAN SCHEUER: Not super well, but
4 okay.

5 MR. YUEN: William Yuen on behalf of
6 Petitioner HG Kaua'i Joint Venture, LLC.

7 CHAIRPERSON SCHEUER: And with you?

8 MR. YUEN: This is Ricky Cassiday, our next
9 witness. Janna Ahu is also appearing by ZOOM from a
10 different location.

11 CHAIRPERSON SCHEUER: Second Chair is
12 always tough, Janna. Don't want you to lose out.

13 Kaua'i counsel.

14 MR. DONOHOE: Good morning, good morning,
15 Commission. Deputy County Attorney Chris Donohoe on
16 behalf of the County of Kaua'i. Also present is
17 Deputy Director of Planning Jodi Higuchi-Sayegusa.

18 Just for a bit of a program note, our Lee
19 Steinmetz will be our representative for the
20 afternoon session.

21 CHAIRPERSON SCHEUER: Thank you very much.
22 Office of Planning?

23 MR. YEE: Deputy Attorney General Bryan Yee
24 on behalf of Office of Planning. With me is Deputy
25 Attorney Alison Kato who will be taking the day for

1 the majority of this case today, except for the
2 cross-examination of Nancy McMahon. Also Rodney
3 Funakoshi from Office of Planning.

4 CHAIRPERSON SCHEUER: Intervenors?

5 MS. ISAKI: Good morning, Bianca Isaki and
6 Lance Collins here for Intervenor Liko Martin.

7 CHAIRPERSON SCHEUER: Is your client here
8 today?

9 MS. ISAKI: I believe he's having technical
10 difficulties connecting. He should be able to call
11 in at least.

12 CHAIRPERSON SCHEUER: Okay. Let me, before
13 we begin, update the record.

14 On April 14, 2021 the Commission received
15 County of Kaua'i's Statement of No Position with
16 regard to Intervenor's Motion to Confirm Deadline.

17 On April 15th, Commission met via ZOOM to
18 consider the Amended the Petition on this docket.

19 I will note for all parties, March 10th and
20 11, Commission allowed for oral public testimony on
21 this matter. After all testimony had been heard on
22 March 10th, I made it clear to all parties and
23 members of the public that the public testimony
24 portion of the hearing for the evidentiary portion of
25 the hearing was closed in order to move forward with

1 the evidentiary portion of the docket.

2 The Commission will continue to accept
3 written public testimony up until a final decision is
4 made. The Commission may allow for oral testimony,
5 if and when a proposed Decision and Order is
6 considered.

7 On April 15th the Commission established a
8 continuation of the proceedings with Petitioner's
9 presentation for today, May 12th.

10 Petitioner will resume their presentation,
11 and I will ask the Petitioner, after I'm done going
12 over our procedures, for their order of witnesses.

13 Once the Petitioner has completed with
14 their presentation, followed in turn by County of
15 Kaua'i, State Office of Planning and Intervenor Liko
16 Martin.

17 From time to time, approximately ten
18 minutes every hour, I will call for short breaks.

19 Are there any questions with our procedures
20 for today. Mr. Yuen?

21 MR. YUEN: No questions.

22 CHAIRPERSON SCHEUER: County?

23 MR. DONOHOE: None by the County. Thank
24 you, Chair.

25 CHAIRPERSON SCHEUER: Office of Planning?

1 MS. KATO: No questions. Thank you.

2 CHAIRPERSON SCHEUER: Intervenors?

3 MS. ISAKI: No questions. Thank you.

4 CHAIRPERSON SCHEUER: Mr. Yuen, share with
5 us your plan of order of witnesses.

6 MR. YUEN: Our first witness is Ricky
7 Cassidy, who we had finished with direct
8 examination. He's subject to cross-examination by
9 all parties, questions by the Commission.

10 Following Mr. Cassidy will be Nancy
11 McMahon, and following her will be Tom Nance and then
12 our last witness Ron Agor.

13 COMMISSIONER OKUDA: I really can't hear
14 him. Is it possible for him to yell at whatever
15 microphone there is so that we can be sure that we
16 are also getting a clear transcript.

17 MR. YUEN: Thank you. Can you hear me now?

18 CHAIRPERSON SCHEUER: That's better.

19 MR. YUEN: You may be able to hear me, but
20 not see me, that's all.

21 CHAIRPERSON SCHEUER: Commissioner Chang,
22 you're going to be absent from what time?

23 COMMISSIONER CHANG: I'm going to be absent
24 from about 9:50 to about 11:15.

25 CHAIRPERSON SCHEUER: Mr. Yuen, is it

1 possible to arrange your witnesses so that Ms.
2 McMahon is available for Commissioner Chang?

3 MR. YUEN: We anticipate that Mr. Cassidy
4 will be on for at least an hour-and-a-half. We do
5 have to get Ms. McMahon on today, so that we have
6 scheduled Tom Nance for this afternoon. But bring --

7 THE COURT REPORTER: I can't hear you.

8 CHAIRPERSON SCHEUER: The Court Reporter is
9 having a hard time hearing you, Mr. Yuen.

10 MR. YUEN: We were asked to not put Ms.
11 McMahon on first thing this morning, so that's the
12 reason we're putting them on in this order.

13 CHAIRPERSON SCHEUER: Thank you.

14 Any other questions for our procedures,
15 Commissioners? Seeing none.

16 I will note that additional written public
17 testimony has been received on this docket on April
18 12th from De Austin, on April 12th from Denise Woods,
19 and on May 10th from Pi'ikea Matias. Written public
20 testimony is being accepted and posted to the
21 website.

22 Were there any other pieces of written
23 testimony that were received by the LUC, Mr. Hakoda
24 or Mr. Derrickson?

25 CHIEF CLERK: No further public testimony.

1 I would like to check with Mr. Yuen, I
2 believe their office filed something late in regards
3 to Intervenor's position on Exhibits 44 and 45, a
4 portion of -- I don't think we were able to update
5 our script on that.

6 CHAIRPERSON SCHEUER: Mr. Yuen.

7 MR. YUEN: I don't believe we filed
8 anything in response to their objections. We
9 submitted Exhibits 44 and 46, but did not file
10 anything else.

11 CHIEF CLERK: Thank you for that
12 clarification.

13 CHAIRPERSON SCHEUER: Did I miss noting the
14 filing for the Intervenor's?

15 MS. ISAKI: No, I don't believe so.

16 CHAIRPERSON SCHEUER: Thank you for that
17 clarification.

18 With that, since it's been awhile, Mr.
19 Cassidy, even though I already swore you in and
20 technically you're still under oath, I'm going to
21 swear you in again.

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

24 THE WITNESS: Yes, I do.

25 CHAIRPERSON SCHEUER: We are now onto

1 cross-examination. You're direct had been finished,
2 so we will start with County of Kaua'i, Mr. Donohoe.

3 THE WITNESS: Can you guys hear me?

4 CHAIRPERSON SCHEUER: We can hear you.

5 Thank you very much.

6 THE WITNESS: Before I start, thank you all
7 for your public service. My stepson Jody Ronna
8 (phonetic) sat eight years on City Council, and his
9 okole got real tired, so I applaud you.

10 CHAIRPERSON SCHEUER: Mr. Donohoe.

11 PAUL RICHARD (RICKY) CASSIDAY

12 Was recalled as a witness on behalf of the
13 Petitioner, was previously sworn to tell the truth,
14 was examined and testified as follows:

15 CROSS-EXAMINATION

16 By MR. DONOHOE:

17 Q Good morning, Mr. Cassidy.

18 A Good morning.

19 Q I was reviewing your resume, and I'm just
20 curious. Have you ever worked for a governmental
21 housing agency in any capacity?

22 A I've never been directly employed, but I
23 have received quite a lot of money for consulting
24 fees, 2014 affordable housing rental study was
25 probably my Hallmark. I did it for all the Counties,

1 DHHL, OHA, IHS, et cetera, et cetera.

2 But, again, I've never been in their
3 employ.

4 Q In this case you were retained by the
5 Petitioners to perform a study analyzing the market
6 for the proposed HoKua Place, correct?

7 A Correct.

8 About eight years ago, Peter Young, my
9 classmate, came to me. He was the planner then, and
10 together we worked on this. I had been active on
11 Kaua'i since 2004 with Harry Weinberg affordable
12 housing Lihue Theater.

13 Q And so the study that you completed was
14 that 41-page study that's Exhibit 30 in this case
15 that was submitted as part of the exhibits attached
16 to the Petitioner's request; correct?

17 A That's correct.

18 Q So on page one of that study, you state
19 HoKua Place is a development that is, quote,
20 "targeting primary housing demand from local and
21 in-migrant families as well as offshore second home
22 demand for real estate ownership," correct?

23 A Correct.

24 Q And so just to clarify, offshore
25 second-home demand for real estate ownership. That

1 means large, single-family homes with a nice view for
2 home buyers that are off island or from the mainland
3 who are using these as second homes, and may live
4 here part-time; correct?

5 A Defining really well, the land has some
6 great view lots that will be priced well above what
7 local people can afford. And I'm not saying that
8 they're going to be short-term, but I'm saying that
9 they're long-term offshore investors, buying quality
10 of life on Kaua'i.

11 Q You also state on the same page that part
12 of the appeal of HoKua Place is appealing to local
13 families looking for, quote, "reasonably priced
14 housing".

15 A That's the bulk of the housing, probably
16 90, 95 percent.

17 Q And even though the current workforce
18 housing requirement is 20 percent, I believe it was
19 your testimony that the developer plans to build
20 workforce housing over that amount, such as
21 30 percent, or did you even say 40 percent?

22 A Depends on the moving target, but the
23 history of this project was that there was a 30
24 percent requirement back when I started with Peter
25 Young, and it's been changed, as well you know.

1 There was a new change a year ago, and a lot of the
2 dials were twisted, such that, yes, correct, it's a
3 20 percent affordable requirement mandatory. And
4 then when I did this study and was working with the
5 developer, the direction given to me, which was, you
6 know, be consistent how we started is how we're
7 ending, a 30 percent affordable requirement
8 voluntarily and mandatorily signed off on.

9 Q So with the workforce housing, will -- in
10 order to, as you said in your study, that they will
11 also be more affordably priced, will cheaper
12 materials be used in the construction of the
13 workforce housing as opposed to the market value of
14 single-family homes?

15 A Not necessarily. Any builder, within
16 reason, and by within reason, I'm excluding the
17 Zuckerberg-type housing, Randy Weir, or any of those
18 guys, who go completely bonkers about what they're
19 building.

20 But on a production build like this, on
21 building parcels, it's incumbent upon the business of
22 the developer to use the most economical materials
23 within the code. And so that pretty much levels the
24 playing field.

25 I've been involved in any number of things,

1 but a million dollar condo will use pretty much the
2 same -- could use the same building techniques and
3 materials as a 400,000 one, and the only difference
4 is in the finish. Same with the single family.

5 Q Would you agree that building smaller unit
6 sizes would be less expensive to build?

7 A Generally speaking, you shrink the square
8 footage, you shrink the overall cost of production.

9 Q Is that a consideration in some of the
10 proposed workforce or affordable housing that that's
11 your understanding of the development?

12 A My understanding is very much so. And,
13 again, I started with Gentry Homes, he was number
14 one -- number two builder in the State, and Castle &
15 Cooke, and long meetings over cost of production, how
16 to get it down. Remove all the extra costs.

17 So, yeah, there's a couple of general
18 things and that is, you know, where can you get the
19 biggest bang for the buck. If it means shrinking the
20 unit and getting a lower price. Again, it depends on
21 your target market.

22 Since this is being developed under
23 affordable housing machine, you've got all these
24 different layers and you've got all these end
25 markets, and because the affordable is usually

1 produced above what you can sell it for, that it's
2 there that you look at your cost savings, but you
3 also have to look at your cost savings on the market,
4 because of the cross subsidy.

5 So you make your money on the market, and
6 you subsidize the affordable. That's been ever since
7 1980.

8 Q On page 12 of your study you acknowledge
9 that part of the issue is, with the housing on
10 Kaua'i, is the average prices of new housing are much
11 higher than the resale markets. And one of the
12 indicators of that, would you agree, that most of the
13 new production is targeted on the high-end buyer and
14 offshore market, which leaves the local residents
15 exposed to a price rise?

16 A Yeah, I'm glad you read that. You stated
17 it correctly. It is the case that if you are a
18 builder on anywhere, you go where the money is, kind
19 of like robbing a bank, and the money really isn't at
20 the top end, these guys come in and do it.

21 Now, just because they do it that way,
22 doesn't form a nexus with the cost of production at
23 the lower end. We have a bunch of contractors on
24 Kaua'i that are akamai, build for their family or
25 friends, they build it differently.

1 So they, with their intelligence and skill,
2 lower the cost of production on it. But most of the
3 production costs are set by, you know, material
4 prices and to some extent cost of labor.

5 Q But if local residents are exposed to high
6 prices, and your study points this out, you would
7 agree that there is a substantial demand for
8 affordable primary housing on this island that has
9 completely gone unmet?

10 A Exactly. That's a good statement, and I
11 just repeat it for you.

12 Q So on page 16 of the analysis, you
13 estimated -- it was also in PowerPoint
14 presentation -- that the pent-up demand was over 1432
15 households that are in need of housing, correct?

16 A Yeah, that is -- what I did was I took a
17 model from Janice Takahashi at HHFDC and they blessed
18 it. And all I did was match supply, which is new
19 production, and then household formation, which is a
20 population-based statistic.

21 Note, this has nothing to do with jobs.
22 Jobs are probably better indicators of housing
23 demand. You create a job, 1.7 jobs usually means the
24 economy, the community needs a new house for those
25 new jobs. So I would say the number you just gave is

1 conservative.

2 Q So it could be greater?

3 A Yes, likely.

4 Q And does that 1432, does that include
5 number of households renting, who would like to own a
6 home?

7 A Yeah, because the housing production can go
8 either to somebody, owner/occupant, or it can go to a
9 local investor, ohana housing is also the same thing.
10 Put it up over the garage and rent it out and put the
11 kids through school.

12 Q Do you have any indication as to what
13 percentage of those 1432 households would qualify for
14 the workforce housing that the Petitioners are
15 intending to build at HoKua Place?

16 A I would do something on the back of a
17 napkin, and opine that a good 60 or 70 percent of
18 that, maybe more, would be locals looking for houses.
19 And I stop for a second just a to think what the
20 in-migration was from, you know, the other 49 and the
21 rest of the world. And I would say 20, 30 --
22 20 percent of the annual population increase would be
23 somebody moving here from somewhere else.

24 Q So 50 to 70 percent of those 1432
25 households are in need of housing, can only afford

1 the workforce housing, then wouldn't the end result
2 be a large number of households competing for a very
3 small number of affordable housing?

4 A That's correct. As you can see, the other
5 statistics of doubling up, people living in the
6 garage, tents in the backyard, that sort of thing, ag
7 housing as well.

8 Q And then so in your PowerPoint presentation
9 for the 36 10,000 square foot large lots, single
10 family residents, projected price per residents would
11 be 750 to 1.25 million; correct?

12 A That's right.

13 Q And then the smaller lot, the 7500-square
14 foot, the 50 7500 square foot median lots, the
15 projected price would be 650 to \$850,000?

16 A A caveat. That was done over a year ago,
17 and the last six months, eight months, I've just seen
18 a tremendous acceleration of single-family home
19 prices. So that would be very conservative.

20 Q That would include the 10,000 square foot
21 as well, because the price has gone up?

22 A Definitely.

23 Q So then the multi-family dwelling, the 452
24 proposed dwellings, the projected price for that unit
25 would be 350 to \$425,000, but that may be higher

1 because of the recent trends?

2 A That's right.

3 Q And then that leaves the 231 workforce
4 housing dwellings, the projected price per unit would
5 be 225 to 325?

6 A That would have a ceiling based on
7 affordability requirements. So, yeah, that's the one
8 segment that won't rise relative to current trends.

9 Q So out of the 1432 households, how many
10 could actually afford to purchase one of the 36
11 10,000 square foot residents?

12 A So cut it down by seven, just simple math,
13 and then I cut it down again. Again, simple math.
14 You know, again, if you guys want, I'll sit in front
15 of my computer and run some numbers with actual good
16 input, but, again, back-of-the-napkin for purposes
17 here of just getting a sense of scale and magnitude,
18 just say half of 7000 is 3500. You know, that would
19 be workforce and below, including public housing.

20 Q Out of the 1432 households, how many of
21 those households is the only thing that they can
22 afford is the workforce housing?

23 A Again, that's a good question. And you can
24 kind of play with that using the census data. If you
25 like, I'll get it down pretty specific, but I would

1 be surprised if it was under 2000, 2000 to 3500,
2 which I just mentioned.

3 Q And then are you familiar with the 2019
4 Kaua'i Housing Planning Study that was prepared for
5 Hawaii Housing Finance on or about December 2019?

6 A Is that the SMS or the mainland firm?

7 Q SMS Research, yes.

8 A Yes, I looked at it.

9 Q I didn't hear?

10 A Sorry, yeah, I glanced at it.

11 Q So you didn't read it in its entirety?

12 A I glanced at the things that I know really
13 well, and I know what I know really well, I'm pretty
14 unique.

15 SMS is a, what I used to call when I worked
16 in Washington, somewhat of a contract researcher.
17 They'll go all over the place. We called them Built
18 Hawaii Bandits (phonetic) back in D.C., and they have
19 grown a pretty good practice on skimming gross
20 numbers, census numbers, which, by the way, brought
21 you the opportunities zone down in Kepu-u, (phonetic)
22 so don't ask me what I think of census.

23 But, yeah, I looked at it. The best part
24 about it, I thought -- see, the problem they have is
25 they do surveys. You get called, or you get

1 something in the mail. And the low end of the market
2 doesn't speak English, or doesn't have time to work
3 on it. So a lot of the survey data isn't really
4 good. But at least they did it, and that was what
5 they ended up with the part about overcrowding and
6 doubling up. I thought that was useful.

7 The rental stuff, I don't trust. The
8 housing stuff is what it is. You can grab it from
9 County TMK and MLS and all that stuff.

10 Q This 2019 study, it listed four impediments
11 that I wanted to go over with you regarding housing
12 production. And one of those would be geographic
13 limitation, that is Hawaii lacks sufficient land near
14 its major population centers.

15 Would you agree with that, that adds an
16 impediment to housing production in Hawaii?

17 A I agree, the problem is we've got not long
18 supply line. We've got to bring materials in.
19 Warehousing is expensive. Labor is expensive.
20 Geography hurts housing supply in terms of cost, yes.

21 Q This study also pointed out, would you
22 agree, that a lack of major off-site infrastructure
23 to support new housing developments is an issue of
24 concern?

25 A Yeah, the solution would be to tax tourists

1 some more, but we have a big social safety net. We
2 have a lot of wear and tear. So the general budget
3 doesn't allow for infrastructure, and infrastructure
4 has not been a priority in a very long time until
5 this presidency.

6 Q And then you already testified that part of
7 the impediment is construction costs here in Hawaii
8 are high.

9 A Yeah, over and above what you see on the
10 mainland, which you could get labor from south of the
11 border pretty easy, and you can't get that here,
12 because it's a long plane ride. And housing cost,
13 where do you put your construction labor cost.

14 Q Would you also agree that government
15 regulations can be -- the amount of government
16 regulations here in Hawaii maybe is an impediment to
17 housing production?

18 A Yeah. Because it's kind of tied to
19 politics, and it's very easy for people to get
20 elected on these affordable housing platforms. You
21 see it in Maui, saying we are going do more, and we
22 want 75 percent in affordable.

23 Then on top of that the history of law is
24 that as you go along, you find something wrong, you
25 add a layer of regulation. But it's not one size

1 fits all. Then you have overlapping regulatory
2 concerns. But, yeah.

3 Q So in this 2019 Hawaii housing study it
4 states that the current demand for additional housing
5 in Kaua'i is actually 4,281 units?

6 A Again, that's a calculation that they made
7 themselves. I didn't get into.

8 Q 4,281 units differs from your testimony
9 that only 1432 units are needed.

10 A And I'm happy it does.

11 Q So that actually shows, according to that
12 study, actually shows more demand for housing than
13 your figures?

14 A I'm happy with mine, because I worked with
15 builders. These guys sit in an office downtown.

16 Q Then would you agree though that the lion
17 share of needed units should be concentrated on the
18 lowest income households?

19 A My mother often said that if you made me
20 God, she would have made her son perfect. I'm not
21 perfect, but certainly if God made me God here, I
22 would produce the heck down to the lower ends because
23 you can see the misery and social stress and all of
24 that, yes.

25 Q Would you agree that affordability includes

1 other factors other than just resident units cost?

2 A Yes.

3 Q Like decreasing transportation cost by
4 putting it near an urban center and having
5 multi-modal connections in and out of the
6 development?

7 A You get rid of parking, it's a big deal.
8 You don't -- you take public transportation, that's a
9 great benefit all the way around. So all of that
10 stuff, yeah.

11 Q So that would help decrease perhaps some of
12 the housing, overall housing cost?

13 A Yeah, it would increase the supply of
14 housing.

15 Q And HoKua Place proposes segregated areas
16 for multi-family units and single-family units,
17 correct?

18 A Correct.

19 Q In your assessment of market conditions,
20 would you agree that there is a market for a
21 clustered high end development or mixed housing types
22 especially on Kaua'i?

23 A In my opinion, looking at the overall
24 history of the market, there is demand at all levels,
25 and that the high end can pay for it usually a little

1 better than low end. So, yes.

2 Q Would you agree that there is a market for
3 development projects that incorporate agriculture and
4 community gardens into residential developments?

5 A Personally I like it. I like it for our
6 local people. I've seen a bunch of people moving
7 from the mainland, especially to Kaua'i, to engage in
8 ag activities. So, yes, I'm bullish on any housing
9 supply tied to agricultural activity. I think that's
10 a great idea, a great thing.

11 Q And then do you have any information, or
12 can you make assurances that the Petitioners would
13 comply with the minimum requirements of KCC Rule 7A
14 regarding the percentage of workforce housing?

15 A I can't even make assurances that my family
16 won't sue me, and we're in the Supreme Court law
17 books. So that's the County and the Applicant.

18 Q Would you agree, or be open, as far as
19 reducing cost of production and/or housing cost to a
20 phased development that would require the workforce
21 housing be constructed on pace with the higher end
22 units?

23 A No. What I know of the business,
24 especially producing affordable housing as with
25 Castle & Cooke and Gentry, when it first came in,

1 back then the market was so strong across all the
2 boards, that the distinction between affordable and
3 market you could have shrunk.

4 As its gone on the way, regulations and the
5 difficulty with which you can qualify affordable
6 households to actually enter it, puts in all sorts of
7 barriers. And so if it's your and my money, I'm
8 going to want to make a little money especially with
9 infrastructure. I mean there's a bunch of -- I mean,
10 Waiawa is probably the big one, never got started
11 even though A&B and Gentry owned it, because of that
12 up-front cost.

13 So, I mean, if you want to be helpful to
14 everybody, you look at the cash flow and you dial it
15 accordingly. If they can take a ton of money
16 up-front or with the single family, hip, hip, hooray,
17 and then roll on through.

18 So on that infrastructure exercise, yeah,
19 with the spreadsheet. So you at the County, when
20 this comes before you, you know, probably dig into
21 that.

22 Q Because you understand that the County may
23 recommend a master plan to be required prior to any
24 kind of zoning event?

25 A I hope so.

1 Q Okay. And would you agree that the master
2 plan could possibly increase the cost and timeline
3 for the project?

4 A Depends on what you throw into the master
5 plan, how it's executed. Again, you can't fight
6 economics. You've got have to have money to make
7 money, and if you suck it all up into the
8 infrastructure and the affordable housing up-front
9 and leave the developer with no spare change down the
10 road, if something flows up like the Lehman crisis,
11 then you're going to take the project back, and it's
12 going to be ugly, not as ugly as Cocopalms, but not
13 pretty.

14 Q Thank you, Mr. Cassidy. Thank you for
15 your time.

16 No further questions. Thank you so much.

17 CHAIRPERSON SCHEUER: Thank you very much.
18 How long do you plan, Ms. Kato, on cross for Mr.
19 Cassidy?

20 MS. KATO: Very brief. I think I just have
21 one questions.

22 CHAIRPERSON SCHEUER: Okay, let's do you,
23 and then we'll take a break.

24 CROSS-EXAMINATION

25 BY MS. KATO:

1 Q Can you clarify for me what you consider
2 market rate relative to the percent AMI?

3 A Rule of thumb, usually any household that's
4 60 percent or below of AMI requires will go into
5 rental housing. That housing requires public subsidy
6 of some magnitude.

7 The same can be said going up to 80
8 percent. At 80 percent there might be a balance, but
9 at 80 percent you also probably, as a developer,
10 depending on the scale of things -- if you are a
11 small developer, there is no profit there; there's no
12 incentive. You can't get a bank loan.

13 Go up to 100 percent, it's a little bit of
14 the same flavor, but a little better. 120 you start
15 to change from needing a subsidy or some sort of
16 public benefit that decrease, stimulate that. And
17 you get to the market, so 100 to 120, it's still
18 difficult. 120 is about, okay, we can do market
19 rentals, but again, can I get a loan and is it worth
20 my time?

21 140, you then work from rentals to getting
22 close to be able to build something and sell it.
23 That's going to be really efficient low-cost housing.
24 So that's my rule of thumb.

25 Q So around 140 would be comparable to market

1 rate?

2 A Yeah. So there is two ways of looking at
3 this. One is a developer looking at it with all the
4 risk and financing. And then the other is the way
5 the market looks at it.

6 And the market is a free market, goes up
7 and down. But at about 120-140 it's at what I call
8 market, but it lags a little bit, not quite there as
9 developable market or investable market, if I can
10 explain it that way.

11 Q So you're saying it depends on perspective?

12 A Exactly.

13 Q Thank you. No further questions.

14 CHAIRPERSON SCHEUER: Thank you very much.
15 Ms. Kato.

16 So with that, Mr. Cassidy, we're going to
17 take a break. It's 9:49 right now. We're going to
18 resume at 10:00 A.M. with cross-examination from the
19 Intervenors and then the Commissioners.

20 (Recess taken.)

21 CHAIRPERSON SCHEUER: 10:00 A.M. Back on
22 the record. Please proceed.

23 MS. ISAKI: Before we begin, actually
24 Intervenor Martin has been in the attendees room and
25 he was asking if he could be promoted to be a

1 panelist so he could be present with all of us.

2 CHAIRPERSON SCHEUER: Absolutely. I will
3 promote him. Not all would consider it to be a
4 promotion.

5 Please proceed.

6 CROSS-EXAMINATION

7 BY MS. ISAKI:

8 Q Thank you. And good morning, Mr. Cassiday,
9 I'm going to ask you a series of mostly yes or no
10 questions.

11 So to clarify, this is your third market
12 report, correct, and the second update?

13 A No.

14 Q Update your -- what I refer to your -- the
15 third market report, or when I refer to your report,
16 I'm talking about Petitioner's Exhibit 30, your
17 supplemental housing study.

18 Was this update in the Final Impact
19 Statement?

20 A Let me unpack the question.

21 I took it to mean how many market studies
22 have I done on this project. Is that the question?

23 Q I was asking if you submitted three
24 different documents concerning the project?

25 A Okay. No.

1 Q No, you did not submit a housing study
2 which is the EIS, Exhibit A, updated housing study
3 which is EIS, Exhibit A.1, and then the final third
4 study?

5 A Again, I'm not sure. I know what I did,
6 and if I can answer that, I'll tell you what I did.

7 Q Did you submit two studies that were part
8 of the EIS?

9 A Well, I didn't. I gave it to the client.
10 I guess that's what they submitted.

11 Q I see. Thank you.

12 I'm going to turn to your presentation
13 which is Petitioner's Exhibit 31, and actually -- I'm
14 going to share my screen, because that might make it
15 clearer what I'm talking about.

16 CHAIRPERSON SCHEUER: Please go ahead.

17 MS. ISAKI: Thank you very much.

18 Q I'm looking at your slide three, Kaua'i
19 Housing Market Trends.

20 Do you recognize this slide, correct?

21 A Correct.

22 Q And do the two years you examine in your
23 Kaua'i housing market trend reflect trends, like
24 housing trends?

25 A The study I did, the bigger study showed a

1 longer timeline. And then this slide was the
2 summary. So the study of the trends and these two
3 years, '19 and '20, represented a point in the trend,
4 so to speak.

5 Q So there's not a trend of rent going up
6 only ten dollars per year and home sales dropping,
7 correct?

8 A Say that again, please.

9 Q So this slide does not show that there is a
10 trend of rents going up only by ten dollars a year or
11 home sales dropping from year to year?

12 A No, that's not a trend, that's an average.

13 Q Got it.

14 I'm also going to look at, this is slide
15 eight, economic benefits for Kaua'i.

16 You said that, in the slide, that there
17 will be, considering your multiplier factor of 2.12,
18 there will be over \$600 million due to economic and
19 employment benefits on Kaua'i; correct?

20 A Correct.

21 Q Did you assess whether all materials and
22 services would be sourced on Kaua'i?

23 A No, I didn't.

24 Q And to your knowledge, is the developer
25 committing to exclusively community higher than

1 sourcing?

2 A That wasn't in my purview, so no, I don't
3 know.

4 Q Okay, got it.

5 I'm going to stop sharing because I'm going
6 to move on to your supplemental report Exhibit 30.

7 And if you want me to pull it up, I can put
8 it on the screen again, but on page two, you state
9 that national and local studies and data have shown
10 that supply of new housing into an existing
11 marketplace results in a moderating trend in prices
12 if not an actual decline in prices.

13 Can you name a local study that establishes
14 a new development that causes a drop in the existing
15 housing?

16 A I cannot identify a local study that
17 isolates the effect of a project on the market.

18 Q Got it.

19 Your Exhibit 30 also includes construction
20 and infrastructural costs. I think there were about
21 \$301 million, and you wrote that infrastructure cost
22 were provided by the development team.

23 Can you tell us who was on the development
24 team?

25 A Bill Bow I think was the major one. And he

1 has a bunch -- I mean, that's a big company, so they
2 have a bunch of subcontractors that look at grading,
3 et cetera.

4 Q And HG's manager Jacob Bracken is not on
5 the development team?

6 A Well, yeah. I'm on the development team,
7 if you want to expand it. But if you want to shrink
8 it down to the actual infrastructure cost, you have
9 to go to somebody who does that professionally, and
10 you know --

11 Q Are you aware of whether the infrastructure
12 cost that was estimated here includes cost of
13 off-site mitigation measures and contributions to
14 County infrastructure, or impact fees, that kind of
15 thing?

16 A No. That's determined at the County level.

17 Q So this estimate does not include the cost
18 of increasing, say, the capacity of the nearest
19 wastewater treatment plant?

20 A Again, that's at the County level, so I
21 can't know.

22 Q Got it.

23 Does your updated market study describe
24 HoKua Place -- it does describe it as, quote/unquote,
25 targeting primary housing demand from local

1 in-migrant families, as well as off-shore second home
2 demand for view estate ownership?

3 You went over this with the County. You're
4 familiar with that statement, correct?

5 A Correct.

6 Q And you're assuming that the vast majority
7 of buyers would be existing full-time residents in
8 regard to analyzing, quote/unquote, public fiscal
9 impacts to the County?

10 A Okay, hold on. I am assuming that most of
11 the buyers will be local, and mid to lower income.

12 What was the second half of your question,
13 please?

14 Q This is looking at PDF page 39 in regard to
15 analyzing public fiscal impacts to the County, are
16 you looking at full-time residents already here or
17 in-migrants?

18 A I did both. I segmented it down to who I
19 thought would buy what product, and then applied the
20 tax rates accordingly.

21 Q Okay. Your study is estimating that
22 88 percent are full-time residents and 12 percent are
23 investors plus nonresidents, correct?

24 A That's correct. That's correct that that
25 was my assumption given my expertise, yes, sorry,

1 yes.

2 Q Got it.

3 And so that 88 percent of the project is
4 going to be purchased by Kaua'i residents to buy
5 market rate housing, correct?

6 A Correct.

7 Q And you said that one of the reasons why
8 it's mostly going to be Kaua'i residents is that, at
9 least in part, housing regulations fully dampen the
10 demands for offshore buyers by this anti-flipping
11 rules and owner/occupants priority; that's correct?

12 A Yes, that's correct. The 88 percent was
13 determined based on the strength of how the County
14 will regulate.

15 So that I projected that out to be, again,
16 County regulation. They do change from year to year.

17 Q So these County controls and rules that
18 you're referencing, do they apply to the market rate
19 housing which constitutes 70 percent of the project?

20 A Of course. There are rules that govern
21 market rate housing as well.

22 Q So market rate -- so I'm asking about
23 owner/occupant priorities, like does that apply to
24 market rate housing?

25 A Yes. There is a preference given to

1 owner/occupants in both the high-end affordable and
2 the regular market, and that's significant.

3 Q Is the preference given by, as you
4 described, anti-flipping rules that the County
5 imposes?

6 A Well, again, when you get into this with
7 the County, they will want to ask you to do a number
8 of things. And prior counties have instituted those
9 regulations. So, yeah, that's what I consider rule
10 of thumb.

11 Q And those apply to the market rate you're
12 talking about?

13 A Yeah, absolutely.

14 Q And that will be imposed later at County
15 level?

16 A That's correct.

17 Q One second.

18 Are you aware that, while statewide, the
19 percentage of out-of-state buyers is 25 percent is
20 actually 40 percent in 2019, according to Eugene
21 Tian, DBED's chief economist when he was reviewing
22 state data?

23 A Repeat that, please, because it would be
24 good to have you repeat the data and the source.

25 It's Eugene, and the date was 19 -- when?

1 Q Eugene Tian who was DBED's chief economist
2 reviewing data from 2019.

3 CHAIRPERSON SCHEUER: Sorry. Are you
4 referring to an exhibit, counsel?

5 MS. ISAKI: No, I'm asking him if he's
6 familiar with this other review by another economist.

7 THE WITNESS: I'm familiar very well with
8 Eugene, he's a good economist. I'm familiar with the
9 data set that he used to do that with. I find that
10 the data set needs to be interpreted by somebody who
11 understands the task of it, one of which is the
12 addresses on the data set.

13 So say you own a property, and you have an
14 address that's a local address, you're going to count
15 that unit as a local unit.

16 But what if your next door neighbor asks
17 you to send his tax bill to your address, that skews
18 the data a little bit.

19 So when I do the data, I download the whole
20 thing, same as Eugene. And then I go through it
21 fairly line by line, project by project.

22 And then ask myself is this a local owner
23 that is an owner/occupied? Is it a local guy that's
24 an investor; or is it an offshore guy that's an
25 investor? That's how I look at data.

1 I'm familiar with his work. I'm
2 representing it to you, but as far as the percentages
3 I'm not really -- it wouldn't be -- oh, I wouldn't
4 think, you know -- if you repeat it to me, I can give
5 an opinion, but it would be a qualified one like I
6 just did.

7 So what does he say 40 percent are
8 offshore?

9 Q He said that, yeah, on neighbor islands
10 it's 40 percent as opposed to statewide, which is
11 25 percent. So I was asking if you were familiar
12 with that statistic, based on Tian's research.

13 He pulled it from the tax information.

14 A I'm familiar with him. I'm not familiar
15 with his methodology. You didn't ask me whether I
16 believe 40 percent is conservative or whatever.

17 Q So to clarify, you're saying that you're
18 not familiar with hearing that 40 percent of
19 nonresident buyers on neighbor islands, that's the
20 percentage?

21 A I didn't hear it. It was publicized, I saw
22 it and I thought, well, that's how he came to his --
23 so, yeah, that's my best testimony.

24 Q Thank you.

25 So your study said that often Kaua'i or

1 local home purchasers include a number of income
2 earners, and purchase, both family members and
3 nonfamily members, and it is this market demand
4 segment of the larger lot and house size units will
5 address; is this a correct statement?

6 A That's correct.

7 Q Would these local income earners with
8 larger family and nonfamily members, would they want
9 to construct ADU's on their single-family lot?

10 A To the extent that they're allowed, they
11 certainly would be incentivized due to the housing
12 shortage to do so.

13 Q And you discuss -- this is on page seven of
14 your study -- a significant home stay industry on
15 Kaua'i.

16 Does your study address the economic impact
17 of vacation rentals on Kaua'i?

18 A No, it did not.

19 Q Thank you.

20 Your project -- you stated the project
21 plans to sell to a number of new residents who will
22 significantly -- this was your term -- impact the
23 general island economy by sending their discretionary
24 income at doors around the island, correct?

25 A Would you say that again a little slower,

1 please?

2 Q The HoKua Place project, in your study --
3 I'm looking at page 35 -- you said that the general
4 island economy also will benefit from the subject
5 development as its full and part-time residents will
6 spend large amounts of discretionary income in
7 off-site shops.

8 Are you talking about new residents here,
9 or people already on island?

10 A A combination of both, yes.

11 Q If they're already on island, will they
12 already be spending their discretionary income?

13 A Yes, but if they benefitted by lower
14 housing cost, or a greater shelter, more bedrooms,
15 that sort of thing, and there is a social impact
16 which is them kind of breathing a sigh of relief now
17 that they have their own home, that then would
18 translate into higher productivity and higher
19 consumption.

20 Q Thank you.

21 So HoKua Place is planning to sell to new
22 residents, but the geographic definition of the
23 market area is limited to County of Kaua'i, correct?

24 A So you had two statements in there. It's
25 going to sell to new -- it's new houses being sold.

1 So if that was a question, then I would say some
2 would be newly formed households, some would be
3 households that are overcrowded in other places, and
4 some would be households already having housing that
5 would upgrade. Does that help?

6 Q I was referring to page three of your study
7 which defines geographic definition of the market
8 area, and you're just talking about Kaua'i, correct,
9 even though you're talking about a market offshore?

10 A Yeah.

11 Q By marketing to new residents, will the
12 project draw people who are not currently utilizing a
13 public infrastructure and social services?

14 A By drawing from -- drawing from newly
15 formed households?

16 Q Is this project marketing to new residents,
17 people who do not live on Kaua'i?

18 A Yes. So it is available on the market rate
19 to people outside of Kaua'i, as well as within
20 Kaua'i, yeah.

21 Q And those people who are -- those are
22 people who are not currently utilizing the public
23 infrastructure and public social services on Kaua'i,
24 correct?

25 A That's correct.

1 Q Is your assumption that these new residents
2 will significantly impact the economy to say this is
3 economic benefits will only impact infrastructural
4 needs to the degree that they contribute to state
5 taxes and new revenue?

6 A So break that down again, what's the first
7 half?

8 Q Is your assumption that these new residents
9 are going to significantly impact this economy?

10 A Yes.

11 Q But will the impact on infrastructural
12 needs be only to the degree that they contribute to
13 new revenues?

14 A No. If you get new people into the
15 economy, they bring their talents, usually that
16 expands it. I think in the pandemic, you're seeing a
17 lot of foot loose workers. And if they were to come
18 to Honolulu and carry some of their skills and teach
19 it to high school students or stuff like that, or
20 just, you know, in their affinity group, kind of
21 contribute, that would go above and beyond.

22 And I think I'm not answering the question,
23 because you have the infrastructure component. And
24 my guess what you're driving at is okay, if you get
25 in-migration, there's extra wear and tear on the

1 infrastructure. And then if you are an economist,
2 you have to say, well, what benefits do these people
3 have? They have to pay taxes and their social
4 capital, and their economic capital, does that
5 outweigh whatever the infrastructure cost? Of
6 course, you have to throw in the taxes that they pay
7 on property. And, again, you know, income and all
8 the good stuff.

9 Did I cover what you're asking me?

10 Q Yes. I think that is what I'm asking you.

11 So is your conclusion that the new
12 residents will not tax public infrastructure to an
13 extent that's more than the cost of their
14 contributions impact, discretionary income, and so
15 on?

16 A My testimony would be that the overall
17 pluses outweigh the minuses. However, as long as
18 they're calculated as a whole, the infrastructure
19 being minus, economic activity being a plus. So,
20 yes, it's a positive.

21 Q But you also testified that we don't know
22 the cost of the contribution to the public
23 infrastructure until we get to the County level of
24 decision-making, correct? Like for the wastewater
25 treatment plant and so on; is that correct?

1 A Yeah. My testimony about that is I don't
2 know what the final tally will be on the County's
3 level.

4 Q Got it.

5 I'm looking at page 37, and I can pull this
6 up.

7 You describe 15 long-term construction jobs
8 out of a total of 40 direct jobs created post
9 completion of the project, based on the presumption
10 of \$317,343 in construction cost from maintenance of
11 existing homes that you then multiply by a factor of
12 2.12; is that correct?

13 A That's correct.

14 Q How much are these 40 jobs paying like per
15 year?

16 A I can give you an answer that doesn't have
17 to do with the study, but if you're going to the
18 number, that is a DBED sanctioned economic model
19 number, that behind which has probably a couple of
20 economists looking at all the different pay levels
21 for all the different maintenance jobs, but, you
22 know, driving around Kaua'i, got to tell you, there's
23 a lot of trucks that are carrying yard equipment on
24 the road.

25 Q And so are you multiplying that 317,000

1 number by a factor of 2.12 to get the amount of money
2 available for those 40 direct jobs?

3 A Yes, ma'am.

4 Q But if you do that, you get about 672,000,
5 maybe 673,000 and then you divide it by 40, so you
6 get about \$16,800 per year or per job.

7 Is that in the ballpark of your
8 calculation?

9 A I didn't do those calculations, those
10 calculations were given by DBED.

11 Q Got it.

12 So your presentation, or actually maybe you
13 can talk about this.

14 Your presentation included a graph of price
15 trends, and also your study on page 13, is it your
16 understanding that there is, that -- will price
17 levels continue to rise in the next few years and
18 likely see peaks at the last cycle; is that a correct
19 statement? I think this was from your study.

20 A Yeah, that's my projection, yes.

21 Q Do you have a projection for how far HP --
22 or sorry -- HoKua Place may increase its pricing for
23 its marketplace homes?

24 A No, I don't.

25 Q In your sales price projection for single

1 family homes, this is your presentation -- sorry this
2 was your study, I think at page 34. It was thought
3 that the sales projection for single-family homes is
4 about \$650,000 to 1.25 million, so HoKua Place, your
5 understanding, is promising to build out at least 50
6 or so single-family homes at prices much less than
7 the average price, which was in the your presentation
8 as \$1.2 million for single-family homes?

9 A Yeah, that's right. I looked at the --
10 what they're going to build, and determined that that
11 would be not where the average would be, lower than
12 the average.

13 Q And you said that -- but HoKua Place is not
14 agreeing to a condition requiring that all the
15 single-family homes are prices index to the below
16 average pricing, like they're not promising to build
17 their market houses at below average pricing;
18 correct?

19 A Not the houses.

20 Q One more time.

21 A I'm saying the houses -- I'm repeating it,
22 so, yes. And as far as the indexing, that's beyond
23 the scope of work, and that's to be determined at a
24 future level if and when the County and them get into
25 this.

1 Q Thank you.

2 And the prices that you use in your sales
3 price projections, those are based on other Lihue
4 developments, correct, for construction material cost
5 increases?

6 A No. The actual prices were determined by
7 comparable properties within the area, the Wailua
8 Homestead, Kapa'a Islands area.

9 Q What year were you looking for these
10 comparable pricing?

11 A When I did the study, which was probably
12 six, eight months ago, nine months ago.

13 Q Do you know how many homes right now are
14 for sale on Kaua'i under \$750,000?

15 A I do not.

16 Q Thank you.

17 And do you know how many homes or
18 apartments in HoKua Place will sell for under
19 \$750,000?

20 A Say that again. Do I know how many homes
21 in HoKua Place will sell below 750?

22 Q Yeah, 750 -- yes.

23 A Are we talking condos or single family?

24 Q Any houses or apartments?

25 A Well, under 750, quite a large number will

1 be below, of the condos, will be below 750 easily.

2 Q Do you know what the maximum allowed
3 selling price for a four-bedroom home on Kaua'i is at
4 120 percent of AMI?

5 A I'd have to pull that out of the table
6 given by HHFDC for 2020.

7 Q Are you aware of -- sorry.

8 Are you aware of how many four-bedroom
9 homes are going to be sold at affordable pricing in
10 this project?

11 A No, I'm not.

12 Q And you already said affordable units are
13 going to be segregated. Are you familiar with the
14 County Bill No. 2774 that passed Kaua'i Council in
15 October 2020?

16 A I'm familiar with some of it, yes, ma'am.

17 Q Are you aware of exemptions from workforce
18 or affordable housing for projects with increased
19 housing density when developed on land not designated
20 in a visitor destination area?

21 A I recall that was in discussion
22 (indecipherable). I agree with the statement if you
23 --

24 Q If the project has a multi-family unit
25 cluster, as you refer to it, and qualifies for

1 Residential 10 zoning, do you know how many
2 affordable units will be required by the County?

3 A Not offhand.

4 Q I'll move on.

5 This is a timeline clarification. Your
6 second updated market, the Exhibit 30, indicates
7 eight-year total project period. Is that correct?

8 A Yeah, that's right.

9 Q I don't know if you are aware, I believe
10 the EIS indicated a ten-year period just for the
11 infrastructure. But so if the infrastructure is
12 going to take ten years, does that mean that the
13 housing can be sold prior to infrastructure being
14 completed?

15 A No. Depending on how the phasing and what
16 is in the phasing, you can start some of the
17 infrastructure that will service the first phase and
18 still have outstanding in the second phase. That's
19 something the engineers and contractors will have to
20 work with essentially.

21 Q Got it.

22 On page 14 of that same study, you said:

23 Last year one of the largest new homes
24 project stopped producing because they reached the
25 capacity for getting water from the County?

1 A That was D.R. Horton on Grove Farm lands
2 right by the airport, duplexes, pretty nice ones.

3 Q And you mentioned the trustees of your
4 family's trust, that's the Mary Lucas Trust for which
5 you're developing 49 units and bringing Koloko Dam
6 into compliance; is that correct?

7 A Yeah. It's my great, great
8 grandmother's -- my great grandmother's trust. My
9 father, in the co-trustee, got 49 units processed by
10 the County back in the '80s. I'm just on --

11 Q And that is the same trust that developed
12 Wailua Ridge, or is that Charlotte Cassiday?

13 A That's a pretty good one. No, Charlotte is
14 my grandmother. My great grandmother was Mary, and
15 yeah, that's Hawaii Loa.

16 So, yeah, Kamehameha gave us an ahupua'a,
17 and then my grandmother bought 4,000 acres from a
18 relative in the late 1890s up in Kilauea. Then they
19 sold some of it to put me through school in Punahou
20 and I thought that was a waste.

21 Q Thanks for your answer.

22 Are you familiar with for-sale housing, or
23 studies showing that for-sale housing is not the best
24 way to provide housing to households in the 60 to 100
25 percent AMI bracket?

1 A Not familiar.

2 But I can see the efficacy. I can see that
3 somebody would make that a starting point, and then
4 develop the argument.

5 Q Would rental housing be a reasonable way to
6 ensure families that need housing, get and retain
7 housing they need at the AMI bracket?

8 A On the demand side, yes; on the supply
9 side, it remains to be seen whether profitable.

10 To date, Hawaii has a miserable track
11 record of producing large scale rental housing,
12 market rate rental housing. Most of it is converted
13 military. Now they're going into high-rises right
14 here around in downtown, offices, converting offices.

15 Q Thank you.

16 I only have a few parts -- last question.

17 Were you aware that there was an affordable
18 housing problem in Hawaii before there were building
19 standards and government regulations of land use?

20 A That's a lot of brain cells. I would have
21 to look at when the LUC came in, when the standards
22 came in. But on the assumption that -- yeah, I mean,
23 I don't have a lot of data, but it seems reasonable
24 to assume as much.

25 Q And in response to the County's question

1 about whether or not the developer is using different
2 materials for affordable and market rate, you were
3 also relying on government regulations, specifically
4 building codes to make sure they were for building
5 materials, correct?

6 A To repeat what I was trying to answer the
7 County on, it would be that really the significant
8 cost items, the framing, the roof, plumbing,
9 whatever, that would be pretty standard across all
10 things. Then the finishes would be where the add on,
11 where the cost would start to pick up.

12 Again, you have a labor component there.
13 The more standardized your construction, the cheaper
14 overall everything is.

15 Q And the standard is the building codes,
16 correct?

17 A No. Well, one is you got to meet the
18 building codes, but also modular housing. If you do
19 modular housing, rather than custom build, very
20 architecturally detailed stuff, that's going to cost
21 a ton of money, but if you just go to panelization,
22 you can get your cost down pretty well. And they do
23 a good job of it in high-rises and now they're moving
24 into townhomes and family homes.

25 Q But you did mention building codes in terms

1 of the answer to the question about whether or not
2 the affordable and market rate will use different
3 materials, correct?

4 A Correct, I did.

5 Q Thank you. That's my last question.

6 CHAIRPERSON SCHEUER: It is 10:36.

7 Commissioners, it is our opportunity to ask questions
8 of this witness.

9 Commissioner Wong.

10 COMMISSIONER WONG: Thank you, Chair.

11 Good morning, Sir.

12 I was looking at your housing study. Did
13 your study look into the count of the number of units
14 that have been approved, but hasn't -- for a
15 development -- but hasn't been built yet as part of
16 the tally for your unmet needs?

17 THE WITNESS: Thank you. That's a good
18 question.

19 And the context of that will be this.
20 There are -- County and the -- the State and the
21 Counties and the Feds look at building permits, and
22 they count them up.

23 And I've always been frustrated that the
24 number of permits never resulted in the same number
25 of completions. And so I've given up on permits.

1 I like to look at them as something that
2 kind of gives the gut, but just because you pull a
3 permit, doesn't mean next year you'll start building.

4 And so there's a lag time, and it may be
5 tied into an economic event, like the Lehman Brothers
6 or the pandemic.

7 So rather than that, what I like to use is
8 completions that come to me through the County TMK
9 office, and it's their job to issue a Certificate of
10 Occupancy, then the tax assessor goes in and gets a
11 number for what it's worth, and gives them a tax
12 bill.

13 So that information is gold standard in
14 terms, for me, of housing production. I hope I'm
15 answering your question.

16 COMMISSIONER WONG: Yeah, it's just I think
17 somebody was talking about other state projects down
18 the coast, for example, the Hawaiian Homes and all
19 that. And, you know, the assumption again is they're
20 going to build it. We didn't say when, but they're
21 going to build it.

22 So I was wondering if that was ever taken
23 into account also?

24 THE WITNESS: I've taken it into account in
25 a lot of other things. It was in the background of

1 my mind.

2 I'll give an example. You have a ton of
3 entitlements on Oahu and you have a small production.
4 Part of the problem is all those entitlements with
5 the land trust or something like Campbell Estate and
6 their potential, and they don't get actualized until
7 Campbell sells to Horton, at which point, the land
8 goes from the landowner into the builder, and then
9 boom, boom, boom, those entitlements get absorbed.
10 That's -- I think that's the context.

11 COMMISSIONER WONG: It's just that, you
12 know, your study says for this project, this is how
13 many, you know, affordable will be built; how many
14 will be not affordable, et cetera.

15 So I was just thinking in terms of, you
16 know, let's say we say yes, this project is going to
17 be built, and taking your assumption that it's only
18 to the TMK that you will take another study down the
19 road.

20 So let's say HoKua Place has been approved
21 to be built. So let's say you do something in a
22 couple years, and do another study down the road, and
23 says, you know, I'm not going to take HoKua Place
24 because it wasn't built, but I'll take it when it's
25 built in TMK.

1 You know, there's that, somehow it seems
2 like there is a lag, so there will always be a lag of
3 how much housing is really out there. That's what
4 I'm trying to figure out.

5 THE WITNESS: Yeah. Okay.

6 If I understand -- and interrupt me,
7 please, if I understand me -- I rarely understand
8 myself anyway, but the reason why I went to the TMKs
9 again, that hits a number. And then you can see
10 every year, so going way back, you have a really good
11 number for completed housing projects.

12 Then the overlay to that would be within a
13 completion, what about an ADU, you know? Those are
14 new. Or what about the garage that got converted?
15 That stuff doesn't get captured, per se.

16 But then if you let HoKua go, it's a master
17 plan, and once it's in the hands of the developer,
18 they borrowed money, it's a race to get the money
19 back. They're going to build it.

20 COMMISSIONER WONG: So in my mind, I'm
21 using your train of thought. I'm just worried, let's
22 say not HoKua Place, but another project in the
23 future we say, yeah, you can go. They say, okay,
24 okay, okay, and they don't build 100 affordable
25 units, so we have 100 affordable units that's

1 supposed to be built for the people but it will never
2 be built.

3 So I was just wondering how that can be
4 taken into account, or how we can help the locals get
5 affordable housing, that's all.

6 THE WITNESS: Get good inspectors and get
7 good lawyers.

8 COMMISSIONER WONG: Thank you, sir.

9 That's all, Mr. Chair.

10 CHAIRPERSON SCHEUER: Thank you very much,
11 Commissioner Wong.

12 Commissioners, question for Mr. Cassidy?
13 Commissioner Okuda.

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

16 I was not really planning to ask you very
17 many questions. In fact, I wasn't going to ask any
18 questions, but then the last three days I've been
19 waking up really early to participate in the Urban
20 Land Institute's virtual meeting, which I believe the
21 State has paid \$150 for me to attend, and they
22 covered a bunch of stuff, so I would like to raise it
23 to you.

24 Let me preface my questions by saying this.

25 Number one, as a public school graduate, I

1 do not hold it against you that you went to Punahou.

2 But all joking aside, I'm going to ask you
3 some questions which actually might be more broader,
4 and going into, to some extent, what some people
5 might say is the public policy issues.

6 And I do that because I recognize that your
7 family's roots in Hawaii go back a long way, and
8 unless my understanding of parts of Hawaiian history
9 is wrong, I believe one of your ancestors was even in
10 the service of Kamehameha I.

11 So I know that in addition to you having
12 extensive knowledge as reflected in your resume, you
13 have the love of these islands, and that's the reason
14 why I'm going to kind of pick your brain a little bit
15 more, if you don't mind.

16 And please do not take my questions to mean
17 I have made a decision one way or the other. I'm
18 just trying to ask for your help to help me evaluate
19 the evidence. Is that all okay with you?

20 THE WITNESS: Please.

21 COMMISSIONER OKUDA: Mr. Cassidy, does
22 your study in any way deal with the market for
23 rentals? And I'm not just saying subsidized rentals,
24 but rentals, notwithstanding the fact that you're
25 probably correct, that Hawaii, for many and assorted

1 reasons, does not have the best history on putting a
2 rental product in the market.

3 And the reason why I'm asking this, at this
4 last Urban Land Institute seminar, I don't know if
5 you watched any of it, you know, they seem to be
6 going big on, hey, you know, look at rentals as a
7 market segment, yeah.

8 Do you have any comment on that; and did
9 your study consider that at all?

10 THE WITNESS: To the study, what I did do,
11 is considered rentals in a narrow construct. That is
12 because all of these homes are for sales. And the
13 impact of thinking about rentals would be from the
14 point of view of somebody who buys it, and then put
15 as an investor, rents it out and then maybe 20 years
16 or 10 years later gives it to their kids, or you
17 know, uses the money.

18 So I highlight that because that's a point
19 of departure for market rentals, which you heard in
20 the ULI, which charged me a lot more, even though I'm
21 about the same age as you. And that's a big thing
22 across the mainland, because of the prices. And some
23 of the regulation of rentals have gone into the right
24 way to make it more profitable, but one of the
25 biggest detriments is, could be, particularly in

1 terms of building condos and selling them, is the ten
2 years that there's an AOA that's considered the
3 builder and developer, so a lot of thought goes into
4 taking care of that contingency even though it might
5 be unknown.

6 A lot of time you hear of unscrupulous
7 lawyers that go in to sue somebody in order to make
8 some money.

9 But let me reflect a second on my family's
10 history. One of the things we did in Niu Valley
11 was -- my great grandmother died. We had to pay
12 death taxes, and so we contracted with a guy named
13 Joe Pau (phonetic) to build out single-family homes
14 in the '50s and '60s.

15 And then when she died, we had to sell some
16 of them. And it was very hard to sell leasehold
17 because it was against the law. So dad went to
18 Dennis O'Connor at the Legislature, hey, can you
19 change the law so that we can convert lease into fee.
20 And all the other big land developers got mad,
21 because it was opening up the flood gates on the
22 single family thing, but it was a necessary thing to
23 do, and the right thing to do.

24 And the problem with Hawaii is we're just
25 too damn desirable, and we've got to live with that.

1 We've got to figure out how to shift the benefits a
2 little bit.

3 COMMISSIONER OKUDA: Well, I think the ULI
4 conference had a number of institutional people
5 talking about rentals, not simply, oh, individuals
6 will buy the single-family house, rent it and then
7 leave it to their kids, but one of the discussions
8 was the great financial opportunity to have like
9 institutional development of rentals.

10 Does your study discuss that at all?

11 THE WITNESS: It doesn't discuss it. It
12 crossed my mind. I generally like that model of,
13 particularly single family rentals, that's a good
14 deal. It's a little bit easier on the mainland with
15 all their land and cheap labor.

16 COMMISSIONER OKUDA: And one of the reasons
17 why I raise this question is the Commission had an
18 order to show cause and a potential reversion issue
19 on a pretty big parcel below Kaanapali Airport.
20 There was a lot of community outcry, and part of the
21 resolution where it seemed like everybody who was out
22 crying against the project, the whole big room at the
23 MAC, Maui Arts and Cultural Center ended up
24 supporting the developer, because the developer
25 turned around and designed a rental project.

1 My only question is whether or not your
2 study covered, like, doing these type of
3 institutional-type rentals, my description, not yours
4 or anyone else's, the type that was just discussed in
5 the last few days at ULI conference, that's all it
6 was.

7 Let me ask you this. Is that the missing
8 part of the market for locals in Hawaii? You know,
9 this type of -- I don't want to call it mass market
10 rental -- but, you know, developments focused on
11 rentals, whether it's single-family, multi-family,
12 condominium type of buildings or a combination of
13 both.

14 I mean, from a public policy standpoint,
15 and maybe I'm talking a little bit broader than just
16 this project, but is that something that government
17 agencies need to look at and possibly encourage,
18 because that will help put local people into housing?

19 THE WITNESS: Okay, this is personal
20 opinion, but I'm very much for locals having housing.
21 I want locals to own housing and get the housing
22 appreciation that's going to come in the future, be
23 able to support a family, send the kids off, that
24 sort of thing.

25 So whatever does that. Now, rental housing

1 may reduce their living cost, so they can get a nest
2 egg and invest in the house. I'm all for that.
3 There's been a lot of discussion of leasehold being
4 an idea, but whatever you do, whether it's affordable
5 regulations, leasehold conditions, or even market
6 rate, you got to let the people make some money. And
7 if there's a way to benefit the locals, give them
8 first dibs.

9 When dad sold Princeville, part of Amfac,
10 and they had this deal where first dibs were given to
11 the resort, next to the community, then went from
12 Hanalei to Kilauea. On an island like Kaua'i, I mean
13 I've seen them do variations of this, and I fully
14 applaud them. Got to watch out for fair-housing laws
15 though.

16 COMMISSIONER OKUDA: And I agree with that.
17 The law is the law, and Hawaii is part of the United
18 States, and we have to respect everyone's rights as a
19 citizen.

20 I'm not suggesting that we do anything
21 unconstitutional or illegal, not at all.

22 Can I ask you this. Because this not only
23 comes out of ULI, but from, you know, the American
24 Planning Association or APA seminars. When I do
25 them, I actually sit there and try to learn stuff

1 because us lawyers, we're basically not that smart
2 regarding planning.

3 It seems to be being drilled into our head
4 not to stick a development away from places of
5 employment or retail or where the development pretty
6 reasonably can be predicted to throw traffic on the
7 road.

8 Do you think what is being preached at the
9 ULI and the APA, along those lines, do you think
10 that's -- is that now the standard of practice, or
11 the standard of care, or do you think that some of
12 the people presenting that are, you know, are trying
13 to push their ideological bias, because I do notice
14 sometimes that the APA or ULI, there seems to be some
15 people with an ideological bias.

16 THE WITNESS: I will say this. You're
17 correct about the trend. You're correct about the
18 ideology. It's looking at what is and then coming at
19 it from what should be. It's not an economical
20 argument. Usually that translates into legal
21 regulation, and Paul Brewbaker is the funniest about
22 this. He's a pure economist and he'll just tell you
23 what costs more.

24 I will say this though. I understand the
25 planning, the thought process. However, the pandemic

1 I think has changed it radically. So all you got to
2 do is look to where a bunch of people have to drive
3 to then support the old thought of putting housing
4 next to them, which is why you want hotel housing
5 right next door to them. But farm worker housing,
6 you can disperse the heck out of it. And then you'll
7 have foot-loose workers.

8 One of the solutions to this real thing has
9 to be condos on the rail that are inexpensive, maybe
10 rent them, but you can take a flood of offshore
11 workers. They would catch the elevator and go to
12 work.

13 That actually -- that's trying to make it
14 work from an economic and social perspective.

15 COMMISSIONER OKUDA: And along that line,
16 if I can ask you this. And this is more a policy
17 question.

18 CHAIRPERSON SCHEUER: Commissioner, we are
19 an at 10:55. How much longer do you think you have?

20 COMMISSIONER OKUDA: Can I have three
21 minutes, and probably stretch to five?

22 CHAIRPERSON SCHEUER: Okay.

23 COMMISSIONER OKUDA: Real quickly, Mr.
24 Cassidy.

25 You know, based on our discussion, does

1 this suggest that a development the size of HoKua
2 Place, all things being equal, probably should be
3 located nearer to Lihue and not nearer to Kapa'a?

4 THE WITNESS: On the old ideology, and
5 living on Kaua'i, you see who goes up and down and
6 where they go. Lihue and Puhi have the industrial,
7 so you got to travel there if you are in the factory
8 or have to be with a group of people, government
9 maybe.

10 So that bridge presents a huge problem for
11 you in terms of that. So that was then and now is
12 now. And then he'd hit me with his right fist,
13 because I took a wave.

14 But again, I'm looking towards -- and I see
15 it. I see people going out to work on other peoples
16 houses, and going north from Kapa'a. And I don't see
17 a heck of a lot of traffic there.

18 You've got the whole Wailua thing. You've
19 got Bobby Feree (phonetic), you've got Willy Sanchez,
20 and the Slaughter House. But the big wave is working
21 at home, and that is what I see on that.

22 COMMISSIONER OKUDA: You know, in your
23 preparation for this hearing, did you see anything in
24 the record which indicated where the perspective or
25 projected owners or residents of HoKua Place would be

1 traveling for work or not traveling for work? Is
2 there anything in the record that shows that to your
3 recollection, because I kind of didn't see it.

4 THE WITNESS: I don't think there was. I
5 did something in Lihue for -- piece of land between
6 Wal-Mart and the hospital, and tried to look at some
7 of that. And so, yeah, that wasn't asked and it
8 wasn't answered.

9 COMMISSIONER OKUDA: My final question is
10 this. And, again, I have not made a final decision,
11 but I hate what's called "trial by ambush", so I want
12 to lay my cards out on the table and maybe help with
13 my thought process.

14 Right now, and I'm not saying this is going
15 to be the final evaluation, but the record of this
16 case indicates some major issues, which suggest that
17 this project cannot be approved.

18 For example, the Environmental Impact
19 Statement had no mention of the wetlands. There is
20 no discussion of the wetlands. Mr. Bow talked about
21 the fact that he couldn't stamp or approve the prior
22 engineer's report, but that wasn't included in the
23 EIS.

24 There is questions raised about adequacy of
25 sewage disposal and whether there's going to be

1 issues of climate change and sea-level rise affect
2 there.

3 I don't know if you were listening, but one
4 of the witnesses testified that his greenhouse report
5 didn't comply with the administrative rules.

6 Another witness seemed to give really
7 equivocal answers about availability of water.
8 There's traffic issues.

9 Can you give me two or three reasons which
10 you think would convince me that notwithstanding you
11 will have these issues, including the questions
12 whether or not this project is even going to get
13 developed, because the evidence is the owner does not
14 have -- you know, the owner entity does not have, you
15 know, money in the bank or real assets, and nobody so
16 far has said they're going to personally guarantee
17 building of the infrastructure?

18 Can you give me two or three reasons why I
19 should discount all of these things and still vote to
20 approve the boundary amendment request, especially
21 since the burden of proof, the burden coming forward
22 with the evidence is on the Petitioner?

23 THE WITNESS: I cannot deal with all those
24 issues on your level. And I will quote Peter Young
25 five years ago by saying this is in the Urban

1 Boundary, it should be built.

2 For my own heart, and recognize that I love
3 my neighbors and my community, and I see housing
4 prices giving them despair, that's -- I can't go any
5 further than that.

6 COMMISSIONER OKUDA: Thank you, Mr.
7 Cassidy. I not only appreciate your testimony, your
8 expertise, but the fact that your family has
9 committed itself to Hawaii for generations. Thank
10 you.

11 Thank you, Mr. Chair.

12 CHAIRPERSON SCHEUER: Thank you,
13 Commissioner Okuda.

14 It is 11:01. We have been going for an
15 hour and one minute. We will take a ten-minute break
16 and will resume with cross-examination by the
17 Commission.

18 (Recess taken.)

19 CHAIRPERSON SCHEUER: It's 11:11 A.M., we
20 have Petitioner.

21 Commissioner Giovanni.

22 COMMISSIONER GIOVANNI: Thank you, Mr.
23 Chair.

24 Thank you for your testimony two weeks ago
25 and being here today for cross-examination, and

1 thanks to the other parties of this docket for their
2 questions that will narrow mine considerably, so
3 thank you for taking the time for your own
4 cross-examination.

5 I think I see -- Chair Scheuer, I think I
6 see that we have Commissioner Chang and Ohigashi.

7 CHAIRPERSON SCHEUER: That is correct.

8 COMMISSIONER GIOVANNI: I wanted to
9 recognize them.

10 Mr. Cassidy, my first questions have --
11 I'm a little confused by the timing of your work. So
12 can you state in clear terms the specific Exhibit No.
13 30, what is the date of that study?

14 THE WITNESS: I would have to see the
15 study. So exhibit -- Commissioner, if you have a
16 copy of it.

17 COMMISSIONER GIOVANNI: It has a date and
18 the year that says February 21st, which was two
19 months ago, but I don't think that's accurate, based
20 on your testimony to date.

21 THE WITNESS: What part is inaccurate?

22 COMMISSIONER GIOVANNI: Did you do it on
23 February 21st, is that when you performed this study?

24 THE WITNESS: The study was performed on an
25 on-going basis, and it was finalized on

1 February 21st.

2 COMMISSIONER GIOVANNI: So let me approach
3 it a little differently than you. The data that was
4 used in the study, what was in this updated version
5 that was put on the record by your counsel on
6 February 21st, what was the period of relevance for
7 the data that was used for your analysis?

8 THE WITNESS: There are several data basis
9 being used there. Some is MLS, some TMK, some is
10 census, some is economic.

11 It depends on what the series is. For the
12 data that is being used, and in most of the tables
13 and charts, it would call out the time period for the
14 data points. And so the finalization was in February
15 of this year, but a lot of times there is a lag
16 period in data, particularly TMK, because it has to
17 go through Bureau of Conveyances and they're slammed.
18 So that would be a lag time.

19 Then on top of that, the MLS would be a lag
20 time. My guess is -- and that's why I'm asking for
21 the particular table or chart -- my guess is, it was
22 performed using the most current data I had at that
23 point, and then as we went along and did the study, I
24 would update this part or that part, work on the
25 other part. So I hope that helps.

1 COMMISSIONER GIOVANNI: So the report
2 doesn't explicitly say in the narrative -- that I
3 could find -- what period of the data that you were
4 able to use for different charts that you prepared
5 and different conclusions of tables that you offered.

6 So I tried to interpolate from the charts
7 themselves what was the most recent data that you
8 were able to obtain, because I understand and
9 appreciate the lag time that's involved in what
10 you're trying to do.

11 So I'm not arguing with that at all, but it
12 appears from interpolating the charts in your report,
13 that the most recent data was probably second quarter
14 of 2020. Would you agree with that?

15 THE WITNESS: I would certainly, without it
16 in front of me, agree that -- no, I think --again,
17 I'm at a loss. I'm thinking, I grabbed a bunch of
18 data and worked on Kaua'i pretty hard in June, July
19 of 2020, because I was really curious to see what
20 happened. And I don't know to what extent I
21 incorporated that in, but February was one data
22 point, you know, and then the pandemic hit, and then
23 -- so, yeah, I can't say when it is.

24 I do have further data updates since this
25 study was completed if that helps.

1 COMMISSIONER GIOVANNI: It doesn't help a
2 whole lot what you just said, so I'm forced to
3 interpret what's in the record, and unless you or
4 your counsel could provide us a more specific update
5 of what data you used, I have to conclude that the
6 data that you've drawn your conclusions from and your
7 recommendations from for the analysis that was put
8 before this Commission is basically, at best, data
9 from the first quarter of the pandemic, which is the
10 second quarter of 2020.

11 So I encourage you and your counsel, if you
12 want to change my perception, provide more
13 clarification on exactly what data you did use,
14 otherwise, I'll just go from there; is that fair?

15 THE WITNESS: I would be happy to do that
16 and thank you for the opportunity to allow me to
17 answer specifically to your question.

18 COMMISSIONER GIOVANNI: Assuming the
19 relevant period of time was second quarter of 2020,
20 or the first quarter of the pandemic that had a
21 significant impact on Kaua'i, as well as the rest of
22 the State, as well as the rest of the United States,
23 as well as the world, and it had a dramatic impact on
24 the real estate market here in Kaua'i as well as
25 other places.

1 Would you agree with that?

2 THE WITNESS: I would.

3 COMMISSIONER GIOVANNI: And I presume
4 you're a lot more familiar with those impacts than I
5 am, so can I ask you to summarize, and be brief,
6 major impacts to real estate market on Kaua'i as a
7 result of the pandemic?

8 THE WITNESS: Two stages to that answer.
9 First was pandemic hit, everything ground to a halt.
10 We all looked around.

11 And then after, around the third quarter,
12 but before then, you saw people seeping into the
13 island to buy homes from outside. And that seepage
14 turned into a wave, and now it's engulfing the
15 island. Gone from the high end down to the lower
16 price segments.

17 When I did the -- when I projected the
18 prices of the condos, I looked very carefully at the
19 existing condos in February, and -- I'm sorry, yeah,
20 February of this year. And what I found was it's
21 starting to increase, and I heard from people that
22 there's no more listing.

23 So I'm led to believe that most of these
24 numbers are conservative and undershoot the market.

25 COMMISSIONER GIOVANNI: Can you speak

1 specifically -- again, let's talk about the wave
2 portion of that analysis, what it did to drive prices
3 both in terms of the market supply and demand driving
4 prices, but also how commodity prices have just
5 escalated and are also driving prices.

6 Can you offer your personal perspective on
7 that?

8 THE WITNESS: My thought is this. And it
9 went across the nation, a bunch of people left the
10 city, took their kids, and the first movers got
11 someplace where the market was kind of in status, but
12 as they filled in, the market supply went down,
13 there's hardly any listings and the average prices
14 are going crazy.

15 And the behavior, you know, they don't --
16 they don't even come and look. You have ZOOM, you
17 know, inspections. And that's a function of the
18 whole world stopping, changing their point of view.
19 And those that can, moving to a desirable place.
20 Kaua'i is very desirable. So, yeah, it's gone up.
21 And I don't see why it should go up.

22 But then the second component which now is
23 taking effect is the expense of building supplies.
24 Lumber has gone through the roof. And also interest
25 rates will start to creep up. So to some extent

1 there'll be brakes on that going forward, in my
2 opinion.

3 The longer time period, though, I mean
4 you're still going to see demand going up, and supply
5 being held back, especially if prices of commodities
6 go up.

7 COMMISSIONER GIOVANNI: Hold that thought
8 for a moment. I'd like to talk a little bit and ask
9 you about the households that comprise the different
10 segments of the buy-in market.

11 So in terms of the wave that you were just
12 describing, a lot of off-island investors, lot of
13 people moving here to become first-time residents.
14 How would you characterize -- describe the
15 wherewithal of those potential and residents or home
16 buyers in terms of their economic condition.

17 THE WITNESS: This is an assumption, but
18 the stock market went crazy. A bunch of these guys
19 cashed out. It's a classic seed case. Grove Farms
20 got out of AOL and went to hard assets. That's on
21 the financial thing.

22 On the quality of living, that's been a
23 constant. The ability to work from home, you know,
24 you see guys at Starbucks on Kaua'i all the time
25 talking business, and that's how I characterize it.

1 COMMISSIONER GIOVANNI: So from what I take
2 away from what you just said is that the entities
3 that are driving these prices, this wave that you've
4 referred, these are not the low income people that
5 are struggling to find their first home, are they?

6 THE WITNESS: No, although there is a wave
7 effect, the wave started at the top, and my guess is
8 when it's easy for you to come down from the mainland
9 and look at something, then it will begin to effect
10 the lower portions of the price spectrum. And that's
11 a guess.

12 COMMISSIONER GIOVANNI: At best that's a
13 guess is what you're saying?

14 THE WITNESS: Yeah, that's a guess, yeah.

15 MR. GIOVANNI: I would guess differently,
16 but that's my guess.

17 But, nonetheless, let's talk about the
18 lower income entities that are searching for their
19 first residents and might be bound up in multiple
20 families living in the same residents. These are
21 really the people that are striving and trying to
22 find their first home, and that's what this low
23 income affordable housing regulatory stuff is all
24 about; is that correct?

25 THE WITNESS: That's correct.

1 COMMISSIONER GIOVANNI: So what has been
2 the impact, in your view, of the pandemic and the
3 slow down in the economy to that portion of the
4 population as opposed to the seed case population
5 that you just described for us?

6 THE WITNESS: And this is just me looking
7 around Kaua'i, lot of people are out of work. I
8 think the motorcycle, the Harley Davidson store ran
9 out of bikes. People were buying bikes and for their
10 kids, the other thing, surfing.

11 The thing of the stimulus money, that was a
12 big deal. And the other thing I thought happened on
13 Kaua'i was pretty cool was that people were sharing
14 resources, barter economy always has been there, but
15 this is a giving economy.

16 So to my mind those families, second,
17 third, fourth generations, they did what they did in
18 every disaster. They all banded together.

19 The stimulus money coming from the outside
20 helped them survive. The guys that didn't have that,
21 had to -- I belong to an affinity group that supports
22 them. And then the ones that didn't have that
23 grouping, they left the islands.

24 COMMISSIONER GIOVANNI: One of the words
25 that you used in your explanation was "survive".

1 Would you describe it overall, just a form of
2 survival during a tough time?

3 THE WITNESS: I like "survival". It might
4 dial it back a little bit, because it wasn't like
5 there wasn't any food and it wasn't like -- the
6 mortgage didn't need to be paid. The landlord didn't
7 need to be paid, the status.

8 So it wasn't a life and death survival, but
9 it was an impressive -- it was a mental condition
10 that turned out pretty good at the end of the day.
11 So far so good. Touch wood.

12 COMMISSIONER GIOVANNI: And the outlook is
13 not going to end any time soon, and some -- even
14 though things are turning in a better direction now.

15 So is it fair to say that people that are
16 in that environment, economic environment are not --
17 would you be surprised if they were out looking to
18 buy a new home?

19 THE WITNESS: Yeah, I mean, those that
20 depend on tourist jobs, that's nuts; and those that
21 depend on tourist jobs are looking to placed to stay.
22 So construction trailers, tents, all manner of
23 shelter, yeah.

24 I'm hopeful for tourism, but traffic is
25 bad. But not everything is open. There's a hurt at

1 this level.

2 COMMISSIONER GIOVANNI: Going to take
3 awhile, I think is what you're saying.

4 So in your testimony earlier this morning
5 you used the expression "qualification for buyers of
6 low-income housing." I presume that meant for the
7 financing qualifications. Is that correct?

8 THE WITNESS: That is a big subject; and it
9 mainly deals on qualifying them. And what you see in
10 the big affordable housing towers here is how hard it
11 is to get people to get all their records together
12 and then have the process.

13 So that's a process, functional procedural
14 type thing, and then, you know, the government can do
15 the dials on the income and extra programs and
16 subsidies here and that sort of thing.

17 COMMISSIONER GIOVANNI: So in other matters
18 before this Commission we have heard from other
19 experts or qualified folks that are in the same line
20 of business that you are offering their consulting
21 services in a similar way. And we've heard -- I'm
22 going to tell you what I've heard and ask you if you
23 agree with this or not.

24 That despite the demand overall for housing
25 in Hawaii that's driving prices up just as you

1 described, it's the lower end, or the people that are
2 looking for the affordable housing that are kind of
3 shut out because of the difficulty in qualifying, and
4 because of their preoccupation with, quote/unquote,
5 survival in this environment until things get back to
6 where we hope they go.

7 Would you agree or disagree with that
8 appraisal in general terms?

9 THE WITNESS: I would always subscribe to
10 it.

11 COMMISSIONER GIOVANNI: Okay, thank you.

12 Are you familiar with financing of major
13 projects like this that gets financing supported or
14 partially by the Federal Department of Housing and
15 Urban Development?

16 THE WITNESS: I am, yes.

17 COMMISSIONER GIOVANNI: So I am not as
18 familiar with those fair-housing requirements as you
19 might be, so let me ask you to share your expertise
20 or familiarity there.

21 But if the developer of this HoKua Place
22 project secured some federal financing from HUD,
23 would that open up the market or would we -- would
24 that open up the market to low income buyers from
25 outside of Kaua'i?

1 THE WITNESS: The short answer is the
2 County can put in a one-year residency, so that they
3 can parachute in and take it away. That's one of the
4 things, and that's kind of the things that, you know,
5 given discussion with the County attorney or housing
6 agency, you talk about.

7 Kaua'i, again, probably the most flexible
8 of all the counties. When I mentioned dad, who
9 worked for Amfac in the '80s, zoning that thing, that
10 was enlightened. But, again, a different time.

11 So today, that enlightenment, if you can
12 spread it out to other forms of housing, ADU's, I
13 mean, you guys are faced with oh, it's got to be
14 super small, because we are afraid it's going to get
15 rented out short-term.

16 Let them have a big place, because that's a
17 big family, that's Kaua'i. Kaua'i is a single-family
18 market. And that's their druthers. And so to your
19 question, if they got low income tax credits, then
20 that supplements, reduces the cost of production, and
21 they then would rent out under regulation a bunch of
22 units to the 60 and 80 percent AMI guys, but that's a
23 decision that this developer would take down the road
24 and probably at the County level, and go back and
25 forth and say, okay, we're tweaking this. And we're

1 doing it because we want more rentals. We think
2 rentals are a good deal. We think it's appropriate
3 for you.

4 The State has some funds. The County has
5 some funds. Affordable housing fund got raided after
6 the Lehman projects failure. Could happen again this
7 time.

8 But there is a ton of money at Bureau of
9 Conveyance coming through, and I think now we're a
10 community that's a bit more cohesive and clear, a
11 clear vision on what we should do and how we should
12 do it. That's a long answer.

13 COMMISSIONER GIOVANNI: Let me say you have
14 more than adequately confused me, so thank you for
15 that.

16 THE WITNESS: Sounds like my wife.

17 COMMISSIONER GIOVANNI: Let me tell you my
18 take away from what you said, and then you tell me if
19 I've adequately confused you or if I'm correct.

20 Let me acknowledge that the developer
21 hasn't clarified what kind of financing he's going to
22 do for this project, so we don't know, but it seems
23 to me that if, under certain forms of financing from
24 government entities to the aid of the developer, it
25 would open up the market for low income products in

1 the development to residents from outside Kaua'i, and
2 to mitigate that, it would require the County -- or
3 to implement specific measures of regulations to help
4 assure that the locals buy it, is that what you
5 actually said to me?

6 THE WITNESS: Yes, that's what I said.

7 COMMISSIONER GIOVANNI: All right. We can
8 go on.

9 Again, on time, this is normally a ten-year
10 project, assuming it starts pretty soon. And I think
11 you said that from a cash-flow perspective, your
12 understanding is you need to generate the profit from
13 the high income housing so that you can afford to
14 build the low-income housing.

15 THE WITNESS: That's right.

16 COMMISSIONER GIOVANNI: Doesn't that mean
17 you build the high end stuff first?

18 THE WITNESS: Yes, absolutely.

19 COMMISSIONER GIOVANNI: And I think you
20 referred to the high market stuff, high profit stuff
21 as the single-family homes that will be put on the
22 position on the property that grants them the nice
23 ocean view.

24 THE WITNESS: The bluff, yes.

25 COMMISSIONER GIOVANNI: Would that also

1 apply to -- we've heard an incredible amount of
2 testimony in this docket about the amount or volume
3 or cost of infrastructure that would be needed to
4 accommodate this project.

5 And I understand your comment, your
6 testimony about all this stuff is going to be phased
7 by the construction people.

8 But as a resident of Kaua'i, I can offer to
9 you that that area of our community is already
10 heavily taxed and in need of infrastructure to
11 support the flow of -- just to pick one -- traffic.

12 So would it be fair or unfair for me to
13 assume that, at best, the real low-income housing
14 here is going to come at the tail end of this
15 phasing, or maybe the infrastructure will come at the
16 tail end.

17 But it's really about building the
18 profitable stuff first, even though we're trying to
19 push this project as an affordable housing project,
20 that's not going to occur for years.

21 THE WITNESS: You could layer them, and
22 that's the -- which is my way of saying, yeah, you
23 got to make money to put into the infrastructure and
24 get the bank to lend you stuff.

25 And if you throw the low income stuff

1 up-front, they're going to go, well, what's in your
2 checkbook, or what is in your pocket? They will want
3 to cross subsidize with another successful project
4 somewhere else, which is why a lot of developers,
5 Castle & Cooke who I worked for, they were able to do
6 stuff because they had cash reserves and land
7 reserves, A & B same thing, plus -- yeah, you're
8 right.

9 COMMISSIONER GIOVANNI: So what drives up
10 the pricing and the profitability for the higher end
11 homes are things like the view; is that correct?

12 THE WITNESS: View and privacy and
13 security, yeah.

14 COMMISSIONER GIOVANNI: Conversely, a very
15 nice home with a view that's in the nest egg of an
16 area that has chronic traffic problems, would that be
17 a negative?

18 THE WITNESS: No, they don't like traffic,
19 and they don't like noise.

20 COMMISSIONER GIOVANNI: They don't like
21 traffic, don't like noise. So you're asking them, if
22 the infrastructure is not done first, because you got
23 to get the profit out first so we can build out the
24 infrastructure, wouldn't it be a disincentive for
25 these high-end buyers to actually buy at full market

1 potential based on the view, because I have to deal
2 with traffic and noise issues? Got to balance that
3 is what I'm saying.

4 THE WITNESS: You got balance, but the only
5 thing I'm trying to answer, the infrastructure goes
6 in first, sewage and freshwater and electricity,
7 roads, conduit, all of that's got to be done. So
8 high-end buyer, I'm not going to buy anything that is
9 a year or two, I want to drive up there, you know, if
10 it's my house, move it back from the bluff, et
11 cetera, et cetera.

12 The view is so good and, you know, I live
13 in Kapa'a and, boy, do I hear a bunch of noise, so.

14 COMMISSIONER GIOVANNI: I hear you.

15 So the infrastructure that has to be done
16 first to make the home buyer happy is actually the
17 on-property infrastructure; is that correct?

18 THE WITNESS: On and off, because where
19 does the sewage go? You can't do cesspools any more.
20 A lot of pipes, a lot of infra -- you know.

21 COMMISSIONER GIOVANNI: So the supporting
22 infrastructure, I'll call it, which is really the
23 responsibility of the County and State for the most
24 part, even though the developer said that he would be
25 willing to entertain discussions about cost sharing

1 and that -- those are really capital improvement
2 projects of the County and State that have to be done
3 first; is that correct?

4 THE WITNESS: Yeah, there is a meeting of
5 the mind. This is what I need. This is what I can
6 give. If you are BWS, you guys engineer it, we will
7 comply. So, yeah.

8 COMMISSIONER GIOVANNI: And all of that
9 effects the sequencing and the layering and phasing
10 of the project; is that correct?

11 THE WITNESS: That's right.

12 COMMISSIONER GIOVANNI: So at best, this is
13 not a project that's going to be off and running
14 building houses any time soon?

15 THE WITNESS: I would say two years of
16 infrastructure, plus whatever it takes to get through
17 the County. But, yeah, maybe three years.

18 COMMISSIONER GIOVANNI: We can debate that
19 later how many years, but I will not accept your two
20 or three years. I live on Kaua'i also.

21 THE WITNESS: Okay. Thank you.

22 COMMISSIONER GIOVANNI: When it comes to
23 regulation, can you describe to me what you referred
24 or has been referred by others in the this docket as
25 anti-flipping regulation for low-income housing?

1 THE WITNESS: Yeah, basically -- and it's
2 the same for the market. You have to be -- first
3 choice, back to helping locals buy, first choice goes
4 to local, got to be here -- you know, I like five
5 years, but anyway, my mom hasn't made me God yet.
6 Then anti-flipping. You got to hold onto it for a
7 period. And since the average family lasts about --
8 moving every seven years, and horses -- about every
9 eight years. Yeah, keep them locked up, you know,
10 reasonably in that sense.

11 COMMISSIONER GIOVANNI: Let's say seven
12 years, how does that work? Can you explain it to me?

13 So I qualify as a low income purchaser of
14 one of the units in the multi-family. And I sign
15 this thing says I won't flip it for seven years.

16 Can I sell it at market rate after seven
17 years?

18 THE WITNESS: Yeah, whatever the time
19 period, yeah. It goes to market. Some exemptions,
20 you know, maybe you share something, there ought to
21 be a little social flexibility, if you have more kids
22 or you guys split up, maybe move to a similar one, so
23 that -- what you're trying to do is stop them from
24 flipping. And for me, three, four, five years. It
25 is what it is.

1 See, I don't want to dampen the individual
2 household's ability to plan and take their investment
3 and move it around like a stock portfolio.

4 COMMISSIONER GIOVANNI: I know you like
5 seven years. My familiarity with these types of
6 projects the developers are seeking five years.

7 But in any event, for HoKua Place, let's
8 say it had a five-year anti-flipping regulation.

9 Isn't it a reasonable assumption that
10 within ten years the whole place would be at market?

11 THE WITNESS: Well, no. The units are
12 produced under the regulation of the State, County
13 and the Feds for 80 percent and 100 percent. And
14 then whatever the County wants.

15 You could probably tweak it and say, okay,
16 shared appreciation meaning, okay, if you sell before
17 seven years or the magic number, we get ten percent,
18 you get 90 percent of the appreciation.

19 COMMISSIONER GIOVANNI: That's not my
20 question.

21 My question -- you've got provisions built
22 in for the five years, just like you described. But
23 after ten years of resales, haven't we effectively
24 created a project that is virtually near 100 percent
25 at market rate?

1 THE WITNESS: Let's go with that
2 assumption. You know, I get down in the weeds who's
3 going to --

4 COMMISSIONER GIOVANNI: I mean, there might
5 be an individual unit that doesn't sell, but in
6 general, and I think we agree on that.

7 THE WITNESS: Here's the thought. If you
8 had 90 percent of those guys, locals, and in ten
9 years their unit traded at market. Then those locals
10 could sell and move up on the assumption that they're
11 doing well and they saved, economy moved in the right
12 direction.

13 So part of my calculations has always been,
14 how do you help locals get a leg up? Because, again,
15 back to families' experience with leasehold, that was
16 a bummer.

17 COMMISSIONER GIOVANNI: I'm looking at it a
18 little different. I would agree with you that the
19 family that was able to qualify for low income unit,
20 and then five years later was able to flip it, might
21 very well be able to move into a higher priced
22 property and move up.

23 My concern, however, is what they left
24 behind is the elimination of a low-income property
25 for a different family to move into, and, thereby

1 didn't solve -- over time it doesn't solve our
2 affordable housing crisis.

3 THE WITNESS: That's a box. That's a
4 conundrum.

5 COMMISSIONER GIOVANNI: Finally, I want to
6 go to a line of questioning that Commissioner Okuda
7 started on rental versus purchase.

8 You mentioned that on the demand side that
9 there was an absolute demand for low -- I mean, for
10 affordable rentals.

11 Can you expand on that perspective?

12 THE WITNESS: Yeah. You look at the
13 demographics, the number of households making 30 or
14 50 or 60 percent of AMI is huge, and you compare that
15 with the existing inventory of affordable housing
16 units serving those targets, and the disparity is
17 unbelievable. So, yeah.

18 COMMISSIONER GIOVANNI: So those families
19 that are in that category, is that what constitutes a
20 high demand for rental units at prices they can
21 afford?

22 THE WITNESS: Yeah, yeah, that would fund,
23 that would -- they would rent as many as you could
24 produce. Yeah.

25 COMMISSIONER GIOVANNI: It's fair to say

1 that most of those families don't have a nest egg for
2 a down payment for purchase; is that right?

3 THE WITNESS: Yeah, that's true.

4 COMMISSIONER GIOVANNI: But you also said,
5 looking at supply side of that equation, the
6 developer's struggle to provide that type of housing
7 and make money doing it, is that correct?

8 THE WITNESS: That's correct.

9 COMMISSIONER GIOVANNI: So they don't build
10 it, is what you're saying?

11 THE WITNESS: No, they don't build it.

12 COMMISSIONER GIOVANNI: Mr. Okuda referred
13 to a project this Commission had under review on Maui
14 where it was about the same size, but the developer
15 expressed that he could make it work to us and, in
16 fact, that project is moving forward to our
17 understanding.

18 So it's not an absolute in my mind, and I
19 don't know if it's an absolute in your mind, that low
20 income rentals as a development are not possible on
21 Kaua'i?

22 THE WITNESS: Oh, no, it's possible. It's
23 hard to do. You have to have a developer that is
24 financially stable and smart about building cost, but
25 on other islands I've seen it done, big Island. But

1 there's a cross subsidization.

2 The Big Island project that I'm familiar
3 with, the guy built a shopping center. So he was
4 able to give Mayor Kim 30 or 60 workforce housing
5 rentals with no subsidy and no regulation simply
6 because he knew how to do it.

7 COMMISSIONER GIOVANNI: Are you familiar
8 with the low income projects down in Koloa on Kaua'i?

9 THE WITNESS: Yeah, I went to the
10 groundbreaking -- not the groundbreaking, Craig
11 Watashi built them. He's a good guy, and had the
12 celebration --

13 COMMISSIONER GIOVANNI: That was the model
14 you were just describing for Mayor Kim, if I'm not
15 mistaken.

16 THE WITNESS: No, Craig got the land from
17 the County who got it from A & B, and he -- I do a
18 lot of these studies for low income tax -- I did the
19 study on that. I did the one in Princeville. That
20 is a subsidized project.

21 COMMISSIONER GIOVANNI: Yeah, I think our
22 County has expressed that if they can make the land
23 available, then these projects are feasible under a
24 rental scenario for a developer.

25 Would you agree with that?

1 THE WITNESS: I agree with that. I would
2 like to see for sale as well, because that's what
3 Kaua'i people like and want.

4 COMMISSIONER GIOVANNI: The other aspect of
5 that agreement that we were talking about on Maui,
6 the one with the low income rentals, it actually
7 had -- and I'm going to describe for you -- an
8 anti-flipping policy that basically said that for
9 30 years, if the renter moves out and a new renter
10 moves in, the new renter moving in would enjoy the
11 same low income provisions.

12 Do you see any reason why that wouldn't
13 work in Kaua'i, something of that sort?

14 THE WITNESS: There's two levels to that.
15 It would work, yes, but one of the levels has to be
16 what it does to the homeowner.

17 And actually that can pretty much stop
18 there.

19 The other level though has to do with the
20 balance of the County's contribution, the State,
21 County, Feds, what they contribute to enabling this.
22 The more of that that's in there, the greater to my
23 mind the restrictions on the individual should be.
24 Because, you know, all of us gave to that one guy to
25 have shelter, you know. It's a way of showing your

1 gratitude.

2 But gratitude might have another
3 description to it, you know, servitude. That's just
4 my philosophy.

5 COMMISSIONER GIOVANNI: I'm going to stop
6 there.

7 Thank you very much, Mr. Cassiday.

8 I have no further questions, Chair.

9 CHAIRPERSON SCHEUER: Thank you very much,
10 Commissioner Giovanni.

11 Commissioners?

12 Commissioner Chang.

13 COMMISSIONER CHANG: Thank you. And I
14 greatly appreciate your testimony, Mr. Cassiday. You
15 have been extremely candid, which I've appreciated
16 that.

17 I'm going to just ask you just a few
18 questions regarding your comment that the developer
19 has to make money.

20 So they want to sell the homes that are on
21 the bluff because there is a nice view, there is a
22 spectacular view. It's private, and so they would --
23 that's probably where the developer would build
24 first.

25 Can you confirm, are those ag lots?

1 THE WITNESS: Don't hold me to it, but I'm
2 pretty sure they would be regular R10. They're not
3 ag lots. I'll take it from somebody else. I think
4 right now it's ag zoning, but it will be changed.

5 COMMISSIONER CHANG: So assume that they
6 are ag zoning, I'm not too sure that you're aware
7 that the Land Use Commission recently came down with
8 a decision regarding the definition of farm dwelling.

9 That on ag lots, it is LUC's position that
10 that farm dwelling, the residential dwelling, in
11 compliance with the rules, it has to be used in
12 connection with the farm or where the activities
13 provide income to the families occupying the
14 dwelling.

15 Now, I suspect that the people that you
16 thought would be buying these properties and paying
17 high-end market to live on the bluff wouldn't be
18 doing this kind ag activity where the majority of
19 their income is being generated by the agricultural
20 activities. Would you agree with that?

21 THE WITNESS: I would agree in form, but in
22 substance -- and here's my distinction -- that it
23 wouldn't be sold with these restrictions because it
24 would be an ag lot.

25 However, you can correct me whether that's

1 the ultimate -- whether that's going to happen or
2 not.

3 COMMISSIONER CHANG: Well, I would assume
4 that if they're going to take it out of ag and put
5 into residential zoning, then they would have to do a
6 boundary amendment for that. So if they're going to
7 keep it in ag, that that would be the restriction.

8 THE WITNESS: I agree with you, yeah.

9 COMMISSIONER CHANG: So if these lots, if
10 this is the developer, as you've just indicated, this
11 is where they would make their money. But if this
12 regulation is enforced, that they have to do ag
13 activities, that the farm dwelling has to be
14 connected to the farming activities, do you think
15 they would pay those kinds of prices, a million
16 dollars for farm dwelling that has to be connected
17 with a farm activity?

18 THE WITNESS: In general, the higher the
19 level of restrictions and mandates for the activities
20 taking place within the boundaries are, the harder it
21 is for somebody to parachute in and create their
22 thing.

23 But having said that, and having lived with
24 the North Shore of Kaua'i for many years, and other
25 areas, all I can say is, human ingenuity when they

1 want to do something, usually comes up with
2 something. It falls to the County to enforce it, you
3 know. God bless them.

4 COMMISSIONER CHANG: You're right. But I
5 will tell you, this is a whole different Land Use
6 Commission, so we're really -- when those issues come
7 up, and they have come up before the Land Use
8 Commission, what is a permissible use on ag zoned
9 lands, I mean we are saying, and we have said it has
10 to be like the rules say, in connection with a
11 farming activity where they are generating their
12 revenues.

13 So it appears that one of your
14 assumptions -- again, assuming that enforcement of
15 that regulation is made, and they do enforce so that
16 we avoid -- because I suspect the developer thought a
17 lot like you thought, we turn these into gentlemen
18 estates, that's essentially what you're saying, these
19 are ag lots. This is where they will get the most
20 money, because it's on the bluff. People will pay.
21 But they're not going to do any ag.

22 So I think the developer was thinking what
23 you were thinking, that those would be sold. He
24 would make his money on those developments, because
25 he could probably sell them for higher value.

1 So I guess, you know, my point is that your
2 assumption that the developer, you know, he has to
3 make money, and he would sell these lots.

4 If those regulations are enforced, the
5 potential buyers that you may be thinking of, and the
6 developer may be thinking of, may not be able to do
7 what they have intended to do.

8 THE WITNESS: I can comment on that if you
9 like.

10 COMMISSIONER CHANG: Go ahead.

11 THE WITNESS: I follow what you're saying
12 about the rules and regulations on the ag parcels,
13 but when I looked at this, I did not conceive of it
14 that way, because the lot sizes are small.

15 I could go down the farm worker thing
16 completely. My assumption, and I think any developer
17 who, again, looks after their pennies would be darn
18 sure that he wasn't going to have to do this for
19 those rim lots, that they would be R10, R15, whatever
20 it is. They would be cookie cutter. They would be
21 within the zoning, R10, whatever the deal is, and
22 that's what it was.

23 What I'm saying is the revenues that I've
24 assumed were based on that concept, if the zoning is
25 in your hands, and I've watched that process, and I

1 know how many cows can dance on the head of a needle
2 or whether a horse can go around any place, that's a
3 Princeville Ranch deal, blah, blah, blah.

4 COMMISSIONER CHANG: And I think I
5 appreciate your comment. But I do believe that if
6 it's zoned ag, then those restrictions apply.

7 If you want to do a purely high end
8 residential lot and no ag, then you change the
9 zoning. So that is what it is.

10 Could the developer do a phased approach on
11 the infrastructure, and let's take your assumption,
12 you know, going to build the high market, the ones on
13 the bluff.

14 Could he just do a phased infrastructure so
15 that he's only providing the infrastructure just to
16 those lots and not to the entire project site?

17 THE WITNESS: Let me qualify a little bit.
18 This comes from Dennis Isaki (phonetic) who's with
19 Wayne (indecipherable). They're really good on
20 Kaua'i. He's looked at it. He said the
21 infrastructure has to be brought mauka to makai, and
22 that makes sense, that's downhill. It has to go at
23 the back to the front, with the rim lots being the
24 last.

25 There is a road that would go up -- my

1 assumption and, again, I haven't seen the developer's
2 final plan, but when you talk to Isaki, you know,
3 guys like that just look at the land and say this is
4 what's got to be done.

5 So the base infrastructure for water and
6 sewer has to be all put in or put down the spine, the
7 center of the project first. So that's your big
8 deal.

9 And then you could do quadrants or bits or
10 halves, whatever, my guess it's quadrants. But in
11 order to be good about your cash flow, you want to
12 have the infrastructure, the stuff that can service
13 everybody, pay for that upfront, and don't phase it.

14 But then the actual finishing of the lots,
15 you try to phase that and keep it close to what your
16 sales rates will be so you don't spend a lot of
17 money.

18 COMMISSIONER CHANG: That helps me a lot.
19 That makes a lot of sense.

20 We've heard from different witnesses that
21 the potential infrastructure cost is \$83 million.

22 Do you think that this developer is going
23 to put up \$83 million before he builds these market
24 homes?

25 THE WITNESS: I'll answer it a different

1 way without using -- I think this developer will not
2 sell a single high-end home unless they're convinced
3 that he's good enough to complete, to the County and
4 the State and the Federal regulations, complies, gets
5 it done, signs it off. I wouldn't give the guy a
6 dime until that.

7 So, yeah. And the more they try and fiddle
8 that, the smaller the price I'll pay up.

9 COMMISSIONER CHANG: I appreciate your
10 candor on that.

11 And if -- I just lost my train of thought.

12 Because the developer has commented during
13 his testimony that it is his intent, he's going to do
14 the best he can to keep it affordable. But what I'm
15 also hearing you say is that, in order to do this
16 development the right way, one, he's got to put in
17 infrastructure, approximately \$83 million, and then
18 probably do the market homes so that he can get some
19 return. And then the affordables are going to be way
20 at the back end. Is that fair enough?

21 THE WITNESS: That's fair. The only kind
22 of thing I would throw on that is that you have three
23 classes of affordable, and there's one that loses a
24 ton of money, and one that's probably neutral.

25 So it's a little bit nuanced, but you got

1 it.

2 COMMISSIONER CHANG: Thank you so much, Mr.
3 Cassidy. I really appreciate your candid testimony,
4 that's been very helpful. I have no further
5 questions.

6 CHAIRPERSON SCHEUER: Thank you. I
7 recognize Commissioner Giovanni has his hand up. I
8 recognize Commissioner Cabral has had her physical
9 hand up. I also have some questions, and we are at
10 lunchtime.

11 So can I get a sense from Commissioners
12 Giovanni and Cabral the length of your questions?

13 COMMISSIONER GIOVANNI: I have one
14 question.

15 CHAIRPERSON SCHEUER: Commissioner Cabral?
16 You're muted.

17 COMMISSIONER CABRAL: Yes, I think I'm
18 short.

19 CHAIRPERSON SCHEUER: Commissioner Okuda?

20 COMMISSIONER OKUDA: One question if it's
21 not covered by prior Commissioners.

22 CHAIRPERSON SCHEUER: I probably have about
23 ten minutes or so. Is anybody burning to go before
24 lunch, otherwise I think we need to take a break and
25 go to lunch, and return to Mr. Cassidy after lunch.

1 Any Commissioners want to ask your question
2 right now? Commissioner Giovanni?

3 COMMISSIONER GIOVANNI: I want to ask it
4 only because it was triggered by Ms. Commissioner
5 Chang's questioning and is a followup.

6 CHAIRPERSON SCHEUER: Please.

7 COMMISSIONER GIOVANNI: So, Mr. Cassidy,
8 Commissioner Chang referred to infrastructure cost
9 and there's been a wide range of what those cost
10 could possibly end up costing, and net to the
11 developer from I think a low of 83 million to a much
12 higher number, not even going to speculate.

13 My question is: In your experience for a
14 project of this type, if a developer had to make a
15 very significant investment in infrastructure, does
16 he recover those costs through the sale price of the
17 property? Through the monthly maintenance fee on the
18 properties that are in a condo association? Or as to
19 a combination of the two?

20 THE WITNESS: Good question. The bulk of
21 it has to come from sale prices. If it is rental,
22 then it's rental income factored over time. And the
23 same thing could be said over AOA fees. But usually
24 on a for-sale project, that becomes the ownership of
25 the owner, that becomes theirs.

1 So the developer doesn't usually make money
2 off AOA0 fees. And the bank will depend on it too.
3 They will say, you know, sales price, what's your
4 sales price, and how fast is it done? Those are the
5 two parameters.

6 COMMISSIONER GIOVANNI: So it's basically
7 uncertain. It depends, but one way or the other
8 they're going to recover the cost?

9 THE WITNESS: Yeah, all things equal, good
10 economy, et cetera, et cetera.

11 COMMISSIONER GIOVANNI: Thank you. Nothing
12 further.

13 CHAIRPERSON SCHEUER: With that, it is
14 12:07. I'm going to suggest we reconvene at
15 1:00 o'clock.

16 Commissioners, parties, is that acceptable,
17 Mr. Yuen?

18 MR. YUEN: Yes.

19 CHAIRPERSON SCHEUER: County?

20 MR. DONOHOE: Yes, Chair, thank you.

21 CHAIRPERSON SCHEUER: OP?

22 MS. KATO: Yes.

23 CHAIRPERSON SCHEUER: Intervenor?

24 MS. ISAKI: Yes, thank you.

25 CHAIRPERSON SCHEUER: Folks we will be back

1 for more fun and games at 1:00 o'clock.

2 (Noon recess taken.)

3 CHAIRPERSON SCHEUER: We will reconvene.

4 There has been a request from Commissioner Wong to
5 ask about how far we have to go today. We have three
6 more witnesses after Mr. Cassidy; Mr. Nance, Mr.
7 Agor and Ms. McMahon.

8 It would be great if we could possibly make
9 it through all our witnesses today. What are folks'
10 constraints among the Commissioners? Any
11 constraints, folks?

12 COMMISSIONER CHANG: Chair, I have no
13 constraints.

14 CHAIRPERSON SCHEUER: It would be great to
15 not go beyond 4:30 too, but if we can make it through
16 in the next three-and-a-half hours.

17 I'm going to note for the record the -- or
18 I'll let the County note for the record the
19 substitution of representatives that they have.

20 MR. DONOHOE: Thanks, Chair. We have also
21 present is Lee Steinmetz.

22 CHAIRPERSON SCHEUER: Additional questions
23 from Commissioner Okuda, but actually first bite of
24 the apple goes to Commissioner Cabral, then
25 Commissioner Okuda. Any other questions from the

1 Commissioners, then I will ask my question.

2 COMMISSIONER CABRAL: Thank you, Chair. My
3 questions came up because during all of the prior
4 questions and answers I got confused.

5 In looking at your report of February 10,
6 2021, it appears, although right now I cannot find
7 it -- that your prices and your market projection for
8 absorption and those things are probably based on
9 those houses being sold, if not actually, but with
10 the understanding from the -- potentially from the
11 buyer that they are going to need a rural or
12 residential-type zoning.

13 I don't know what Kaua'i zoning is for that
14 because I'm from the Big Island, as opposed to an ag
15 zoning. Would you say that your market analysis is
16 based on those being houses, not farm dwellings?

17 THE WITNESS: Yes, that's correct. It's
18 that they're houses, not farm dwellings.

19 COMMISSIONER CABRAL: Also is it somewhat
20 based -- and it appears -- and I think this is also
21 because the Petitioner is looking at selling all of
22 these and not having -- does not appear from a lot of
23 the data, the reference rentals, but it does appear
24 that they're looking at selling all of the
25 properties, not on them continuing to have ownership

1 of properties and keeping them as rentals; is that
2 correct?

3 THE WITNESS: That's correct, the developer
4 is not contemplating rentals, correct.

5 COMMISSIONER CABRAL: Although individual
6 buyers potentially could make them rentals, if not,
7 otherwise restricted by government regulations.

8 And then on page 33 of your -- of that
9 analysis, you're, for example, showing that
10 absorption or the closing projection is called --
11 would start in 2025 and go to 2032, and that
12 somewhere else you're saying even potentially 2034
13 for absorption.

14 So there is a lot of discussion about
15 whether they would build expensive homes and make all
16 the money first, or the affordable or whatever, but
17 your projection, am I correct, although all that
18 conversation took place, it looks like every year I'm
19 assuming they're not going to build them and not sell
20 them, so every year during those years they would be
21 selling a percentage of every single one of the types
22 of properties?

23 THE WITNESS: Yeah, that table is based on
24 closings. The year above can change, of course, but
25 the progression, yes, it does show every one of the

1 four products having closings, and then flowing out.
2 And, in fact, when I did this table, I had the
3 affordables going slow, a little bit slower.
4 Somebody could come to me and say the demand is so
5 big, that that's -- and I can actually say, yeah, the
6 demand is big, and you can increase the number of
7 homes in that thing.

8 And let me footnote something, after saying
9 that, because I'm good at sowing confusion.

10 You know, I took a look, and I had to think
11 over lunch, and Commissioner Giovanni and I got into
12 this a little bit -- and I ended up with them over
13 lunch thinking, thinking, thinking, then I looked at
14 this table and here's what my realization was.

15 And that is that most of these places are
16 condos. And condos are easy to build. There's not
17 going to be a lot of product differentiation in terms
18 of development. There will be some finishes that are
19 different, but in terms of building something, and in
20 terms of the layout, which is a bunch of
21 multi-family, you can mix the affordable in with the
22 market very easily. So I'm going to crawl back a
23 little from any thoughts that there might be that the
24 developer would hold off on the affordable, and say
25 instead, he doesn't really need to do that, because,

1 again, the backbone cost of the infrastructure is
2 what it is. And then every other increment is
3 additional.

4 And in an additional multi-family
5 increment, there could be a nice mix of affordable
6 and market. To be sure as a developer, I would
7 weight the market a little bit heavier than the
8 affordable in order to get, you know, recoup my
9 investment cost and pay down my bank loan.

10 Now, does that confuse you?

11 COMMISSIONER CABRAL: No, I totally agree
12 with you, because you've got this projection on that
13 table says potentially 452 multi-family market units,
14 and then 231 multi-family affordable. So clearly the
15 most affordable thing to build will be, even if it's
16 in multiple different buildings, will be the
17 multi-family market units, because you've got a whole
18 lot of them, and if you make them in multiple
19 buildings the sewerline only has to go that far as
20 opposed to when you get into 36 large lots, you've
21 got to go miles to get to the end of 36 of them.

22 And that was my last question. The
23 profitability that they're going to do infrastructure
24 to a certain point, now that sewer pipe or whatever,
25 or the water supply, because I'm assuming you'll

1 probably do whatever, cesspool or what have you. No
2 need to talk about sewer problems, but water supply
3 lines, all of those, they start out big because they
4 got to supply a whole large area. So still
5 cost-wise, the first building out, first thing is
6 going to be larger, because it's preparing for
7 everything beyond, depending on the layout.

8 The other thing is even after these 769
9 units -- I know some other documents have potentially
10 more units built -- but even after those are built,
11 do you see a huge demand still in the need to meet
12 the demands of housing on Kaua'i?

13 THE WITNESS: Yeah. And I think it would
14 be wise when this comes to the County, that the
15 County talks about and incentivizes the affordable
16 housing component in a way that makes it logical for
17 the developer to go ahead, they can do density
18 bonuses and whatever else, so, yes, I think housing
19 -- and, again, it's the pandemic, it's drawing people
20 in and displacing locals to some extent, and the
21 locals don't want to move.

22 COMMISSIONER CABRAL: I think at one point
23 the need was 1400 houses, and that was probably from
24 last year's analysis, so let's assume that's even
25 increased, one, because more people are coming; and

1 two, any prior inventory has been bought and sold
2 out, even Hilo is sold out. So okay.

3 Thank you very much. You've answer --
4 clarified my questions. Thank you.

5 CHAIRPERSON SCHEUER: Thank you,
6 Commissioner Cabral.

7 Commissioner Okuda.

8 COMMISSIONER OKUDA: Mr. Cassidy, I just
9 have a clarification question just so that we're
10 clear.

11 Where on the subject property or adjoining
12 property, you were giving testimony with respect to
13 questions asked by Commissioner Chang.

14 Can you or maybe your attorney can bring up
15 Mr. William Bow's PowerPoint, which is Exhibit 28.
16 And I ask you to go to page ten of 12, which is Mr.
17 Bow's Figure 4.

18 It's a map, color-coded map of the subject
19 property or the property which is subject to the
20 Petition, and also the adjoining HoKua ag lots. So
21 if I can bring that up, or if you could just look at
22 that document.

23 If you can just look at that document,
24 Figure 4, which is page 10 of Exhibit 28, which are
25 Mr. Bow's PowerPoint.

1 Do you see Figure 4 in front of you?

2 THE WITNESS: I can take a stab at it
3 without looking.

4 COMMISSIONER OKUDA: Okay. Now, you know
5 the lots you were discussing, which were in
6 agricultural zone or district, and it was also
7 described as lots on the bluff. Were you referring
8 to the area on Figure 4 that is labeled HoKua Ag
9 Lots?

10 THE WITNESS: No, I wasn't.

11 COMMISSIONER OKUDA: What portion of Figure
12 4 were you referring to?

13 THE WITNESS: What I was referring to is in
14 the docket in front of you. It's only -- it's the
15 non-ag lands before you. The ag lands are apart and
16 distinct from this.

17 My understanding, and my scope of work,
18 didn't encompass them. It only encompassed the rest
19 of it.

20 COMMISSIONER OKUDA: Okay, now I'm getting
21 confused, and maybe the confusion is just because of
22 me.

23 Were you basically testifying that the sale
24 of these ag lots were going to be used to fund
25 payment of infrastructure and other things in this

1 development?

2 THE WITNESS: No. I was not. There are ag
3 lots, but my scope of work didn't include them.
4 They're on a parcel entirely separate.

5 So that to try to be as consistent as
6 opposed to confusing.

7 The rim lots I'm talking about are in the
8 bigger parcel. So ag lots are down over by where
9 they put in the solar panels, and not under
10 consideration today, or in this petition. And I
11 could let Attorney Yuen clarify that.

12 COMMISSIONER OKUDA: We all know what's
13 subject to the Petition.

14 Can you then explain your testimony of what
15 you were trying to say with reference to testimony
16 about ag lots then? Because I was listening
17 carefully, and you know, I mean the transcript will
18 say what the transcript says, but are you trying to
19 change your testimony or not? Because I'm kind of
20 confused now.

21 I mean, what was the purpose of this
22 discussion with Commissioner Chang then, or even this
23 last answer to Commissioner Cabral?

24 THE WITNESS: What it probably was -- this
25 is how it looked from my point of view.

1 Commissioner Cabral was really good about
2 the concept of ag, of farm lots, ag lots. And she --
3 and I was happy to discuss that as a general issue
4 separate and apart from the Petition.

5 And that's because I've lived with this for
6 a long time, what's an ag lot? What are the
7 restrictions? I think I threw out something dumb
8 like how many horses or cows dance on the head of the
9 needle, which is what you need to have in order to --
10 what you have to do is you can buy the lot, but
11 before the County will let you go in, pull the
12 permit, you have to give them an approved ag land on
13 farm worker or ag lot or anything.

14 CHAIRPERSON SCHEUER: If I may, for
15 purposes of efficiency of our proceedings.

16 On the Figure 4 of Mr. Bow's presentation
17 that Mr. Okuda, Commissioner Okuda has referred, were
18 you referring in your discussions with Commissioner
19 Chang to any of the color-coded areas in that figure?

20 COMMISSIONER OKUDA: Thank you, Mr. Chair.
21 That's a very efficient way of asking my question.

22 THE WITNESS: Just to be up and up and
23 fair, I'm calling up William Bow's PowerPoint.

24 CHAIRPERSON SCHEUER: I will share screen.
25 I'm hoping that people are now seeing that. Can

1 somebody confirm?

2 THE WITNESS: I can see it.

3 CHAIRPERSON SCHEUER: Does Figure 4 from
4 Mr. Bow's PowerPoint, Petitioner's Exhibit 28, I
5 believe. When you were discussing the same
6 agricultural lots, Mr. Cassidy, are you referring to
7 any of the areas in the Petition Area here, the
8 agricultural and also referred to as the red lot?

9 THE WITNESS: Then let me answer it this
10 way. Everything in the color is before you.
11 Everything white is not. And then the upper
12 left-hand corner -- well, the school -- go to the
13 left of that, and you read "ag lots", that's the ag
14 lots. I didn't do any work on that for purposes of
15 this study.

16 COMMISSIONER OKUDA: Chair, may I ask the
17 witness, just answer your questions directly. Please
18 answer the Chair's question, and maybe the Chair can
19 repeat the question so it's very clear on the record.

20 CHAIRPERSON SCHEUER: To summarize what I
21 understood from Commissioner Chang's
22 cross-examination, without going back to the
23 transcript, she was asking you questions about how
24 the sale of certain lots would finance this
25 development.

1 And in that discussion you referred to lots
2 sometimes, I believe, as agricultural lots, and
3 sometime I believe as rim lots.

4 Are any of those lots you were referring to
5 on this map in the color-coded area, and if so, which
6 color-coded areas?

7 THE WITNESS: Thank you. No, none of them
8 are there.

9 CHAIRPERSON SCHEUER: Thank you very much.
10 Sorry, he's your witness, Commissioner Okuda. I
11 didn't mean to --

12 COMMISSIONER OKUDA: No, Mr. Chair. Thank
13 you very much, because that was a very succinct way
14 of asking the question directly.

15 Let me say this, just so that there is no
16 question, at least of my personal position regarding
17 this.

18 The rule of law means something, because
19 there seems to be this commentary that took place, I
20 would like to just take one minute to read, again,
21 the ruling of the Land Use Commission in DR83-8 at
22 page three. This was an order signed by Mr. Yuen
23 himself when he was the Chair of the Land Use
24 Commission. And what it says is this, and I quote.

25 "Based on the above, the Land Use

1 Commission rules that a single-family dwelling can be
2 defined as a farm dwelling only if the dwelling is
3 used in connection with a farm where agricultural
4 activity provides income to the family occupying the
5 dwelling, and that a single-family dwelling, which
6 use is accessory to an agricultural activity for
7 personal consumption and use only is not permissible
8 within the Land Use Agricultural District. This
9 ruling is applicable to all lands located within the
10 State Land Use Agricultural District."

11 In other words, it is not sufficient for
12 people to put in false statements with County
13 officials and State, knowing that they're not going
14 to engage in the required agricultural activity, to
15 simply try to skirt the rule of law. And I can't
16 emphasize enough that false statements made to
17 government officials, it's a crime. And that's HRS
18 Section 710-1063. The crime is called unsworn
19 falsification to authorities. And there is a
20 specific definition there about County officials
21 being one of the authorities protected by this
22 statute which prohibits false statements.

23 So I can't emphasize enough that, yes, it's
24 true that maybe that was -- people believed it was an
25 acceptable practice to make these statements, to put

1 their mansions on agricultural land.

2 It's not acceptable, it's illegal. And in
3 my view, it cannot be tolerated if we believe in the
4 rule of law.

5 Thank you, Mr. Chair. I have no further
6 questions.

7 CHAIRPERSON SCHEUER: Thank you,
8 Commissioner Okuda.

9 Commissioners, are there further questions
10 for Mr. Cassidy? Commissioner Chang.

11 COMMISSIONER CHANG: Thank you, just one
12 follow-up question, Mr. Cassidy.

13 So the assumptions that you made, and we
14 discussed those about, you know, ag lots. Were those
15 based upon instructions by the developer, the lawyer,
16 or you made those assumptions?

17 THE WITNESS: The assumptions I made were
18 mine based on my understanding of the materials that
19 were provided to me from the developer and the
20 lawyer.

21 COMMISSIONER CHANG: So if I understand it
22 was based upon your understanding, based upon the
23 materials provided?

24 THE WITNESS: Yep.

25 COMMISSIONER CHANG: So your understanding,

1 was that in writing? Was that orally? How did you
2 get these understandings?

3 THE WITNESS: Over the course of five years
4 that I've studied this, I've been given a number of
5 different land plans, one of which the whole thing
6 was an ag lot, and then everything else -- or put
7 another way, one of which had a bunch of divisions in
8 the ag lots, and they told me this is what it is
9 right now.

10 So right now, what's possible, you know,
11 14, whatever the number is -- I would have to pull
12 out the study -- ag lots. But I wasn't studying
13 that. I was studying what was to come.

14 And so in seeing the land plan that was
15 given me, and I saw the way that these were carved up
16 by the planners, that these were small lot
17 residential homes, and indeed the square footage of
18 the lot confirms that.

19 COMMISSIONER CHANG: I do not intend to
20 confuse us all again, but you made certain
21 assumptions that, while what is before us is a
22 district boundary amendment for those parcels that
23 you saw are colored, however, you made an assumption,
24 based upon your understanding, that the financing of
25 this development would hinge upon the sale of those

1 ag lot parcels?

2 THE WITNESS: No.

3 COMMISSIONER CHANG: I'm mistaken?

4 THE WITNESS: Yeah. No, I didn't -- no,
5 you're mistaken. I don't opine on what the possible
6 revenue would come out of something that wasn't
7 within the colors.

8 COMMISSIONER CHANG: So when you reference
9 the homes on the bluff with the view, you were not
10 referring to the ag lots?

11 THE WITNESS: No, I was not. Not ag
12 lots --

13 COMMISSIONER CHANG: Go ahead and answer.

14 THE WITNESS: In looking at the map closely
15 now, there might be some of the bluff existing over
16 as the whole thing is a curve, and the ag lot is on
17 the Lihue east side. There might be a bluff there,
18 but I wasn't considering that.

19 I had the map in front of me, the land
20 planners map, and the main bluff is on the southern
21 most -- eastern most, makai most part of the
22 property. And then as it bends around to the north
23 and looks over the wetland, that's also my reference
24 to the rim lots. But that's the rim.

25 COMMISSIONER CHANG: Okay. I think you've

1 answered my question. Thank you. I have no other
2 questions.

3 CHAIRPERSON SCHEUER: Thank you.

4 Commissioners, anything further before I
5 ask my questions?

6 I'm going to start off where Commissioner
7 Chang left off.

8 Mr. Cassidy, what I think you just said is
9 the opposite of what you said in answer to my
10 question. Am I understanding that correctly?

11 THE WITNESS: That's quite right.

12 CHAIRPERSON SCHEUER: Thank you.

13 So my questions are -- just so you know
14 where I'm coming from -- and I'm very grateful for
15 the amount of time you're spending with us.

16 My questions are coming from the point of
17 our duties as volunteers in implementing the land use
18 law, particularly I'm looking at Chapter 205, Section
19 17, the section on Land Use Commission
20 decision-making criteria. Particularly I'm
21 interested in Part III(f), which is that we have to,
22 we're mandated to look at the provision of housing
23 opportunities for all income groups, particularly the
24 low, low moderate and gap groups. As well as part
25 VII of section 17, which is -- part VI, excuse me,

1 representations of commitments made by the Petitioner
2 to secure the boundary change.

3 So that's what is informing my questions.

4 Now, my first set of questions have do with
5 COVID and the pandemic, which you've touched on in
6 some of your testimony. And for better or worse,
7 sometimes as Commissioners we are affected by issues
8 that come up in other dockets.

9 And at our last meeting we approved a
10 modification of conditions to allow for extension of
11 time for an affordable housing project built by
12 Alexander & Baldwin on Maui, Kihei. That project,
13 which really was multi-family geared towards local
14 buyers, if I recall correctly, in the end about
15 60 percent of the purchasers were local, and
16 40 percent they couldn't sell to locals, so they sold
17 to non-Hawaii resident buyers, and, you know, various
18 ranges between 80 and 140 percent of median income?

19 They asked for an extension, and they asked
20 for an extension because while certain aspects of our
21 economy are recovering from the pandemic, the wages
22 of the people who would actually be living in these
23 units, purchasing these units, have not recovered and
24 are on a very uncertain path to recovery.

25 So have you done any analysis that looks at

1 that relationship between the currently depressed
2 income from the people who we want to see living in
3 these properties, and the timeline that the
4 developers representative has told us that they will
5 be able to not only begin backbone infrastructure
6 within ten years, but actually start to sell
7 (indecipherable).

8 Is there anything in the record that you've
9 provided that gives analysis of the current condition
10 and the potentials for economics recovery?

11 THE WITNESS: Those were part of the
12 assumptions I made. That's kind of what I tried to
13 go from the scope of work and abstract up to issues
14 and thoughts, motivations that you guys have in
15 looking at this.

16 I didn't know the regulation, per se, but I
17 do know that you have to exercise decision-making.
18 The pandemic is huge, and it's particularly huge in
19 affordable housing, and it's particularly huge on
20 Oahu affordable housing.

21 All that old stuff, they're crammed
22 together. They can't get away from one another, and
23 they're getting sick. And here's a side bar. The
24 guys that run your public agencies, HPHA cancelled so
25 many units at a time when they should have let these

1 units proceed, and have modern design, and Oahu would
2 be a heck of a lot better. Now, that's a paid
3 political announcement.

4 CHAIRPERSON SCHEUER: I'll allow that, but
5 if could you answer the question.

6 Is there anything in your analysis
7 explicitly that examines how the pandemic may or may
8 not affect the developer's ability to meet the
9 deadlines they're committing to?

10 THE WITNESS: This is outside of the study,
11 but I did eight affordable housing studies in the
12 latest round of low-income housing, and I've looked
13 at vacancies and turnover. And to some small portion
14 there has been an effect as described by the A & B
15 representatives on Maui, Maui particularly might be a
16 more difficult regime than other islands, but having
17 said that, to answer your questions, yeah, sure.

18 The incomes are down, and the amount of
19 income are down and the job growth, it's to be hoped
20 that it's going to come roaring back to replace those
21 guys, but even then, especially down at the low end,
22 the demand is still pretty strong.

23 Now, again, remember the low end is where
24 you lose money. So A & B, again, might want to cross
25 subsidize, to some extent. I don't know what the

1 project is, whether it's a standalone or mixed market
2 affordable. Does that help?

3 CHAIRPERSON SCHEUER: If I understood your
4 answer correctly, you were aware of the potential
5 effects on COVID with the sale of these units and
6 your projections, but they weren't explicitly
7 included in your analysis.

8 THE WITNESS: Correct.

9 CHAIRPERSON SCHEUER: You alluded to, in
10 your answer, to a second question I have regarding
11 the pandemic, and I just -- this is really for you to
12 respond to.

13 There is an assertion in certain places,
14 media and other places that multi-family is going to
15 be increasingly undesirable as people who've
16 experienced more crowded conditions due to pandemic,
17 and desire to be apart, yet most of these units are
18 multi-family.

19 Is there anything that you could share with
20 us as part of your official testimony that would
21 indicate whether or not multi-family will actually be
22 a desirable kind of product for these income laden --
23 (indecipherable) going forward?

24 THE WITNESS: In general, I agree with the
25 statement, particularly as it relates to the eastern

1 coast of the United States and other cold weather,
2 New York City's nothing but a bunch of caves, and I
3 get a little claustrophobic these days walking down
4 corridors to the elevator.

5 However, we are not New York City, we are
6 in Hawaii. We can open everything up, get plenty
7 ventilation. The wind on Kaua'i is great, can't say
8 enough about that.

9 So in terms of -- and this is -- townhomes
10 are two stories, maybe an additional story, with, you
11 know, you can walk up the stairs. If you use the
12 elevator, there is one for -- I don't see there is a
13 particular problem.

14 I would not -- I have a condo on Kaua'i and
15 it's open at both ends of the corridor.

16 CHAIRPERSON SCHEUER: I had a bunch of
17 questions about which regulation you were referring
18 to, and Commissioner Giovanni ably asked you those
19 questions.

20 So my last question goes to that portion of
21 your career, which is in your resume, in which you
22 reference in your testimony working for both Gentry
23 and Castle & Cooke, and you specifically said, if I
24 heard you correctly, that because of their extensive
25 land holdings and deep pockets in Hawaii, they were

1 able to sort of finance and provide for these large
2 mostly affordable and market rate developments.

3 Now, this developer, by their own
4 testimony, has done one very small project in Hawaii,
5 has no experience in Hawaii.

6 So one of the things we are required to
7 sort of weigh is how reliable are the representations
8 that this developer makes.

9 Given your really lengthy and great service
10 to Hawaii in the real estate industry, can you
11 comment on the, generally, first on the success of
12 none local based developers in delivering on large
13 projects?

14 THE WITNESS: Okay. This requires some
15 thinking, because there's a bunch of different
16 developers, and how they do things that I've seen
17 over the course of my career.

18 I have seen really some successful guys
19 coming from this, from the outside and bringing their
20 expertise here. What's weird is at the high end
21 you'd think that would be the easiest part, and to
22 some extent it is. It's not easy doing affordable
23 and low market, but a lot of them don't understand
24 the thing of their market. They come in -- let me
25 get to the point.

1 Howard Hughes came in and they did
2 everything. They brought over a ton of experience.
3 And then whether this guy is a Howard Hughes, no,
4 he's not. But he's done his stuff in Utah, and
5 there's no reason why he can't do this.

6 Basically one product, condos, single
7 family isn't rocket science.

8 I did have something really big to say and
9 it went out of mind, so you know.

10 Oh, it's this, remember -- or put it this
11 way. You're not just passing on the developer,
12 you're rendering a decision that has an impact on the
13 value of the land. So keep in mind the value of the
14 land when you go through this.

15 The reason why I say that, is because we
16 have just seen Stanford Carr get kicked out because
17 of the Chinese guy up at the top of Makaha. But
18 Stanford and Mike Akani (phonetic) had that for a
19 number of years, and they cleaned up a whole bunch of
20 problems. So I hear it's going to go to auction.
21 They added value.

22 You know, I'm not sitting where you guys
23 do, but I want you to think that if you add value to
24 this land going forward, it may not be the same
25 developer, it may be a better developer. And the

1 County can get in there and do things, and at the end
2 of the day, maybe it gets sold or they get a partner
3 or something like that.

4 And, again, I'm going to shrink back into
5 my scope. I do market research. I see people
6 hurting without housing. And I have basically an
7 easy testimony even if I am confusing.

8 CHAIRPERSON SCHEUER: I really appreciate
9 your testimony. I wanted to go into that part of
10 your resume where you worked on Monty Python
11 marketing issues, because I think those would be very
12 applicable to certain proceedings we have in front of
13 this Commission. But we are not going to. I want to
14 thank you for your time and testimony.

15 Commissioner Chang, I would allow one more,
16 but I would like to have a chance for Petitioner to
17 do any redirect. You're muted.

18 COMMISSIONER CHANG: This is a quick follow
19 up to Mr. Cassidy's response.

20 You said that what's before us, or that
21 this Petition added value. And you're absolutely
22 correct that that's exactly what this Petition does.
23 It adds value to this property with no guarantees
24 that it will be done the way that it's presented to
25 us. \$83 million in infrastructure cost, affordable

1 housing, there is no guarantee. But he could then
2 sell the land at an extremely valuable increase,
3 because of the now -- the new zoning. Then somebody
4 else is going to come in and say -- and I apologize,
5 I'm making much more of a comment than a question.

6 CHAIRPERSON SCHEUER: Thank you,
7 Commissioner. I'm going to move on, and ask Mr. Yuen
8 whether there's any redirect.

9 MR. YUEN: No redirect.

10 CHAIRPERSON SCHEUER: Intervenors on a
11 previous witness, you asked for --

12 MR. COLLINS: Your Honor, we just --

13 MR. YUEN: I'm going to object, Mr.
14 Chairman.

15 CHAIRPERSON SCHEUER: What are you
16 objecting to, Mr. Yuen?

17 MR. YUEN: Objecting to the Intervenor
18 asking any questions. If we have redirect, then he's
19 entitled to recross, but there is no redirect.

20 CHAIRPERSON SCHEUER: In any case, I think
21 Mr. Collins was indicating he had no questions. So
22 you can object to my bad chairmanship, and I'll
23 gladly grant you that objection.

24 If there is nothing further, Mr. Cassidy,
25 thank you for your two appearances, very lengthy and

1 for everything you do. We appreciate it.

2 Mr. Yuen, why don't you call your next
3 witness.

4 MR. YUEN: Is Nancy Cabral in the audience?

5 CHAIRPERSON SCHEUER: Nance Cabral is a
6 Commissioner.

7 MR. YUEN: I meant Nancy McMahon.

8 CHAIRPERSON SCHEUER: Do I need to admit
9 her? I see her. I am promoting Ms. McMahon to be a
10 panelist.

11 I can hear and see you. I'm going to swear
12 you in and hand you over to Mr. Yuen.

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

15 THE WITNESS: Yes, I do.

16 CHAIRPERSON SCHEUER: Mr. Yuen you or Ms.
17 Ahu?

18 MS. AHU: Mr. Yuen is going to do the
19 direct, but can I share my screen?

20 CHAIRPERSON SCHEUER: Yes, please.

21 NANCY McMAHON

22 Was called as a witness by and on behalf of the
23 Petitioner, was sworn o tell the truth, was examined
24 and testified as follows:

25 DIRECT EXAMINATION

1 THE WITNESS: My name is Nancy McMahon, I
2 live in Lihue, Kaua'i, Hawaii.

3 BY MR. YUEN:

4 Q What is your profession and business
5 affiliation?

6 A I am a professional archaeologist for 40
7 years, mostly in the State of Hawaii. And so I
8 consider myself a principal investigator in an
9 archaeological firm.

10 Q Can you please describe your professional
11 background in archaeology and native Hawaiian
12 cultural practices?

13 A So --

14 CHAIRPERSON SCHEUER: Briefly, so you know,
15 Ms. Ahu, we are seeing your presenter view, not the
16 slide view. I make this mistake constantly on ZOOM.
17 It is driving me batty.

18 MS. AHU: Give me a second.

19 CHAIRPERSON SCHEUER: Are you using a
20 separate display, two displays? Sometimes if you put
21 the presentation on your main display it solves the
22 problem.

23 MS. AHU: Let's try that.

24 CHAIRPERSON SCHEUER: Sorry, Ms. McMahon,
25 to interrupt you.

1 There we go. I will mute myself again.

2 MS. AHU: Thank you, Chair.

3 Q (By Mr. Yuen): Please describe your
4 professional background in archaeology and native
5 Hawaiian cultural practices.

6 A So I started out doing archaeology when I
7 was eight years old. I then went to college at
8 University of Hawaii and continued doing that. I
9 started and graduated 1981. My bachelor's in
10 anthropology. Field work was in Hawaii.

11 Then I went on to go back and got further
12 master's degrees, and I have actually worked doing
13 professional archaeology since that B.A., but then
14 worked for the State of Hawaii, starting for like
15 23 years.

16 I was designated as Kaua'i archaeologist,
17 and then eventually as a branch chief for archeology
18 for the division, for the Department of Land and
19 Natural Resources.

20 After I left the department in 2010, I
21 opened up my own consulting firm, and I have done
22 consulting archaeology off and on, depending on
23 projects and what I have since then.

24 Q Please describe the methodology you
25 followed in conducting an archaeological assessment

1 of the HoKua Place project site?

2 A So when I go out to do archaeological
3 surveys, and in particular this one, this was done, I
4 started around end of 2011 to 2012. I kind of get a
5 background of what is in the area so I have a
6 predictability of what I would expect.

7 I had actually previously asked for
8 inventory in this area when I was the State Branch
9 Chief Archeologist. And because prior parcel right
10 up above this, off of Olohena and Ho'iki had a survey
11 done and found a lot of historic sites, mostly
12 related to the plantation.

13 So I actually surveyed the 97 acres in this
14 parcel. In the meantime, while I went out to go do
15 the field work, I also started to try to contact
16 people that knew of the parcel at that time, mostly
17 concerned to give them a background in what I should
18 expect to find in there while walking through.

19 At that time -- so you end up doing a
20 survey on the ground first. And the solar panel farm
21 was already up. The high school is built and had a
22 fence around it. There is a goat farmer. And the
23 Sanchez had cattle in that area.

24 When I walked through the parcel the first
25 time, they were building a house, or I guess a

1 utility building for the solar farm was happening
2 then.

3 So I walked through the parcel. I actually
4 had an old aerial from 2005. I found a lot of the
5 remanent roads from the cane, using the field, Field
6 35. I got that from Mr. Fukushima, one of the
7 informants.

8 I turned in the archaeological assessment,
9 and then Teresa Dawn (phonetic) was the Branch Chief,
10 had taken my role over, and Susan Lebo was doing some
11 of the Kaua'i reviews and suggested that we do
12 backhoe trenches, that I put three random backhoe
13 trenches in.

14 So actually these backhoe trenches are
15 really in the Petition Area that the owner has, and I
16 initially thought I was doing this for the
17 subdivision process, so I'm not mindful of what the
18 developer really wanted to do, I'm just out there to
19 give you a basic assessment of what you have on your
20 property and let you know what you had.

21 So I was re-sent back to the field with the
22 backhoe, and I tried to put them in locations I
23 thought possibly we might find something. And
24 basically the soil profile showed that we still have
25 these Lihue-Puhi clay soils, pretty turned up.

1 You've got a top soil layer that is really the Guinea
2 grass, hale koa, java plum out there.

3 I did also verify with the biologist some
4 of the plants that I had seen, but not a lot of great
5 stuff.

6 So anyway, that was sort of my inventory.
7 I wrote up a second report that included the backhoe
8 trenches. And I think in 2014 the State Historic
9 Preservation Division approved that assessment
10 report.

11 So it was really an inventory survey. If
12 you find negative results, then it turns into an
13 archaeological assessment.

14 Q Can you please describe the conclusion of
15 your archaeological assessment?

16 A Well, pretty much summary. I did contact
17 Stanley Vasconsolas. He actually was my horse shoe'r
18 at that time. He worked, and so was his father, he
19 worked for Lihue plantation. He actually worked on
20 this field. He told me he actually was the one doing
21 a lot of -- the clay was pretty thick in there, and
22 to get things to grow, they actually chain and ball
23 drug the land pretty deeply, he said, in there.

24 Which makes sense, because the soils were
25 pretty consistent with that. So, yeah, it really was

1 former sugarcane land.

2 And when I walked the parcel at that time,
3 again, you had cattle in there, and you had goats and
4 the solar farm, and up above in a separate parcel,
5 single-family resident, and the Middle School. And I
6 walked directly behind all of those.

7 I did not find any archaeological features
8 or historic sites, and I never found on any maps of
9 any kind, nor when I was out there any burials. And
10 that assessment was accepted by SHPD.

11 I also had contacted a lot of other folks.
12 So as part of this, I was also asked to do the
13 cultural impact research.

14 Q Please describe the methodology you
15 followed in conducting the cultural assessment of the
16 HoKua Place project site.

17 A Well, again, you try to kind of get the
18 predictability of what you have out there, and what I
19 saw after doing an archaeological survey. And Albert
20 Fukushima, who had worked on that piece, Field 35, he
21 drew a map for me.

22 Then there was also Mr. Sanchez. He's the
23 one that had the cattle, and he was mowing the Guinea
24 grass there, so it wasn't that tall as it is today in
25 some of those locations, but kind of put more of a

1 buffer by where the Bypass Road goes through the
2 property, next to the property.

3 Then I also talked to the Martines. I was
4 friends with Janine (phonetic), and her brother has
5 the goats. They have some other parcels, and we
6 talked about those.

7 And then Les Milnes because, again, I'm so
8 concerned about what's out there. And he also gave
9 me some information about the ditch systems and what
10 he thought and how the system was irrigated over
11 here. But no remnants could be found.

12 I then contacted Cheryl Lovell, who I got
13 an email from. We talked about it. She actually
14 sent me an email, I still have it to this day. I
15 don't believe right at that point, she was on the
16 burial council. She was with, sort of ad hoc, they
17 weren't officially yet Aha Moku. And she was on the
18 watershed.

19 And she sent me an email from Rayne Regush
20 and Nani Rogers, and at that time their concerns were
21 traffic, water, and there was runoff, something like
22 that. It was their concerns, what people have
23 concerns about when development happens.

24 Then Kaliko Santos worked for OHA, but also
25 on the burial council at that point in time. I

1 contacted Barbara Say, also on the burial council,
2 not from this area, trying to get ahold -- somebody
3 mentioned this -- Kehau Kekua (phonetic) and she
4 actually had her work in Japan at that point, so she
5 never contacted, but she was -- she works in
6 Waipouli, but didn't have any information here
7 either.

8 And the only person at that moment in time
9 back in 2012 I tried to reach out to Nathan Kalama
10 and he's from this area, but he was supposed to get
11 back with me if he knew anything. And I never got
12 anything back from him on this parcel, and never any
13 input about anything there.

14 So I felt I had reached out to quite a
15 number of people to try to contact them about
16 relevant information to see if we -- trying to do my
17 feasibility and my due diligence to see if anybody is
18 in there to do what we would call traditional and
19 customary rights to the land and they were doing it
20 for subsistence, cultural, religious purposes to be
21 in there. And nobody gave me any information,
22 because Willy had the cattle in there, and the goats.
23 Nobody told me anybody was really accessing the
24 property.

25 And then during that survey bit, I did work

1 with -- I actually took the biologist team out there.
2 There was two of them. I asked them what this was,
3 because I thought it was an indigenous plant, and it
4 was the holualoa. Looked like a weed, and it was
5 really scrubby. And it was right where the cattle
6 were going to go eat, and the goat ran away. Doesn't
7 have to be cultivated.

8 And we also looked at the moa, and there
9 was a Polynesian introduction was the kokua tree, but
10 those were the things then that possibly cultural
11 practitioners might want to have access to. But they
12 say moa and holualoa can grow on their own in other
13 places. And don't know if they're still even there,
14 because like I said, the cattle were headed that way
15 to eat that area. Nobody claimed anything, and
16 nobody came forward.

17 And just to kind of give you that
18 background of what else I kind of did in there.

19 I also looked -- I try to identify things
20 too. I go back, and almost every cultural assessment
21 or Ka Pa'akai analysis I've ever done, I try to go
22 back and look at all the chants, the wahi pana
23 information I can find. I tried to look at place
24 names. I'm kind of really big on this. I usually
25 hold a big section on my place names in my reports

1 because I think you can glean information from that.

2 And then trying to figure out where you can
3 find some of that information, which is maybe back to
4 the kuleana information and those things. And I kind
5 of put that in the report and kind of asked for
6 people.

7 And just when I started doing these in the
8 past as a State reviewer, we didn't have authority to
9 review this, but we did look them over, the cultural
10 assessments. One of the things a lot of people don't
11 come forward to tell you a lot of stuff.

12 So I asked a lot of people why some people
13 don't want to support a project, so they don't tell
14 you anything. Some people don't even like their name
15 listed even if you try to contact them.

16 Again, I went to all these people and asked
17 them to write some testimony. I did get three. The
18 others did not submit anything to me. Maybe because
19 they don't know anything, and don't want to submit
20 something like that, or they just don't want to say
21 anything.

22 So after looking at all that, that's pretty
23 much how I did my methodology. I wrote that up in
24 the cultural assessment, and that was done in 2012.

25 Q You did receive written statements from Mr.

1 Fukushima, Mr. Sanchez and Mr. Vasquez; is that
2 correct?

3 A That's correct. Mr. Fukushima provided a
4 map of the area, which gave me like the field number
5 which I didn't know what the Makee Field No. was for
6 that parcel.

7 Q Let the record reflect that these
8 statements are admitted into evidence, and
9 Petitioner's Exhibit 39, 40 and 41.

10 Next, just to clarify then your cultural
11 assessment concluded that there was no known uses of
12 the property for traditional gathering of native
13 plants, or for any other cultural practices; is that
14 a fair statement?

15 A That is correct.

16 Q Did you hear the public testimony of Joseph
17 Kamai and Rhoda Libre regarding use of the HoKua
18 Place property for pig hunting and gathering and the
19 remains of a heiau?

20 A Yes, I did.

21 Q First, how does one establish a traditional
22 practice, or what do you consider to be a traditional
23 practice? Is there a duration of time involved?

24 CHAIRPERSON SCHEUER: Mr. Yuen, I'm going
25 to mark that I will want to take a break sometime

1 soon, so give me some indication on your flow of your
2 direct when you might want to take a break.

3 MR. YUEN: It's up to you, Mr. Chairman. I
4 have a few more questions, going to take more than
5 five minutes.

6 CHAIRPERSON SCHEUER: Well, folks will be
7 patient. Let's continue, see if we can do all the
8 direct.

9 THE WITNESS: So you're asking for
10 timeframe of traditional and cultural practices.
11 Well, the constitution gives you the 1778 date. And
12 the PASH Kohanaiki case which sort of follows this,
13 actually came up about November 25th, 1892 -- take a
14 look at my notes here -- yeah, 1892 as when you have
15 to be able to document that you've been doing that
16 activity for that timeframe, or around that
17 timeframe, up to that timeframe.

18 So you kind of got two really old dates to
19 look at there. I think both are relevant to anything
20 close, you know. So those are the kind of things
21 that I would use to document that you have been doing
22 and using your rights in an area.

23 Q (By Mr. Yuen): So in use, that is less
24 than 10 or 20 years old, would that qualify as
25 traditional cultural practices?

1 A No, it would not.

2 Q In your experience, is pig hunting a
3 traditional and customary practice or form of
4 gathering by native Hawaiians?

5 A I sort of believe the subsistence hunting
6 of feral ungulates does not count as the traditional
7 and customary right, and it's really not protected by
8 the State Constitution, or any of the Hawaii Revised
9 Statutes.

10 There is no evidence that I have seen, and
11 I've talked to a lot of other people, including many
12 Hawaiians, that pigs were hunted in ancient times.
13 The Hawaiian diet isn't dependent on pigs.

14 Pigs were used for ceremonial and offerings
15 to gods. Also I have done a lot of work in other
16 Pacific Islands, Micronesia, and some of the
17 Polynesian outliers in Micronesia, and I've gone to
18 some other islands in Polynesia, and unfortunately
19 don't have a lot of documents, but I really wish I --
20 maybe I should look at doing this -- documenting.
21 Hawaiians are really good at domestications and
22 breeding of animals, their dogs and their pigs were
23 bred -- and I don't know how much inbreeding -- they
24 were smaller in size. So the wild pigs we have today
25 were mixed with the boar that came from American

1 Europe, and the hunting was with guns and knives, all
2 were sort of the European cultural people, the higher
3 people that would go out to do the hunting with dogs
4 and stuff. That has kind of gotten mixed with that.

5 But when I went to all those other places,
6 you still are in villages, and we still find this in
7 our archaeological sites, these enclosures that were
8 small, and pretty sure pig pens to raise and feed
9 these animals.

10 So I didn't find any remnants of pig pens
11 out on this parcel either, but -- does that answer
12 your question?

13 Q You testified that you performed
14 100 percent pedestrian survey in preparing your
15 archaeological assessment.

16 Does this mean that you walked pretty much
17 the entire site?

18 A Yeah. I have an aerial from 2005 that I
19 used, and I walked -- there's access from the solar
20 farm, there's access going around the Middle School
21 from up above. There's access by that private
22 property, and on the bypass there are two gates that
23 I also went through. I went through all of this. I
24 reached all of them.

25 The thicker part, like I said, that had a

1 little taller Guinea grass, kind of tall today, more
2 than when I was out there, which had hale koa, java
3 plum was also in there and thick Guinea grass. I
4 walked through a lot of that.

5 And then when we went to do the backhoe
6 survey, I actually rode through some of that to make
7 sure we didn't see anything. I walked like every
8 inch -- there actually are more remnant roads that
9 used to be in there, I think from the plantation. I
10 think they had planting areas. Maybe that's how they
11 were trying to irrigate that area, transferring the
12 water there to get them started.

13 So I did walk and tried to survey, I would
14 say it was at the 100 percent level.

15 Q Did you see anything resembling the remains
16 of a heiau on the HoKua Place site?

17 A I saw nothing like that, no.

18 Q Is it likely that a heiau would have been
19 located near a stream?

20 A So I know that Rhoda said she saw boulders,
21 rocks coming out of the stream. That probably is
22 unlikely, because that would be a low point in the
23 land, and most of our heiaus are religious places.
24 And I'm thinking bigger size, or how on the bluff,
25 they overlook things. They overlook vantage points.

1 The highest point if we look at the whole parcel in
2 general is about where the parking lot is for the
3 Middle School, and off of Olohena Road up there, and
4 if you put something there, you probably did have a
5 vantage point of looking to the west, and you could
6 have almost looked over to the opposite side, where
7 Pala Road (phonetic) is at, and looked down on the
8 wetlands of Kapa'a and where Kapa'a Town is today,
9 village is today.

10 So you would have a better vantage point up
11 there. I know when they even built the school, they
12 didn't find anything there either.

13 Q Did you contact -- did you find any bone
14 fragments or other remains of a burial site?

15 A No. And I thought about talking to the
16 burial council people that were on the burial
17 council, from Barbara Say and Cheryl and Kaliko, that
18 if they knew of anything they would have told me
19 about anything.

20 I know, I believe Nani Rogers testified she
21 saw something on a map. I have looked at all the
22 maps in this area, and some are in my reports,
23 different ones, and sometimes on USGS maps there will
24 be a cross or something that might -- sometimes it
25 says "grave site". I didn't see any of that marked,

1 more or less I didn't find any. When you find that
2 on the USGS map or a topo map, it's more like a
3 headstone or maybe historic grave site, but nothing
4 of that was in this area either.

5 Q Did you contact Rhoda Libre to verify her
6 claim of a heiau and burial site?

7 A So I heard her testimony. I did text her
8 and she responded to me, not quite right away. And
9 she said, well, I really don't know much about that
10 area. We got to go with Noe and Nani, but it's
11 raining right now. Let's wait until it stops
12 raining.

13 And then I followed up like three times
14 with her. Finally on the fourth -- well, third time
15 I guess it was really, I responded fourth. She asked
16 me, "oh, you're working for the developer, huh?"
17 Something like that.

18 And then I told her I had done the reports
19 and then she never -- I asked her, "let me know when
20 it's a good time to go out," and they have not gotten
21 back to me.

22 Q In summary, for purposes of the Ka Pa'akai
23 O Ka 'Aina versus Land Use Commission case, would
24 development of HoKua Place have any adverse impact on
25 any historic site, burial site or native Hawaiian

1 cultural practice?

2 A No, it does not.

3 MR. YUEN: No further questions, Mr. Chair.

4 CHAIRPERSON SCHEUER: Okay. Thank you.

5 Thank you for stopping the screen sharing. It is

6 2:06. Let's take a ten-minute break, resuming at

7 2:16 and proceed with cross-examination by the

8 parties and the Commission.

9 (Recess taken.)

10 CHAIRPERSON SCHEUER: Excuse me for not

11 recalling this immediately. Ms. McMahon, did I swear

12 you in?

13 THE WITNESS: Yes, you did, sir.

14 CHAIRPERSON SCHEUER: Thank you. We will

15 proceed with cross-examination by the County of

16 Kaua'i.

17 MR. DONOHOE: Thank you, Chair.

18 CROSS-EXAMINATION

19 BY MR. DONOHOE:

20 Q Good afternoon, Ms. McMahon. I just have a

21 couple follow-up questions. Some of my questions are

22 already covered on direct.

23 Just to clarify what was testified

24 previously by one of Petitioner's witnesses, Jacob

25 Bracken, can you explain what procedures SHPD has in

1 place with regard to burials or discovery of burials
2 during development or construction?

3 A During development and construction, the
4 assumption is there has been no inventory survey. If
5 they haven't been identified prior, there is a
6 different process.

7 So during construction there is monitoring
8 that may be required by SHPD, and so a monitor is out
9 there while construction is going on with every piece
10 of equipment that is digging up dirt and doing
11 subsurface work.

12 And then if they find a burial, that at
13 that point work in that area immediately stops, SHPD,
14 could be the DOCARE enforcement officers, the police
15 are all called too.

16 And the archaeologist out there doing that
17 work has to make a determination if those bones are
18 50 years old; are they a murder victim; or the
19 context of them; the nature of the discovery one bone
20 already hit, perhaps, still in situ, which means
21 intact.

22 And so that all information is then filled
23 out in the form that's provided to SHPD and their
24 cultural and history branch, burial specialist and
25 the branch chief. One burial respondent is supposed

1 to be immediately within 24 hours, but if there's
2 multiple burials, they have 48 hours, and they decide
3 the disposition of what's going to happen.

4 Q So there's -- that procedure is in place
5 whether it's an inadvertent discovery?

6 A Correct.

7 Q You testified that you had reached out to
8 various persons regarding traditional and customary
9 cultural practices, people with knowledge of cultural
10 resources in the area, plants, animals, archaeology.

11 Is that mostly by word of mouth, or other
12 methods that you used to try to reach out?

13 A In this case, it was by word of mouth.
14 I've done them with emails. Also tried to write
15 letters to people. In this case it was word of
16 mouth, and I think email with Cheryl Lovell and I had
17 been corresponding.

18 When I tried to reach people, we talked
19 about that was by phone call, and sometimes before
20 the pandemic I would bring people out to a site and
21 have them show me something if they knew something,
22 but nobody could give me information that was going
23 on on that parcel.

24 Q Have you tried to post on any websites or
25 post out any information, mass mailing, letters, did

1 you do that in this case?

2 A No, I did not. And, yeah, you could post a
3 notice in the paper about it. Peter Young, just so
4 you know, is handling, I guess, the Environmental
5 Assessment for the -- I was giving him a lot of
6 information, because they were writing the package,
7 Peter Young and Jennifer Barra (phonetic).

8 And he actually then met with a lot of
9 people. I specifically asked him months ago when I
10 first was told I was going to re-testify, but I
11 didn't know what -- I never saw minutes of those
12 meetings if they did meet with people. It was
13 basically people that had concerns.

14 So when I saw the concern that Cheryl sent
15 me, I sent that to the developer and to Peter about
16 Rayne Regush's and Nani's concerns.

17 And then he met in groups with people and
18 individually with people. And he said no one brought
19 up any archaeological or traditional cultural issues.

20 Q Did you reach out to the Kaua'i Aha Moku
21 Council?

22 A At that time we weren't really formed, they
23 were ad hoc, still under DLNR, and Cheryl Lovell was
24 on that committee, so yes. And then now Kaliko
25 Santos is on it. So she was already on the burial

1 council, so, yes.

2 Q So regarding -- you heard the testimony of
3 Ms. Libre regarding the possibility if there was a
4 heiau on the site.

5 Again, if one is discovered at any time
6 during the construction of the development, are those
7 same procedures that you described regarding the
8 inadvertent discovery of burials, is that the same
9 procedure SHPD would follow?

10 A They have a different set of HAR's for
11 that, but there are rules that you are to stop work
12 in that area. You're to make the determination of
13 what it is you have out there. So on any kind of
14 sites, house site, could it be, you know, monument
15 marker, or something like that.

16 And then the archaeological staff would be
17 more involved than a burial staff in this decision.
18 And then you would do a mitigation of what you're
19 going to do at this point in time.

20 And generally a heiau would give general --
21 more preservation rights to wider buffers, and you
22 try to work with how you're going to preserve it, or
23 if it's like we say we found a monument marker from a
24 survey team dumped there, or something like that,
25 that might not need much preservation. It might mean

1 relocation of something if it was not an official
2 marker any more.

3 If it's a cultural site, like I said,
4 heiau, that would be probably preserved what we've
5 got, if we can, and then start looking at what we can
6 redo buffers. While they're doing that, the
7 architecture and engineering firm is probably
8 redesigning something in there.

9 Q In the two field inspections you made, that
10 was back in 2012, you made two?

11 A Yes, correct.

12 Q No site visit since then in preparation for
13 this hearing?

14 A No. I was going to take Rhoda out there
15 and have her show me what she was concerned about.
16 She mentioned those rocks in the stream. But the
17 stream is not in the Project Area, and the only thing
18 I could think of was by the Bypass Road where there
19 is a cultural -- if you look at Mr. Fukushima's map,
20 and also I think both in my cultural and
21 archaeological, there's an old survey map from the
22 1800s in there. There's a railroad line that went
23 through there where the bypass is currently today.

24 It is highly likely she saw boulders. This
25 is not in the Project Area. That those rocks

1 Hahanui Stream was used to pump water or anything
2 because it's perennial and it would be hard to pump
3 it uphill, but using something from the ditch system,
4 that's why I touched base with Les Milnes, because he
5 maintains the east and west Waiko Watershed, to know
6 if they pumped water down to them, so that's
7 basically what my information was based on.

8 Q So did that history, the fact that it was
9 previously cultivated for sugarcane, does that affect
10 the depth of your survey or inspections regarding
11 whether there is archaeological or artifacts or
12 cultural resources there in any way?

13 A No. So does that affect the depth of --
14 well, we did backhoe testing -- well, usually when
15 you start seeing changes in soil, but it was still
16 completely that Lihue-Puhi clay all the way down. I
17 think I went six feet in several places there, or
18 something, I can't remember that part of my
19 trenching. But, yeah, it was pretty consistent.

20 And we couldn't get -- obviously, with a
21 backhoe -- get to bedrock or something like that,
22 verify that, but that's what you would try to do if
23 you could do that.

24 But that surely shows that the land was
25 pretty much disturbed by the cane. So the cane in

1 bigger pastures of bigger lots that I know of, even
2 my own pastures that I've had, sometimes valleys and
3 gullies don't get touched.

4 But I actually took the backhoe into one of
5 the gullies, which I think on their maps now shows
6 open space. I didn't know that at that time they
7 were going to have that.

8 But typically you might find remnant sites
9 in there because the cane equipment never gets in
10 there. But in this case they actually had been in
11 there too, and there was fallow taro in one of the
12 gullies I walked.

13 Q And then in the FEIS with regard to the
14 historic property, your assessment, you determined
15 there were no trail systems identified in the
16 proposed project area?

17 A That is correct.

18 Q Were you able to determine that by just
19 walking through, or how did you verify that?

20 A By walking through, I looked, and what I
21 was seeing through my aerials was the old cane system
22 maps.

23 But I also -- I have a lot of State
24 attorneys on this ZOOM -- but we used to get a lot of
25 land quiet titles. So it also taught me a lot about

1 how to look at Land Commission Awards. And reading
2 the documentation and the transcripts of them,
3 because a lot of times they mention trails. And when
4 people did quiet titles, they were supposed to tell
5 the State AG about that. And nothing's on the
6 parcel. There's no Land Commission Awards on the
7 parcel. There is one that's really close to it,
8 Ka'eos, (phonetic) I believe it is, and Honoulis
9 (phonetic) is the other one.

10 And they actually meant kula lands, that's
11 pasture lands. They mentioned the name -- which I'm
12 glad I said Hahanui Stream, because that is the
13 correct name for that stream based on Land Commission
14 Awards, because they mentioned it was adjacent to
15 their kuleanas.

16 So I read those kind of things to tell me
17 that they still exist.

18 Q A lot of the lands -- my understanding, a
19 lot of the Petition Area is covered with Guinea
20 grass.

21 A Correct, it is. It's more overgrown than
22 it was before. It had cattle in there and the
23 goats -- actually I think I have photos in there,
24 quite a lot. If you look at them you'll see a of lot
25 eroded -- the grass at that time was eroded down to

1 the dirt in some places just because overgrazing
2 maybe.

3 Q So it's easier to tell if there was trails
4 or not?

5 A Yes.

6 Q Is that the same assessment regarding like
7 if there is a plantation ditch system?

8 A Correct. And that should have come from
9 the top of the property, gravity flows. So I did
10 walk through the solar panel all the way from the
11 back of the Middle School to see if we would see any
12 remnant footings for those.

13 Sometimes they might have basalt rock
14 footings and that kind of thing to keep the flumes
15 coming down. It would have probably crossed Olohena
16 Road to get in here, but I did not see that.

17 And I didn't find the metal, and it's very
18 possibly cleared, just based on my prior experience
19 just having horses and cattle in pastures. A lot of
20 people who have pastures take those things out,
21 because they cut up legs of animals and they can't
22 also mow.

23 Mr. Sanchez was actually mowing the grass
24 in here for his cattle.

25 Q Then you mentioned the Ka Pa'akai or the

1 requirement analysis. Given that you testified that
2 certain members of the public contacted you or you
3 heard their testimony, and that they came forward and
4 explained that they weren't consulted and they had
5 their testimony regarding possible cultural
6 practices, do you still agree that the conclusions
7 that you testified to satisfy that requirement?

8 A Yes, because the people that I heard
9 testify -- well, there are some that were native
10 Hawaiians. They aren't really from that area, and
11 didn't know specifically -- Rhoda is not Hawaiian,
12 but she didn't really have great knowledge of it.

13 And I did have a phone call with her too.
14 She was there -- she wanted other people there to
15 show her stuff to, and everybody was together and Joe
16 Kamai, who his son lives up there, but he was from
17 the west side. I know him from also paniolo stuff.
18 And I talk to him quite frequently. He probably,
19 right when he was doing this, was still working on
20 the west side, CJM Country Stables. And his hunting
21 is really recently with the pig hunting with his
22 sons.

23 And I think a couple other people mentioned
24 they were collecting stuff there, but they never said
25 any of the plants that I knew had been there if

1 they're still there.

2 Q One last question.

3 So given the procedures that you described
4 SHPD has in place, would you support a recommendation
5 that should any permits be allowed, any construction
6 be allowed for HoKua Place that a condition be
7 attached that states:

8 Should any archaeological or historical
9 resource be discovered during ground disturbance or
10 construction work, that that work in the area of the
11 archaeological, historical findings immediately
12 cease, and then the developer has to contact SHPD and
13 the Planning Department?

14 A I don't have any problems doing it. The
15 letter that SHPD wrote to approve the AA was
16 March 31st, 2014, and doesn't have any of those
17 recommendations in there.

18 Usually what they go by this, they may not
19 require it, I don't think anybody is opposed to it,
20 but what has happened -- and I've been helping a lot
21 of people out -- sometimes this goes amuck when you
22 do this -- I have one going on right now -- it's
23 called precautionary monitoring, there's no condition
24 to be there. So for some reason the landowner thinks
25 there might be something, they just want to have an

1 archeologist out there.

2 So SHPD always likes to have conditions
3 attached to permits, so if we do -- and then they
4 typically -- if that happens, then they typically ask
5 for archaeological monitoring plan. But if you just
6 go to ask the developer to do this, then it's really
7 called precautionary monitoring.

8 It's still the same thing. Follow the same
9 processes, and you're still required under the rules
10 to document your findings and turn them in. That's
11 the kind of report, precautionary monitoring report,
12 no findings report. And then if you find something
13 it triggers other steps.

14 Q So there's no real negative impact in
15 having that condition?

16 A No.

17 Q Okay, great. Thank you, Ms. McMahon.
18 Nothing further.

19 Thank you, Commission.

20 CHAIRPERSON SCHEUER: Thank you very much,
21 Mr. Donohoe.

22 Office of Planning, Mr. Yee.

23 CROSS-EXAMINATION

24 BY MR. YEE:

25 Q Thank you.

1 I just want to first clarify the
2 pedestrian (indecipherable) -- submitted, conducted.
3 A part of your testimony you said you walked through
4 a lot of the Guinea grass. You later said you went,
5 what you thought, was 100 percent.

6 Did you physically inspect 100 percent of
7 Petition Area?

8 A Yes, I did. And you broke up for a minute
9 there. But I did inspect 100 percent of the Petition
10 Area, yes, and beyond that, correct.

11 Q You mentioned some of the witnesses, public
12 witnesses, one was Rhoda Libre.

13 Did you go back onto the site to look for a
14 heiau, even if she was not there with you?

15 A No, I have not gone back there, because she
16 mentioned the stream, and the stream wasn't in the
17 Project Area.

18 And like I said, my -- and there are like
19 10 or 11 heiaus in there that we don't know the
20 location of. It's in my reports, everybody was
21 quoting that before. I think Peter actually put in
22 the summary statement of the EIS.

23 We don't know those locations very well,
24 but based on my experience in Hawaii, if I were to
25 put a heiau someplace, it is actually where the

1 Middle School is at, at the top of the ridge. You do
2 have a great view. Right now buildings of the school
3 block that.

4 But you would have a commanding view of
5 that Hahanui Stream, what people call a swamp, but it
6 has a Hawaiian name to it, and all of the village of
7 Kapa'a. So you would have a great view.

8 And there was another heiau, opposite
9 ridge, which is very typical by the Kaua'i High
10 School today, wherever that high school and
11 elementary school was. We don't know where it was,
12 but it's talked about in a lot of literature.

13 So the two could relate to each other, and
14 has that commanding view.

15 So I did walk around to get to the pasture.
16 And to get to this parcel I walked around the side of
17 the school. The parking lot is paved, can't see much
18 there. And it's fenced, so.

19 Q My recollection of her testimony was that
20 she said it was located in the back somewhere in the
21 back of the Middle School.

22 Can you explain why you did not feel it
23 necessary to go back to look for the heiau even if
24 she was not present?

25 A That area up there, at the time when I was

1 there, it was very clear. There is a photo in one of
2 my reports that show that's where the goats were at.
3 And I walked through the goat pasture. There's
4 nothing there.

5 So I didn't go back there because I didn't
6 feel like anything just showed up all of a sudden.
7 The area that had been -- was at that time currently
8 farmed or in pasture, had cattle and goats, solar
9 farm was pretty wide open, and they were mowing a lot
10 of the Guinea grass. Like I said, the only overgrown
11 pieces are right adjacent to the Bypass Road, and it
12 wasn't that much.

13 And so I could tell that there was dirt up
14 there. There was nothing that showed there was
15 anything there. Sorry if I missed that.

16 That's why I was asking her to tell me
17 directions or something when I texted her and talked
18 to her on the phone, but I didn't get that from her.

19 Q Let me move on.

20 Did you speak to Mr. Kamai?

21 A I have not spoken to Mr. Kamai, no, since
22 that testimony.

23 Q My recollection is he testified that there
24 were burials -- that his nephews hunted pig, and he
25 gathered medicinal plants from the Petition Area.

1 So do you think they should order -- with
2 respect to burials, what is the basis by which you've
3 concluded that you have done your due diligence to
4 determine whether or not there are burials in the
5 Petition Area?

6 A So there are no known burials on the
7 property that have been previously recorded or during
8 my survey. There would be maybe indications, if
9 anything were in the plantation pasture, you might
10 find a plantation burial. The kuleana, that would be
11 in that flood area, and I don't think they would bury
12 there. And I felt my walk-through survey was very
13 accurate.

14 What I was going to say, typically we do
15 have burials in Kapa'a, but it's been -- most of them
16 have been -- and I can't think of any other ones in
17 the upper uplands, but are all in the Kapa'a Village
18 area down below, the sand burials, and we do have a
19 lot of those. So that is where there are burials.

20 There is no sand deposits on this parcel,
21 which if I had that, I might think there would be,
22 but I don't have that.

23 Q Let me go to that issue. Did you look at
24 the geology of the area?

25 A Yes, I did.

1 Q What was your determination of -- you
2 talked about sand, and you talked about the clay.
3 Why is that relevant?

4 A So it's kind of relevant, because when you
5 see the clay soils, you know what can be dug in there
6 or not. During the traditional timeframe, Hawaiians
7 didn't have backhoes to dig deeply or cane ball
8 chains to drag that deep and disturb the land that
9 deeply.

10 So if anything, those things, that kind of
11 soils don't have deep deposits like we might have a
12 cultural -- like in the sand deposits, let's say it
13 that way, where we might have in Kapa'a. And I can
14 give you the exact example of this from my personal
15 experience.

16 Kapa'a right in the middle of town, you
17 have a historic deposit. You have below that sort of
18 a little lens of clean sand, and then you have a
19 prehistoric deposit.

20 So we have two deposits in there, and the
21 burials are coming out of mostly the prehistoric
22 deposits in context down there.

23 So that kind of soil information is kind of
24 important to know. I actually believe -- I attached
25 it to SHPD, we actually attached the soil report to

1 show the Puhi soils, it's Lihue-Puhi soils.

2 Q So because of the clay soils, it's less
3 likely to find burials than you would if you had
4 sandy soils; is that right?

5 A Yes. You have might find more above
6 surface structures at that point, like a crypt or
7 something.

8 Q What about fissures in the lava? Is that
9 something that was an issue in this particular
10 Petition Area?

11 A No. No, I never saw any fissures,
12 that's -- we have that more on the Big Island a lot.
13 And, yes, you do have burials in some of those,
14 correct. The flows are a lot different.

15 If this was a Koloa site, we would probably
16 be a lot closer to seeing those, or in lava tubes,
17 but we don't have any of that in this area.

18 Q He also talked about hunting pigs, and I
19 know you spoke to us whether pig hunting is or isn't
20 a cultural practice. But let's just ask about
21 whether or not, whether it does exist or doesn't
22 exist in the Petition Area.

23 Did you speak to anyone as to whether there
24 was hunting in the Petition Area?

25 A Again, old information, but when I talked

1 to Willy and Stanley they didn't know anybody was
2 hunting pigs.

3 On the adjacent parcel is Bette Midler's
4 parcel. I do know her pigs run wild. Pigs don't
5 care about which property they're on. They mentioned
6 they do it with a knife and dogs.

7 And so -- but at the time I found no
8 remnants of anything that suggested there could have
9 been even pigs in there due to the cattle and goats.

10 And I talked to the Martines. Sometimes
11 though, I will let you know this, it's a pretty known
12 fact with those farmers, pigs go after baby goats.
13 They eat their livers and stuff.

14 The farmers where I had horses in Koloa at
15 one time were having an issue, and bringing in pig
16 hunters to kill a lot of the pigs, because -- the
17 Kaneshiros will tell you this. They were eating --
18 obviously some deficiency in their diet. So maybe
19 the Martines also hunt. He never said that to me and
20 Janine's brother, but I don't know.

21 I would think he would be protecting his
22 goats. I don't think the cattle ranchers care, but I
23 never saw nobody in there. And at the time I knew
24 Joe, he never mentioned anything about anything being
25 there. At that time his son, they were all on the

1 west side. I think his son only last few years has
2 moved up into that area.

3 Q Joe is Joseph Kamai?

4 A That's correct.

5 Q And Willy is?

6 A Willy Sanchez.

7 Q So from your testimony, what I hear you say
8 is you would not -- provided information as to pig
9 hunting in the area, but it sounded like it could
10 exist because of the neighboring property as well as
11 the subsistence of food for pigs through the goat
12 farm?

13 A There is a possibility some people are
14 going in there and doing that.

15 Q Did you see any hunting trails?

16 A No, I saw cattle trails, and I have a photo
17 in one of my reports about that they typically, like
18 horses, follow the same path.

19 Q Mr. Kamai also testified that he gathered
20 medicinal plants. In you walk, you look for things
21 like native Hawaiian plants of cultural importance?

22 A I did. In fact, I brought the biology team
23 out there. When they did their report, we talked
24 about there is a kukui tree, java plums. There's one
25 kukui tree, which is a Polynesian introduction, which

1 nobody mentioned anything. Even the testimony you
2 had about using kukui nut oil, or anything of that.

3 There's holualoa, and that's the one plant
4 I wasn't sure I was right about. I brought my friend
5 over to look at it, and it was straggling at that
6 time, so whether cattle were eating or bad spot or
7 hot day, whatever. Moa I found and all those can be
8 used for medicinal purposes. And hau, there's lots
9 of hau by the stream, it runs along the stream.

10 There's things you can use. The native
11 Hawaiian do use things for it, but it's thought of as
12 a pest sometimes. So it was clogging -- I know it's
13 been clogging up that flow underneath the bypass, and
14 of course it backs up and has made the wetland much
15 bigger back there.

16 Q When you went to do your analysis for the
17 CIA, cultural practices, how did you select the
18 number of people you were contacting?

19 A Just going to the people I was contacting
20 verbally, and they would tell me about other people
21 and giving me, you know, maybe you should contact
22 them, or maybe you should contact them. And then
23 people I knew that were -- what I remembered could be
24 from that area.

25 So I knew Nathan Kalama was. Barbara Say

1 wasn't, but she was on the burial council and she
2 knew contacts, so I -- they'd say, yeah, should
3 probably go talk to them, or don't know, or, oh, that
4 person's not from there. They kind of told me that
5 too, like that person, they may transport through
6 there, they're probably not doing anything in there,
7 but their family background was such.

8 It was kind of trying to find that out, who
9 had more information about that area, basically
10 through those contacts.

11 And so once I couldn't find any more people
12 to contact, that was the limitation I had.

13 And then -- a lot of the people that came
14 on today I didn't know them at that time. I don't
15 even know if they were around. Maybe they were, but
16 I didn't know them, and didn't know how to contact
17 them. But I don't think they were involved in this
18 then or were living here at that time.

19 Q A number of people from the public
20 testified that they were never contacted, although
21 you apparently did not know of them as they didn't
22 contact you either, so I don't say it was deliberate,
23 but is the practice that you described common?

24 A So I do know, like I told you, Peter Young
25 and Jennifer Barr did go out and meet with a lot of

1 people. Some of those people, and one of the
2 questions they asked was about traditional cultural
3 stuff, because they asked me about that. And they
4 have their meetings to discuss whatever else. I
5 never saw notes on this; I never saw minutes.

6 To prep for this at the beginning of the
7 year, I did call Peter, because I didn't even know
8 why he was taken off the whole project, so I didn't
9 follow that.

10 And he said, no, we had a lot of meetings
11 about this project, but nothing public, nothing
12 publicized. Just met with individual people.

13 And so he told me then that they talked to
14 people about this, and he didn't have any leads to
15 give me either.

16 Q Let me ask a fundamental question.

17 Is there a common practice for determining
18 who and how many people to contact for cultural
19 impact assessment?

20 A The OEQC guidelines. You try to make your
21 best effort forward to try to contact as many groups
22 or organizations or individuals as you possibly can.
23 There is no like list, this is who we have to
24 contact. I think because -- so 2012 to 2021 we have
25 a lot different organizations out there, and a lot of

1 different people we possibly could contact, and
2 different people move in and out or come back home
3 that may have not been here when this project started
4 and knew about it then.

5 So I think you're trying to do your best
6 effort, trying to put your best foot forward to try
7 to get to as many people as you think you can get to
8 contact.

9 Like I said, and I heard you guys, all of
10 you, you appreciated everybody's testimony. It's
11 true, it's really hard to get folks to come forward
12 and talk about a project area. They either feel
13 they're sometimes supportive or they don't want to,
14 or they don't want to feel like they don't know
15 nothing. And they don't want their names sometimes
16 out there.

17 So it's a sensitive issue of how you handle
18 these people.

19 Q The Olohena site that you reference in your
20 testimony, is that somewhere near the Petition Area?

21 A Talking about the heiau? Is that what
22 you're talking about? Or the road, Olohena Road.

23 Q You referred to archaeological inventory.

24 A Oh, so, yes. So there is a prior
25 archaeological study done, yes, not in this project

1 area. It's above this project area, more mauka, and
2 actually I think it's to the north of this area,
3 Cultural Surveys did, they found a number of historic
4 sites, mostly, in fact, all plantation stuff.

5 Q In the general region, but not in the
6 Petition Area?

7 A Right.

8 Q Was there a cultural impact assessment for
9 that?

10 A I don't think so. It was a subdivision
11 application at County level.

12 Q With respect to your cultural impact
13 assessment, what original source material, if any,
14 did you review, or would you normally review, to
15 determine (indecipherable) -- I think I heard you
16 mention Land Commission Awards.

17 A I'm looking at Land Commission Awards. I'm
18 looking at documents that might even reference
19 archaeology. I do look at the archaeological
20 background, even for the cultural traditional stuff,
21 because there might be some gleans of information or
22 perhaps they've reached out to somebody that I tried
23 to get ahold of.

24 I also looked at the -- a lot of chants.
25 The Wahi Pana I think I mentioned to you. You try to

1 look at any documentation, if anybody has come
2 forward with that. You look at the some of the lore,
3 folklore, the myths, mythology. I look at --
4 somebody mentioned it today, winds. I try to even
5 look at wind chants, because they're place names for
6 that. They might even mention this area, maybe this
7 project has a particular place name that might be
8 still important to keep.

9 So I'm trying to look for that, and I try
10 to bring almost all the cultural impacts, more than
11 archaeology. And I've done a lot of what's here
12 called the Ka Pa'akai analysis, where I try to really
13 find that information out and try to get -- some of
14 them don't have western definitions, and I don't like
15 to -- I try to find references to that if I can find
16 it. Some I just put "I don't know". And the
17 spellings are varied because of public written
18 documentation.

19 So all that background will be condensed to
20 what is appropriate for this area. And sometimes
21 it's a wider -- because I can't find something to
22 this parcel it becomes wider to the whole ahupua'a.

23 Q Did you do that in this case?

24 A Yes, I did.

25 Q Let me briefly turn to your opinion on pig

1 hunting. And you mentioned the date of the activity.

2 I assume what you mean is the type of
3 activity dating back to a longer time ago, not the
4 specific individuals; right?

5 A Excuse me, I missed what you said there
6 again. You were talking about what?

7 Q You had referenced like -- I can't remember
8 the dates now, but like 17 something.

9 A I referenced the constitution and the
10 ruling, it was 1778, whatever it is, 1778, and then I
11 referenced to you the specifics that came out the
12 PASH Kohanaiki date that you try to document
13 traditional cultural property rights back to.

14 So I'm kind of using those two as my
15 guideline. So if anybody can get to anything,
16 they're historic dates, right? Documented that they
17 had access and rights since then. That's usually
18 where I put the guideline at to try to reference it.

19 If they have prior, before that, that's
20 great. They can reference themselves to the kuleanas
21 out there or something like that and they're
22 claimants. I know one of the kuleana families, and I
23 did touch base with them too. But they're not really
24 part of this parcel, and they didn't give me any
25 information either.

1 So something like that would give me a
2 prior older right than that because they are tied to
3 that land. They probably got that land from somebody
4 else way before there was the Great Mahele.

5 Q This is a reference -- my question was this
6 was a reference to a type of activity, not to
7 particular family's activities.

8 A Yeah, I think -- sorry, Bryan. I think I
9 was trying to give -- I got asked the question -- let
10 me think what it was now -- when do you -- what do
11 you consider the start of traditional cultural
12 practices, and I tried to reference those as my start
13 date. That's the question that was asked of me. So
14 I gave the constitution says 1778, but PASH Kohanaiki
15 case actually gave everybody a specific date November
16 25th.

17 Q You're not saying some particular
18 individual needs to show family (indecipherable)
19 dating back to that date, correct?

20 A That's pretty general. I just use that in
21 general terms. So if somebody told me I've only been
22 here for six years, I go, okay, I don't think you can
23 go back that far then. I know that family history is
24 not from here anyway, that they really go back in
25 their Kamais and whatever or malamas, or whatever. I

1 go back to where that family comes from.

2 So that's where I'm saying if somebody
3 tells me they've only been hunting here for six
4 years, or only came back a few years ago. And here's
5 where you have to watch that. But if somebody told
6 me they were actually gathering medicinal plants --
7 and this is all hypothetical -- and I just moved back
8 here because I've been away, but my family is from
9 here, I look at that better, because somebody's
10 carrying on that tradition for the family and they
11 have come back to join the family.

12 So salt makers would be a good example, lot
13 of salt makers. Tradition to come back, and a lot of
14 people related to everybody and come and go, but back
15 to those family ties. Does that help you out?

16 Q So let me ask this hypothetical.

17 There is an individual from the Big Island
18 who has a long history of teaching in the hula
19 traditions. She moves to Kaua'i and decides to live
20 there, all on Kaua'i. She then gathers plants for
21 her hula ceremony.

22 Would that practice on Kaua'i be considered
23 a cultural practice to you?

24 A I would say it's a cultural practice but is
25 it a traditional one for her and her family, or if

1 it's just her? You're asking individual. It's a
2 cultural practice, yes, for that halau. Is it a
3 traditional one? I think those are the gray areas of
4 all the laws of what is -- there's some questions
5 even in the framework of some of these things.

6 It would be something that I would put in
7 the report. I don't think there is an answer. If I
8 saw that, I would still probably put it in my report.
9 I don't know if it has any conclusion to it.

10 Q Would it be a native Hawaiian practice even
11 if it is not traditional to that person?

12 A I'm trying to think of how -- not just on
13 my own thoughts, I think it's a cultural practice to
14 that person, correct.

15 Q And I wasn't prepared for this particular
16 line of questioning, so -- I am told that there is a
17 fern that is used for hula, native for the indigenous
18 species, it is very, very difficult to find now, but
19 there is an introduced species --

20 CHAIRPERSON SCHEUER: Laua'e.

21 Q (By Mr. Yee): -- which is much more
22 common. So would the collection of that introduced
23 species be a cultural practice?

24 A I would think so, yes. And I don't know,
25 it wasn't identified when I was out there. And like

1 I said, it could be introduced or replanted out
2 there. I don't know if that happened.

3 Q I guess my question is if collection of
4 this introduced fern is a relatively new cultural
5 practice, native Hawaiian cultural practice, would
6 pig hunting also be considered a cultural practice if
7 it is not traditional dating back precontact?

8 A It could be subsistence, I would probably
9 clarify, maybe subsistence practice. I try to
10 look -- so here's where my cultural and western law,
11 if I'm trying to follow the frameworks that are
12 there, and there are gray areas in that based on law.
13 It gets cloudy, because it's kind of unclear like
14 there is unresolved -- does traditional cultural
15 practices apply to non-Hawaiians even? Because what
16 if I went through something and actually became a
17 kumu hula, and I'm out there doing that, and I'm on
18 that property collecting that. I'm practicing a
19 culture and that's the only spot it grows on. I
20 think for the Land Use Commission, based on the Ka
21 Pa'akai case, you're to make sure we've done a
22 feasible action to protect those rights if they
23 exist.

24 And I think opinions of Nancy McMahan, and
25 not in a legal opinion, I think the two can co-exist,

1 those issues just have to be worked out.

2 And I think that, you know, providing
3 better access, if there is those kind of plants, is a
4 workable thing. And just experience with that, with
5 even burials, people want to -- who we have put in
6 parking lots for people and things like that.

7 So maybe that kind of action is feasible
8 and it's better access for those people.

9 Q Would the loss -- let me backtrack. I
10 think you testified there are certain plants in the
11 Petition Area that would have, or could be used for
12 some medicinal purpose.

13 What impact would the loss of those
14 particular plants have if this Petition Area is
15 developed?

16 A So when I went with -- and this is more of
17 a biologist question. I believe when our -- they
18 went out there. And I asked, like I said, the
19 scraggly holualoa, which I have used myself for sore
20 throat, is that the only place to get it? Was there
21 enough of it?

22 I don't know if he did that. I would have
23 to go back and read his report. It was a long time
24 ago. But I was actually out in the field because I
25 was trying to show him the Petition Area. And I

1 think he had to get through the cattle gate or
2 something.

3 But anyway, I said, hey, is this what this
4 is? So I think the one kukui tree, or we have other
5 kukui trees. You have to look at is this --

6 CHAIRPERSON SCHEUER: If I may briefly, who
7 is the "he" you were referring to?

8 THE WITNESS: He is -- he did the biology
9 report. Slips my mind right now, sorry. I'll think
10 about it as we go along. Probably pop up right after
11 we finish the questioning.

12 Anyway he had a partner with him, but
13 anyway he did a survey for the EIS -- EA at the time,
14 but EIS eventually.

15 Anyway, I was out there, and then he said,
16 yeah, it doesn't need to be cultivated. It can grow
17 on its own. Could it disappear? There are other
18 places it grows.

19 I think you have to look at is there a
20 better source someplace else, and easy access. Yeah,
21 there is another source, but you can hardly get
22 there. That's why it's really abundant more, because
23 no access or very limited, then that's something to
24 look at.

25 I'm not the one to judge on that. But that

1 would be something that, you know, I think talking to
2 that specialist in that field to verify that, yeah,
3 these grow all over, and they're accessible or can be
4 replanted anywhere. Maybe that's another spot of
5 relocation too.

6 Q (By Mr. Yee): So if I understand you
7 correctly, you've identified plants that would be
8 there, but have not given an opinion as to what the
9 loss of those plants in that Petition Area would have
10 on native Hawaiian cultural practices separately?

11 A Yeah, because nobody was using these at the
12 time. Nobody was accessing that I knew when I did
13 that CIA at that point in time, correct.

14 Q Would the fact that no one was currently
15 utilizing those plants for those purposes mean that
16 there would be no cultural impact from the loss?

17 A The cultural impact from the loss, and that
18 was the only one, that would be a big cultural
19 impact, if they were the only ones, correct.

20 I don't feel I got that from the biologist
21 out there. I know kukui trees grow all over the
22 place, so I don't think we will use abundance of that
23 tree, moa and -- and then the hau, there's a lot of
24 that. And I think that will still continue to grow
25 down there because that's mostly, mostly -- well,

1 still a bit in the Petition Area, but it's outside
2 too.

3 I don't know, because we're limited to the
4 boundaries of the property. If he walked over and
5 saw moa on Bette Midler's piece, or holualoa over
6 there, we don't know that. So that's adjacent
7 property.

8 So I think that, you know, could be looked
9 at. I'm not denying it can't be looked at, because
10 the loss of it, if that's the only one, is a big
11 loss.

12 Q So what I hear your testimony today is that
13 loss of kukui tree or Hau bushes does not give you
14 any warning signs or red flags about problems, but
15 you're reserving your opinion with respect to moa and
16 holualoa?

17 A Correct. That's correct.

18 Q And your suggestion we should ask the
19 flora-fauna or flora expert about the availability of
20 those plants elsewhere?

21 A Correct. I think they would be able to
22 answer that better than I, yes.

23 Q Those are all the questions I have. Thank
24 you very much.

25 CHAIRPERSON SCHEUER: It's 3:06. We've

1 been going for 50 minutes. Perhaps we should take a
2 ten-minute break to 3:16. And then I suspect we
3 don't get beyond Ms. McMahon today, once we do cross
4 from the Intervenor and the Commissioners.

5 Let's shoot for that, go through around
6 4:30, after our break to 3:16.

7 (Recess taken.)

8 CHAIRPERSON SCHEUER: Back on the record.
9 And we will -- Ms. Isaki, will it be you again?

10 MS. ISAKI: Yes, it will. Thank you.

11 CHAIRPERSON SCHEUER: Please proceed.

12 CROSS-EXAMINATION

13 BY MS. ISAKI:

14 Q Thank you for being here, Ms. McMahon. I
15 have a bunch of questions, might be a little out of
16 order, taking notes as you were speaking.

17 In response to Office of Planning, you said
18 that one of the orig -- or the first thing you
19 mentioned as original source materials you looked at
20 in your study, you said you look at Land Commission
21 Awards.

22 A One of the sources I look at, yes.

23 Q But this is crown land, so there were no
24 Land Commission awards, correct?

25 A Correct, but they are adjacent of kuleanas.

1 Q And so if there is no Land Commission
2 Award, does not the crown retain the land?

3 A The crown has this land, but I do use the
4 information from the kuleana records to see what was
5 going on around the parcel at the time. I also
6 looked at survey maps to try to get some information.
7 Sometimes place names get put on.

8 So I did see the old survey map out there
9 for crown lands, and I know that Spalding had the
10 land, was crown lands, and he acquired it from Makee
11 Company.

12 But I do use -- the initial stuff I do try
13 to look at is some of the kuleana documentation.

14 Q Did you look at any land conveyance
15 documents that established the crown lands moved into
16 private hands?

17 A I have read some of those, yes. I've not
18 read this one fully, because it doesn't really -- I
19 was looking for archeological information, doesn't
20 tell me exactly what kind of sites I might find.

21 I have read some of it. Again, I look at
22 boundary information it has in it. So I do look at
23 that, yes.

24 Q So your testimony is that you did see a
25 document at the Bureau of Conveyances or another

1 institution?

2 A So I started looking at some of that
3 information on the PDF, and I have been -- not for
4 this project, I did not walk over to the bureau for
5 this particular project. I have done in the past
6 sometimes when access was easier.

7 Q So you looked at the PDF. Where did you
8 get the PDF from?

9 A I can't remember if I got it from Peter
10 Young at the time. Might have sent me some
11 information too. When I asked for it, they were
12 sending me back and forth information.

13 Q A PDF was authored by Peter Young?

14 A He just had a PDF, some kind of file on it,
15 boundary use and some of the documentation. I don't
16 know if the title report was with that. I think
17 that's what it was.

18 Q Peter Young gave you some kind of file that
19 you think is a title report.

20 Do you remember if it was a title report or
21 status record that was filed in this case?

22 A No, I don't recall that. I mean probably
23 2011, '12, so I don't recall that information. I
24 remember looking at the title report, and attached to
25 that was the survey map of the boundaries of the

1 grant. And then I believe it had other documentation
2 of the grant so I probably perused it very briefly,
3 but usually doesn't have -- it doesn't document
4 everything that was going on at the time the grant
5 was given to them.

6 So like I said, I try to use the Land
7 Commission Awards to give me an idea what the
8 commoners were doing out there in that area.

9 Q In your, I believe it's your CIA and your
10 archaeological assessment -- I can refresh your
11 memory, if you want to look at the document.

12 You said that -- do you want to see your
13 document?

14 A Go ahead, refresh my memory there.

15 Q I'll read the quote, and if you want to
16 look at the document, let me know.

17 In the early 1900s, to help with the
18 burgeoning plantation population, government lands
19 were auctioned off as town lots in Kapa'a.

20 Do you remember writing that?

21 A Yes, I do.

22 Q So does the title report show that this
23 parcel was part of that government auction?

24 A No. That's probably some general
25 information I had on the area, prior knowledge I had.

1 Q Your prior information, where would that
2 have come from?

3 A A lot of research, which when I worked for
4 DLNR we looked at a lot of documents and stuff like
5 that. And we were all supposed to have research
6 projects where we were looking at different ahupua'as
7 on the islands and trying to figure out settlement
8 patterns.

9 Q Was the DLNR document a document from the
10 Bureau of Conveyance or no?

11 A I don't recall, sorry.

12 Q Would you be surprised to learn that the
13 history sheet shows only a 1952 conveyance to Lihue
14 Plantation and does not have any information in the
15 1900s?

16 A As I said, I don't know of anything --
17 usually they don't have a lot. They don't usually
18 have a lot of information, so not much help.

19 Q But an unspecified DLNR document showed you
20 that in the early 1900s this parcel was part of
21 government --

22 A No, that wasn't part of a DLNR document.
23 Like I said, we were asked to do -- years ago when I
24 worked for DLNR, to do our research, have some time
25 doing research. And part of that time was when I

1 actually worked in Honolulu, so I probably was able
2 to go through documents at the bureau then.

3 But I don't know if that's what I did then.
4 Specifically that would even be prior to this.

5 So that is a summary statement that I put
6 in there basically.

7 Q And so just your summary statement. There
8 was no other documentation or backup to your
9 statement in your report?

10 A Correct.

11 Q And you just mentioned Peter Young again,
12 that he gave you some information.

13 When was Peter Young taken off the project
14 and why?

15 A I don't know why he was taken off the
16 project. But when I started the project there was a
17 different developer, different entity. And they had
18 asked me to do the survey, then Peter contacted me
19 following that because he was working on all the
20 documentation, and I believe permits for it, I
21 believe. And then he later said this is probably
22 going to need an EA. There is a subdivision
23 application, and had to do with land use boundary
24 change.

25 So that was what he was doing. And I think

1 he was putting the EIS together.

2 So he was sort of -- Jennifer and him I
3 talked to a lot about this project.

4 Ron Agor was involved later on. And I
5 don't know, I didn't follow -- I don't follow
6 projects all the way through.

7 We do what we are asked do. We get the
8 approvals, which we did from SHPD, and then I think
9 when the EIS was at the Land Use Commission a couple
10 years ago or so, somewhere Peter got taken off
11 (indecipherable) changed a little bit.

12 So my correspondence -- I think Ron got
13 ahold of me, because there was a comment or some
14 question on the EIS and he asked me to answer it. So
15 I answered the general questions at the end and sent
16 it off, so I didn't know what happened to it.

17 So that's my limited knowledge. I did not
18 follow this any more.

19 Q Just so we can get a timeline together,
20 about when were you asked to do the survey or respond
21 to the comment -- was that by Peter young?

22 A No, that was by Ron Agor. And that was
23 when this was up at the Land Use Commission last
24 time, so 2015, '16, I guess. Something like that.

25 Q And they asked you to do the survey that

1 was in 2015, 16 or --

2 A No, the archaeological survey. The CIA,
3 was all -- I think I was asked to do the survey and
4 CIA around 2011, started around there, end of that
5 time period and 2012 was when I finished the first
6 reports. Something like that.

7 Q Got it.

8 And then you said that you were with SHPD,
9 you asked for an AIS, because the parcel mauka of
10 this had a lot of historic sites. Was that the
11 Kulana Subdivision?

12 A That could be. You could be right. Yes,
13 correct. I couldn't remember, but yes, that sounds
14 correct.

15 Q And just to clarify, I think that OP asked
16 you this.

17 You didn't investigate the hillside where
18 the school is to look for large stones on the slope
19 or other remnants?

20 A He asked if I went after the hearing when I
21 heard about that. I didn't hear about the hillside.
22 I know I walked it really well because there actually
23 was a goat shed right behind the school. A lot of
24 dirt around there. And the school has a fence around
25 it. So I did not -- I didn't really hear her say

1 that. I heard her say -- and I watched it live --
2 there were boulders by the stream, that's what I
3 heard.

4 Maybe she later said something that I
5 missed that, sorry. I really felt I really did
6 survey that area.

7 Q And you said that -- I think I heard you
8 say you didn't find any maps of any kind of burials,
9 then you mentioned USGS map.

10 A I looked up a lot --

11 Q Are there burials on other old maps or just
12 USGS ones?

13 A There could be burials on other maps too.
14 I have to say that. You have State surveyors out
15 there, you've got a lot of different surveyors that
16 did a lot of parcels. You have the surveyor for the
17 State that did the crown lands. I did look at that
18 map. I actually did look down below where the bypass
19 (indecipherable).

20 So I did look at those things. I have just
21 found that anybody marks a burial on it, it's on USGS
22 map, and I actually -- there were some of those where
23 I've seen those.

24 I also have been in those areas on those
25 maps, sometimes they're not quite right, or nothing

1 there. Most have been historic burials, like
2 headstone or something like that.

3 Q Okay. I'm trying to make my questions
4 like --

5 COURT REPORTER: Stop, please stop. Both
6 of you please stop.

7 Both of you need to let each person finish
8 asking a question or an answer before the next person
9 starts to speak, otherwise I cannot get it, and I
10 want a good, clean record for this, please.

11 THE WITNESS: Yes, ma'am.

12 MS. ISAKI: Thank you.

13 Q So were historic maps, other than I guess
14 you had a USGS map, were historic maps and drawings
15 located for the project site, and were they included
16 in your archaeological assessment report?

17 A Yes, they were. Some are on the CIA and
18 some are in the archaeological assessment.

19 The ones I thought were relevant, or might
20 show something, are things around there. Place names
21 are not on every single map.

22 Q By historic map, can you point or like
23 describe one map that you used?

24 A So there is one of the survey maps that is
25 in there, is one, I think it's Kittridge does one, he

1 does the generic one, but he shows Kapa'a. He
2 shows -- I can't remember the other ones.

3 Names I saw in there, that I found, USGS
4 map from 1910. I think that section is in there in
5 the report. So I go through a lot of the map
6 collections that's available.

7 I used to have a lot of access to stuff.
8 Usually wander online too to look at old maps, from
9 map collections at the University of Hawaii.
10 Sometimes The Historical Society has stuff. So I
11 usually will put in a request to look for things of
12 an area, and they will tell me if they can find
13 something or not.

14 Q And these maps, they were used to determine
15 the placement of your trenches for your AIS?

16 A I talked with SHPD about where we should
17 go. The trenches were in the Petition Area, because
18 a lot of the land is already under farming and
19 ranching sort of, and the solar farm. So this is in
20 the Petition Area.

21 So I went to places that I thought we might
22 find stuff, so that's where I put the locations for
23 those trenches.

24 Q Your use of those maps, was it documented
25 in your description of method?

1 A Yes, it was.

2 Q Are you talking about your CIA or your AIS?

3 A So the CIA has nothing do with the
4 trenches. So that would be the archaeological
5 survey.

6 CHAIRPERSON SCHEUER: Again, try not to
7 interrupt each other, please.

8 Q (By Ms. Isaki): Yes, sorry.

9 In your method section, so it's your
10 testimony that in your method section you describe
11 the use of the map in your, I guess, the Kittridge
12 map to locate the trench; is that your testimony?

13 A I used that in my own field judgment when
14 we were out there. So when I looked out there, I
15 think I used one of the aerial photos from there for
16 helping me with the survey work, the actual walking
17 through, because I knew there was remnant pasture
18 roads in there, so I was trying to go parallel to
19 each other. So I went through some of those. Then I
20 wouldn't want to put a trench in a road, so I made
21 sure we weren't in the road. I put it in a high
22 location. I put it down low. I tried to be in
23 different orientation of the trench, that is based on
24 my field experience.

25 Q Which gully did you find the fallow taro?

1 A It was that -- it was one where they have
2 the open space in that little area, so it would be
3 adjacent to bypass. And I think on their plans
4 now -- I did not have these then -- but it shows that
5 there's open space and that is sort -- so you got to
6 understand. Not like a deep gully. Just a little
7 rivet up in there, goes down.

8 Then there is another one. So they have
9 two of those, I think, on their development map. And
10 I don't have the exhibits, so I don't know what they
11 are. Sorry about that.

12 Q Was the trenches placed in that open space
13 or gully area?

14 A I hit part of one and part of the upper
15 space of one of them. So I caught part of the gully.
16 I went in the gully with the backhoe, and then I went
17 up above to catch the gully and that. And I think it
18 was, like I said, the first one. I wasn't walking
19 through the other one. I didn't see anything. It's
20 a little wider actually. So that's right directly
21 above the Bypass Road there.

22 Then I went -- actually almost closer to --
23 I found their map, I don't know which one it is --
24 but it looks like kind of in the location where the
25 parking lot at the school is.

1 I didn't have this with me then, because
2 this was not done then. But if I were to try to tell
3 you. It hits the open space on F12, I think that's
4 where one of the trenches were. Another one was
5 actually kind of right where the school, but not in
6 the -- it's like the single lots that are up there.
7 So at least we had single lots in that area.

8 So that's kind of random. And then I went
9 further down, in another one closer that's towards
10 that Hahanui Stream and cane-haul road thing, right
11 there too.

12 So I went down there just to see if there
13 is anything in there.

14 MS. ISAKI: Can I share my screen with you?

15 CHAIRPERSON SCHEUER: Yes, you may.

16 Q (By Ms. Isaki): So do you recognize this
17 map? It's from one of the geotechnical appendices.

18 A I do. Kind of blurred, sorry.

19 Q Where the fallow taro was found, is it --
20 this is trench one, towards the bottom left of my
21 screen, refocusing here (indicating).

22 Hold on here just a second, sorry about
23 that.

24 CHAIRPERSON SCHEUER: Ms. Isaki, what is
25 your reference --

1 THE WITNESS: Do you have a page number on
2 that?

3 CHAIRPERSON SCHEUER: If I may finish the
4 sentence.

5 Where are you trying to go, Ms. Isaki, on
6 this? I'm trying to make sure our proceedings are
7 efficient.

8 MS. ISAKI: Where we're going is some of
9 the Intervenor witnesses and the Intervenor wanted to
10 testify to historic lo'i terraces towards the Kapa'a
11 bypass area. And if she is describing fallow taro in
12 that area, that would buttress their testimony.

13 So I wanted to see if the area she is
14 talking about where the fallow taro is, is in trench
15 one. But if she can't locate it, we can move on.

16 CHAIRPERSON SCHEUER: What page of the
17 evidence are you referring to?

18 MS. ISAKI: In our Exhibit 2, it's the PDF
19 page 451, it's page 53 of her archaeological
20 assessment.

21 CHAIRPERSON SCHEUER: Is the witness able
22 to pull that up?

23 THE WITNESS: I don't have that, but I have
24 my archaeological survey report, and that does not
25 look like where I put my trenches. That looks like

1 the geotechnical report, just to let you know.

2 So there you go, because you were asking me
3 about different trenches, so I have a lot of USGS
4 maps.

5 Q (By Ms. Isaki): Can you tell me what
6 page -- so that trenching was just for the
7 geotechnical work. And then your map, can you tell
8 me what page number?

9 A I don't know -- so referencing it to my
10 archaeological report, it is Figure 9, page 24, and
11 that's on a USGS map.

12 CHAIRPERSON SCHEUER: Petitioner's
13 Exhibit what, Ms. Ahu or --

14 MR. YUEN: Petitioner's Exhibit 4 is the
15 Final EIS.

16 MS. ISAKI: Can I share my screen one more
17 time? This will be brief.

18 CHAIRPERSON SCHEUER: Yes.

19 Q (By Ms. Isaki): So this is Figure 9, page
20 24 of your report.

21 So this was your map of the trenches?

22 A Can you go up to one more figure, because
23 that's not my figuring. But maybe it got changed in
24 the EIS. There is another USGS map.

25 Q I guess if you have it on paper, it might

1 be -- is this it?

2 A No. There is another one too. That
3 doesn't look like it's coming through. Would like me
4 to share my screen?

5 CHAIRPERSON SCHEUER: You can try.

6 THE WITNESS: Can you see this on here now?

7 CHAIRPERSON SCHEUER: Is there a figure
8 title?

9 THE WITNESS: Yes, this is -- again, can
10 somebody give me a specific page reference to an
11 exhibit?

12 MR. YUEN: Petitioner's Exhibit 4. I don't
13 know the page reference.

14 CHAIRPERSON SCHEUER: Is there a figure
15 title, Ms. McMahon?

16 THE WITNESS: It's Figure 9, and it shows
17 up as my -- looks like 27, but I don't think this
18 came from the EIS document. This was turned into
19 SHPD for approval.

20 CHAIRPERSON SCHEUER: So it's not
21 necessarily Petitioner's exhibit?

22 THE WITNESS: I don't know. I don't know
23 what they turned in. I cannot speak to that.

24 CHAIRPERSON SCHEUER: So you might be
25 familiar, Ms. McMahon, to reference things that are

1 actually in the record.

2 THE WITNESS: So the inventory survey
3 should have been in there.

4 CHAIRPERSON SCHEUER: Mr. Yuen, your
5 witness. Help us out.

6 MR. YUEN: Have to go find it. Perhaps you
7 can move on to another area.

8 CHAIRPERSON SCHEUER: If the Intervenor
9 could move on.

10 Ms. McMahon, stop screen sharing, and if
11 the Intervenor could move on to a different question.

12 MS. ISAKI: Yes, will do.

13 I'm trying to be mindful of the time.

14 Q This is, again, in your archaeological
15 report, you said the majority of the study areas are
16 located within urban Kapa'a along the shoreline and
17 away from the mountain areas.

18 Do you remember writing that?

19 A Yes.

20 Q Is it possible that the location of
21 previously studied areas reflect modern land use
22 study more so than precontact land use?

23 A Correct.

24 Q Since the project area has not been
25 previously surveyed, is it possible that undiscovered

1 sites exist and is that possible?

2 A It has now been surveyed.

3 Q I'll move to your survey question.

4 How many people worked on conducting your
5 two-day survey?

6 A Myself, and I had an assistant Wendy
7 Tolleson. I did the field surveys and the
8 walk-throughs. She's authored the report.

9 Q And how many hours did you spend walking
10 for each day?

11 A Pretty much all day. Probably beyond 8
12 hours walking through this. It was pretty easy on
13 the first part, just walking through the taller
14 grass. It wasn't really waist high at the time, so
15 it wasn't as bad as I thought. So I gave myself a
16 few days, because of the existing conditions there.

17 Q Can you estimate the amount of area that
18 you cleared to establish where there were surface
19 artifacts or not?

20 A Most of the parcel was low cut grass.
21 Nothing had to be cleared there. It was only where I
22 had to clear to get the trenching work in, and there
23 were no artifacts surfaced down there.

24 Q So under grass -- actually different
25 question.

1 qualified -- personally there is opinion, but I'm not
2 a qualified expert in that. I mean as far as if
3 there was fishing rights in there?

4 Hypothetically, yes. And if there were
5 impacts to that, yes, that could affect those rights.

6 Q (By Ms. Isaki): Fishing is a cultural
7 practice, correct?

8 A Yes, it is.

9 Q Are you familiar with the concept of the
10 amanu (phonetic) as a traditional flood control
11 feature?

12 A Yes, I am.

13 Q Can you describe what it is and where you
14 would look for it on the parcel?

15 A You would look for it in the stream areas
16 around there, probably higher up, maybe or where it
17 can contain water, and you have banks to do that.

18 Again, not in this area and I did not look
19 for that because the stream wasn't part of the
20 Project Area.

21 Q So it's your testimony that there is no
22 signs of a stream on the Project Area?

23 A Correct.

24 Q You said that OHA gave you a list of
25 possible individuals with extensive knowledge of

1 traditional cultural practices, but none knew of any
2 for this Project Area, correct?

3 A Correct.

4 Q Was Milton Ching on that list?

5 A At that time, no. He worked for DOCARE.

6 Q So he was not listed as someone with
7 extensive knowledge?

8 A Correct.

9 Q Who were the individuals?

10 A At that time, Nathan Kalama is the only one
11 I got, but I am the one that asked Milton to join
12 this, because since then -- at that time he was a
13 claimant for Kealia and some other locations. He was
14 supporting this project before when it was at the EIS
15 level, and we talked about that. Then I asked him
16 perhaps he should provide testimony to this.

17 Q But you did not ask him that before you
18 prepared your CIA?

19 A At that time I did not know he had
20 extensive knowledge of this area. And we're pretty
21 good friends.

22 Q So you're familiar with, I would assume,
23 with a SHPD letter that requested recordation of
24 former irrigation ditches and such from this parcel
25 and the request to do an EIS, correct?

1 A Yes.

2 Q And you were also part, or your study was
3 part of the EIS; correct?

4 A Yes.

5 Q Are you aware that the study by Hookuleana,
6 LLC, Peter Young's LLC, also says relied on
7 statements from SHPD and the sustainability plan
8 talking about -- which talked about, and I'm talking
9 about the EIS Appendix B, Sustainability Plan at page
10 17. It's in our Exhibit 2. It's also in our Exhibit
11 3 at pdf page 422, because Appendix B is illegible in
12 the Final EIS, but just to mark where I'm talking
13 about.

14 The Sustainability Plan talked about
15 recording locations, remaining former irrigation
16 ditches, and recording information, and also
17 recovering rocks from rock walls that are found on
18 the property.

19 Are rock walls, can they have potential
20 significance, historic -- can they be potentially
21 historic properties?

22 A Yes, they can, because modern walls
23 sometimes are including railroads, local rocks to
24 build modern things. So they could be from a
25 previous site that wasn't there any more, yes.

1 So I do think they're significant, yes. So
2 I listen to the stones sometimes, they speak. So,
3 yes, I did feel they're significant.

4 Q So were any rock walls encountered?

5 A No, ma'am.

6 Q Thank you.

7 Yet the -- are you aware that the
8 Sustainability Plan includes reuse of rock walls?

9 A I did not read it. I know that I'm trying
10 to be short.

11 I did work -- Peter and Jennifer and I went
12 back and forth about what they wanted to extract from
13 my reports to put in their documentation. And so --
14 but I don't -- he might have added that in. I don't
15 recall that with him, so sorry.

16 Q Moving on to heiau, your archaeological
17 assessment lists like 14 heiaus. This is Exhibit 2,
18 Appendix L, page nine, or pdf page 429.

19 Have you read or any part of Archeology of
20 Kaua'i by Wendell Clark Bennett?

21 A Yes.

22 Q Or Mary Kawena Kukai, Place Names of
23 Hawaii?

24 A Yes.

25 Q Are you familiar with them mentioning

1 Mahewalu Heiau on Olohena Ridge?

2 A I have seen -- actually, I believe that
3 might be more -- so they say Olohena Ridge, but I
4 believe that's actually where the Kapa'a High School
5 is today, not the Middle School there, that's there.
6 It's on the opposite ridge.

7 Yes, I have read their works. There's
8 actually a street over there with that name on it.

9 Q Did you list the heiau in your
10 archaeological assessment?

11 A It's listed with the 14 heiau, but that's
12 probably not the closest heiau that I think could be
13 near this parcel. And I did not -- I looked for it
14 and I didn't see it.

15 There is another name actually much closer
16 listing name of heiau, but it shows up on a
17 plantation map as a camp.

18 Q Did you use a different name for the heiau?

19 A No. There is a Pueo Camp. Pueo Camp was
20 probably down where the Martine family lives by the
21 roundabout, somewhere over there. So if there is any
22 heiau that might have been there, it's not there now.
23 That camp has taken that name.

24 Q That's not my question.

25 My question was is Mahewalu Heiau listed in

1 your archaeological assessment of nearby heiau?

2 A That report of nearby heiau, I can't
3 remember. I didn't read that one. Probably in the
4 list of heiau that I have.

5 Q I did not see it. I guess that's just a
6 comment.

7 You testified earlier that heiau are not
8 typically located by streams, correct?

9 A I haven't found one by a stream on this
10 island. I found them in more prominent point or leys
11 on the coast. So if we are talking about a very
12 large size heiau, that would be really not a
13 prominent location. Middle size.

14 Q So I was going to ask you if you heard of
15 Kau'ula Heiau in Lahaina, say yes or no?

16 A Yes.

17 Q And that one is located by Kau'ula Stream
18 by the headwaters, correct?

19 A Correct, but --

20 Q Hale o Papa in Halawa, is that located by a
21 stream?

22 A Yeah, I have been to that site, so I know
23 where it is.

24 Q Is Wailua Complex just south of this area
25 located by a stream?

1 A They're high up on the promontory, not
2 right by the streambed.

3 Q Can boulders have been moved over the
4 centuries, or by the plantation workers before you
5 got there to look, or before, I guess -- any people
6 today have gotten to the streams to look for them?

7 A So I do believe plantation, and before even
8 the informants I talked to, probably did move
9 boulders out of the field, yes.

10 They scarred them up, and relocated them.
11 Most of the time they piled them in piles someplace.
12 I did not see a pile of boulders anywhere. Maybe
13 they individually took them and got reused. None of
14 the folks that worked on the plantation said that had
15 happened.

16 Q Did I misunderstand? I thought you just
17 said -- maybe you said Mahewalu Heiau might have been
18 where the high school, but you also said earlier to
19 Office of Planning, the Middle School is where the
20 heiau would have been; is that correct?

21 A If there was a heiau on the property -- he
22 asked if there was a heiau anywhere, I thought that's
23 the most prominent place to have a heiau, and
24 actually it's in the parking lot closer to Olohena
25 Road. And I stood there and looked.

1 There is a glimpse of the views, that's
2 where I would put one if I was to put one.

3 Q And did you review the archaeological
4 documents for Kapa'a Middle School?

5 A I don't believe there was any done.

6 Q In your direct, you said in 2010 you opened
7 up your own archaeology firm?

8 A Yeah. Yes, I had one before, years ago.
9 So I just had it back in 2000 -- I forget what it
10 was. I was laid off from the State, so I opened up a
11 firm then way back, years ago. I had it, used it,
12 2010, correct. I started doing --

13 CHAIRPERSON SCHEUER: To the degree it's
14 possible to answer these questions sort of directly,
15 it would greatly facilitate our proceedings.

16 Q (By Ms. Isaki): You said in 2011 you
17 started work on the Kapa'a Highland project, or
18 whatever it was called before, correct?

19 A Yeah. He asked me about doing it around
20 then. By the time we finished writing up the report,
21 it was 2012, correct.

22 Q Did you get an advisory opinion from the
23 Ethics Commission prior to carrying out the work SHPD
24 recommended for this project?

25 A I got an opinion because the letter was

1 written a long time ago by me to do the inventory
2 survey. I was already off from the State for one
3 year.

4 Q And that has not been put into any record?

5 A Nobody asked me to do that.

6 Q While you were at SHPD, did you review --
7 well, you did review the HoKua Place project.

8 Did you have access to non-public
9 information concerning SHPD's interview of Kapa'a
10 Highlands project?

11 A I talked to Susan Lebo, Teresa Dunham and
12 the staff, but did I have access to that? No, I did
13 not.

14 Q You said that your cultural impact
15 assessment, you had at least three individuals raised
16 in testimony. Are those three individuals native
17 Hawaiian cultural practitioners or traditional and
18 customary practitioners?

19 A No, they are not, of those three.

20 You asked me about three. There was more,
21 but, yes, three. I think you're asking
22 clarification.

23 Q Yes, I'm asking about the three that you
24 said wrote in testimony on this, yes.

25 A So those three, no, they are not

1 traditional cultural practitioners.

2 Q Did you know Lupert Roe (phonetic) at the
3 time you wrote this CIA?

4 A Yes, I did.

5 Q Did you know Noelani Jocelyn (phonetic)?

6 A No, I did not.

7 Q Did you know Alec Koa Hoffman (phonetic)?

8 A No, I did not.

9 Q Did you know Liko Martin?

10 A I remember Liko because he played music,
11 and I met him a few times.

12 Q You referenced difficulty of getting people
13 to talk to you. After you left SHPD in September
14 2010, did you apply to the Kaua'i Historic
15 Preservation Committee in 2011?

16 A Somebody asked me to put my nomination in,
17 yes.

18 Q And the council did not confirm, in light
19 of copious public testimony, including from many
20 kanaka maoli; is that correct?

21 A Yes.

22 Q Is it possible that the same public
23 testifier from the 2011 County Council meeting were
24 not responding to your solicitations for native
25 Hawaiian informants?

1 A That I don't know. I have gotten -- since
2 other projects, people do respond, some do, again.
3 But other -- I won't go further. I'll be short.

4 Q I only have one more set of questions.
5 During your tenure with SHPD, did the
6 federal national park conduct a site review in
7 regards to compliance with National Historic
8 Preservation Act?

9 A Of the office, yes. I actually started
10 before I became -- while I was there (indecipherable)
11 -- I became branch chief and that. They were already
12 being audited by the National Park Service.

13 Q And did that result in the March 2010
14 report designating SHPD a high risk of
15 (indecipherable)?

16 A Correct.

17 Q Is it true that at the time of the site
18 visit, that the National Park Service found Kaua'i
19 SHPD office closed and its furniture, equipment,
20 files and other items at your residence?

21 A Yes, because it was always at my residence.
22 There was no Kaua'i office. We never had a Kaua'i
23 office that was mine. Even when I was relocated here
24 to do Kaua'i, I worked out of my house.

25 Q Is it true that some of the items moved

1 from SHPD's office included human remains?

2 A No, they -- the burial council had a
3 container in the baseyard.

4 Q Is it true that the National Park Service
5 concluded that the duration was undesirable
6 particularly to Hawaiian community members who
7 advocate the reinterment of human remains?

8 A That was to the whole office in general,
9 because the inventory for Kaua'i was very limited.
10 Other islands had bigger inventories.

11 Q Is it true that the SHPD report -- and if
12 you would like me to, I'll call it up to refresh your
13 memory -- described at your residence a set of human
14 remains?

15 A Excuse me, repeat that, please.

16 Q I'm reading from the report, and may I
17 share my screen? This is not being offered into
18 evidence though.

19 CHAIRPERSON SCHEUER: Okay. If you're not
20 offering it into evidence --

21 MS. ISAKI: This is just impeachment
22 evidence, or impeachment as a demonstrative aid.

23 CHAIRPERSON SCHEUER: Go ahead.

24 Commissioner Okuda, are you trying to --

25 COMMISSIONER OKUDA: Mr. Chair, I

1 understand the rules of evidence don't strictly
2 apply, but I think counsel can just read the portion,
3 and I would suggest there is no need to put a
4 document up, which is not being offered into
5 evidence. Thank you.

6 MR. YUEN: If she's going to read from it,
7 I would like to have it put into evidence, otherwise
8 I don't think it should be read from.

9 COMMISSIONER OKUDA: Mr. Chair, okay. If
10 Mr. Yuen wants it in evidence, then I withdraw my
11 comment.

12 CHAIRPERSON SCHEUER: Mr. Yee.

13 MR. YEE: Do you -- we have an objection.
14 One, the document, I believe, is not admitted into
15 evidence. I don't know -- is it listed in the
16 evidence list?

17 MS. ISAKI: No, it's not evidence.

18 MR. YEE: If it's not listed in the exhibit
19 list, our concern is -- I've had no opportunity to
20 review it. It's being used apparently for
21 impeachment, but not with respect of anything that
22 she particularly said, but apparently with respect to
23 the witness generally. So assume this evidence they
24 knew, or an exhibit they new they might be using, so
25 I think I would object to the use of the document in

1 this proceeding.

2 CHAIRPERSON SCHEUER: Ms. Isaki.

3 MS. ISAKI: I just want to clarify that
4 this is in direct reputation of her statement that
5 she had not been keeping human remains at her
6 residence. Not being offered into evidence, just
7 impeachment, and I think this goes directly to her
8 statements that it was okay to conclude that there
9 was no cultural practices, because nobody came
10 forward and said anything to her.

11 CHAIRPERSON SCHEUER: I will call on
12 Commissioner Okuda in a moment, but I have to say
13 that, Ms. Isaki, you lost me. The connection that
14 you're trying to draw, again, the witness' statement
15 that she saw no evidence of traditional customary
16 practices, and this allegation around human
17 remains --

18 MS. ISAKI: The SHPD report says that Nancy
19 McMahon had human remains at her house. And that
20 this was -- I'm not sure if the word was
21 "undesirable" for native Hawaiian communities.

22 CHAIRPERSON SCHEUER: The point you're
23 trying to make is that, if I understand, the point
24 you're trying to -- (indecipherable) you do not want
25 to, is that correct?

1 MS. ISAKI: Correct.

2 CHAIRPERSON SCHEUER: Which is actually a
3 point that I will note the witness acknowledges in
4 her direct testimony, she acknowledged that there may
5 be informants who do not want to talk with her; is
6 that correct?

7 MS. ISAKI: Correct.

8 CHAIRPERSON SCHEUER: Which is actually a
9 point I will note the witness acknowledged in her
10 direct testimony already. I believe in her direct
11 testimony under Mr. Yuen she acknowledged that there
12 were people who do not wish to speak with her. She
13 didn't specify a reason, but she has acknowledged
14 that.

15 Mr. Okuda.

16 COMMISSIONER OKUDA: Mr. Chair, you, once
17 again, you have taken the words out of my mouth. I
18 agree with you to the extent my input is even
19 relevant.

20 I also agree with Mr. Yee. I think this is
21 becoming cumulative. And the point has been made,
22 and I'm not even sure whether this starts bordering
23 on character type of presentation, not necessarily
24 specific to credibility.

25 CHAIRPERSON SCHEUER: It would be -- I can

1 rule on it, or -- I was already nervous, Ms. Isaki,
2 in your previous questioning where you started to
3 reference things that were not listed in evidence.
4 We had extensive discussion earlier (indecipherable)
5 about what was going to be allowed into evidence --
6 in these proceedings about what was going to be
7 allowed into evidence, when people would have a
8 chance to respond to things being in evidence.

9 So can you proceed without this line of
10 questioning?

11 MR. YUEN: I object to -- they are trying
12 to read this report.

13 CHAIRPERSON SCHEUER: Just to be clear, Mr.
14 Yuen --

15 MS. ISAKI: Yes, we can move on.

16 CHAIRPERSON SCHEUER: Mr. Yuen, I'm
17 responding to you.

18 Mr. Yuen, I want to be abundantly clear
19 that I'm responding to you.

20 Does this satisfy your objection?

21 MR. YUEN: That's fine.

22 CHAIRPERSON SCHEUER: Mr. Yee?

23 MR. YEE: We're good, thank you.

24 CHAIRPERSON SCHEUER: Commissioner Okuda,
25 your hand is still up. Is that left over, or is that

1 new?

2 COMMISSIONER OKUDA: I'm sorry, Mr. Chair,
3 it was left over. I'm sorry.

4 CHAIRPERSON SCHEUER: Thank you.

5 Ms. Isaki, please continue.

6 MS. ISAKI: You know what, I'm going to
7 stop there. Thank you.

8 CHAIRPERSON SCHEUER: It's 4:06. I said we
9 would go to 4:30. I have no doubt that some of our
10 Commissioners would have extensive questioning for
11 this witness. I believe we are all kind of tired.

12 Do we want to go on a little bit, or do we
13 want to pause and start again tomorrow morning?

14 Mr. Yuen, your witnesses will all be
15 available tomorrow morning?

16 MR. YUEN: Ms. McMahon will not be
17 available tomorrow morning.

18 CHAIRPERSON SCHEUER: When will she be
19 available?

20 MR. YUEN: The next time we have a
21 Wednesday.

22 CHAIRPERSON SCHEUER: Sorry, I didn't give
23 OP a chance -- no, OP did have a chance.

24 Next time there's a Wednesday?

25 MR. YUEN: She has other commitments on

1 Thursdays.

2 CHAIRPERSON SCHEUER: Commissioner Okuda.

3 COMMISSIONER OKUDA: Mr. Chair, I would ask
4 that we continue with this witness, and I would ask
5 that the witness reappear tomorrow. We are all
6 putting in time to handle this docket, because this
7 is a very important matter for all parties. And so
8 everyone should give it the same respect and
9 importance that we're all providing it.

10 So I would ask that we go as long as we can
11 today with deference to the court reporter, because
12 we have to be aware of, you know, the stress of the
13 court reporter, because she is the most stressed out
14 person. You, Mr. Chair, might be the second person.

15 But if it's necessary to reconvene
16 tomorrow, then the witness should be here tomorrow.

17 CHAIRPERSON SCHEUER: Can I check with all
18 the parties and our court reporter, can we continue
19 to 5:15 if we take a ten-minute break right now?

20 COURT REPORTER: Chair, this is Jean. I
21 will go to 5:15, but I am really tired.

22 CHAIRPERSON SCHEUER: Commissioner
23 Ohigashi?

24 COMMISSIONER OHIGASHI: Mr. Chair, I -- cut
25 off at 4:30 because I have these pressing matters

1 that I have to attend to regarding my work, get out
2 some matters.

3 CHAIRPERSON SCHEUER: I understand we all
4 have other commitments. Is it possible, however,
5 because I'm afraid that we will further delay these
6 matters if we don't try to conclude our questioning
7 of Ms. McMahon.

8 COMMISSIONER OHIGASHI: You're going to
9 lose me, but I believe I can review whatever was --

10 CHAIRPERSON SCHEUER: I'll give you first
11 bite at the apple when we come back.

12 It is 4:09. Take a six minute break, then
13 come back and plow through to 5:15.

14 (Recess taken.)

15 CHAIRPERSON SCHEUER: We are back on the
16 record at 4:15. I will encourage my fellow
17 Commissioners to be as succinct as possible, and
18 witness to be as succinct as possible in your
19 responses.

20 THE WITNESS: Thank you.

21 CHAIRPERSON SCHEUER: Just offering for the
22 record, Commissioner Ohigashi's request to leave at
23 4:30.

24 Do you have any questions for this witness?

25 COMMISSIONER OHIGASHI: No questions.

1 CHAIRPERSON SCHEUER: Thank you.

2 Commissioners? Commissioner Chang.

3 COMMISSIONER CHANG: Thank you, Mr. Chair.

4 Good afternoon, Nancy, how are you?

5 THE WITNESS: I'm good, thank you, Dawn.

6 COMMISSIONER CHANG: I've known Nancy for a
7 long time when I was over at the AG's office. So
8 thank you for being here. I will tell you I had a
9 lot of questions, but I'm going to try to be, as
10 Chair said, much more succinct and not try to be
11 redundant.

12 Let me start off with archaeological
13 assessment. Your trenching methodology was you
14 selected three trenches for 97 acres.

15 What was the rationale for three trenches
16 over the entire parcel?

17 THE WITNESS: In my discussions with Susan
18 Lebo, who was okay with the field assessment portion,
19 we talked about doing the three trenches, because the
20 other area, solar farm, was already there. I showed
21 them pictures of how wide open it was, and nothing on
22 the ground. And also showed them where the goat farm
23 was at. So where I chose to put the trenches was the
24 least impacted by all of those areas, and for
25 potentially where I thought if anything, maybe we

1 would find something there. That is how that
2 selection was made.

3 COMMISSIONER CHANG: Let me ask you. Quite
4 frankly, I thought three trenches were inadequate for
5 97 acres, but let me ask you this.

6 What was the land prior to sugar
7 plantations? What was the land used during
8 precontact?

9 THE WITNESS: Well, we don't know exactly.
10 We can hypothetically understand that, because there
11 was no written record, so I would go back to any
12 testimony I see, even what I see in the land records.

13 So we have a lot of kula lands. They talk
14 about surrounding areas which are pasture lands. So
15 if that's true, and there could potentially have been
16 a heiau at the Middle School, then that area might
17 have not anything around it. So it had a clear view
18 plain on it.

19 Adjacent to where those kula lands and the
20 taro farming area might be, you might have -- and
21 there's nothing that I can find that shows any other
22 kuleana or even unclaimed that was not awarded, but
23 maybe on the -- I don't want to say not in the flood
24 plain or stream, but higher up might have found a
25 house site in there. That kind of thing that they

1 could be easily attending to their taro patch, which
2 is down in this sort of perennial stream area,
3 actually more in the Bette Midler's piece where it's
4 flatter.

5 COMMISSIONER CHANG: I'll be honest, I
6 found your archeological assessment to be very
7 difficult to follow. There were -- the maps were not
8 very clear. I couldn't tell where like, for example,
9 LCAs were in relationship to the subject property.

10 I couldn't tell where the historic
11 properties have been previously identified or in
12 relationship --

13 CHAIRPERSON SCHEUER: Commissioner Chang,
14 is there a question?

15 COMMISSIONER CHANG: Yes.

16 It was very difficult, so I'm trying to
17 understand that this is -- this was not -- I had some
18 problem understanding the rationale.

19 So because you state in the reports that
20 Kapa'a and Kealia, suggesting that the two ahupua'as
21 were politically significant in ancient times.

22 So you made some speculation about that.
23 Where were there heiaus located, that they
24 couldn't -- because you don't know exactly where they
25 are located. Couldn't they be located within this

1 project site?

2 THE WITNESS: They are not there now, or no
3 remnants of them. Could they be there? Not in the
4 project site. I believe --

5 COMMISSIONER CHANG: What is the basis for
6 your conclusion that they could not be in the project
7 site?

8 THE WITNESS: Per the walk through that I
9 did -- if you're talking about prior things out
10 there, we are talking about what I thought was there
11 before, then they could be there. But due to
12 historical activity, they were destroyed typically,
13 and so they're not there now, and I see no remnants
14 of that to indicate there's something there.

15 COMMISSIONER CHANG: And that's going to be
16 my next question.

17 Isn't it true that we have found subsurface
18 in cane fields, in agricultural fields, that we have
19 actually found cultural resources including burials,
20 because those activities, they may have started at
21 the top, but over time we could still find some
22 subsurface remains. So the fact that you don't see
23 anything surface, doesn't necessarily mean there was
24 nothing substantive, would you agree?

25 THE WITNESS: I would agree, correct, on

1 that, yes.

2 COMMISSIONER CHANG: And the fact that --
3 and your own report says Kapa'a and Kealia were very
4 significant. Would you agree with that?

5 THE WITNESS: Well, I think all ahupua'as
6 are significant in their own right.

7 COMMISSIONER CHANG: But when you say
8 politically significant, that generally signifies
9 that there were activities that if royalty or ali'i
10 lived there or kohanaikis lived there, it was
11 probably also inhabited by others. Doesn't that make
12 sense?

13 THE WITNESS: Yes. And it is crown land,
14 so the ali'i did take this land absolutely.

15 COMMISSIONER CHANG: So generally isn't it
16 accepted that where people lived, we could find
17 burials in the area?

18 THE WITNESS: It is possible.

19 COMMISSIONER CHANG: So your conclusion
20 that there are no burials is really based upon just
21 the pedestrian walk through, the three trenches, and
22 what you can see, but based upon the historic
23 documentation that you provided, there is an
24 indication that this area could have been habitated,
25 and it could have actually been habitated by royalty,

1 but nonetheless, it could have been habitated, right?

2 THE WITNESS: That is correct.

3 COMMISSIONER CHANG: Let me go down to the
4 cultural impact assessment.

5 You indicated that this is marsh lands of
6 Kapa'a. Where are the marsh lands?

7 THE WITNESS: So the marsh lands -- and
8 they referred to this in a lot of I guess historic
9 maps -- is adjacent to the parcel area, per se. It's
10 below -- I guess some of the area now has been
11 indicated to be, from listening to you guys and the
12 testimony today, some I would say some of the
13 wetlands become part of that marsh lands.

14 Then clearly below this project area is the
15 bigger wetland that's there. So they sometimes did
16 that with the wetland, put that in there.

17 COMMISSIONER CHANG: So the fact that there
18 were marsh lands, and I think even your report says
19 that there could have been evidence of fishponds; is
20 that correct?

21 THE WITNESS: I said they sometimes did
22 that with the wetland, they would put that in there,
23 that's correct, I did say that.

24 COMMISSIONER CHANG: So the fact that there
25 are marsh land that could have been evidence of

1 fishponds, it does mean that that area was used, may
2 have been habitated, and it may have supported a
3 vibrant community where people lived; would you agree
4 with that?

5 THE WITNESS: It could have, yes.

6 COMMISSIONER CHANG: So your conclusion --
7 well, your statement that this was -- that some of
8 these activities were outside the project area, but
9 when we do cultural impact assessments, don't we look
10 at the cultural landscapes? Don't we look at
11 mauka-makai connection, for example? So salt
12 gathering, you've got to walk through to go -- so
13 while the activity may not have occurred within the
14 Project Area, from a cultural impact assessment
15 standpoint, it may have been used as a pathway for
16 gathering?

17 THE WITNESS: Right. It could have been.
18 I didn't find evidence to give me that, but also
19 adjacent land, you're right, we didn't look at Bette
20 Midler's property, per se, right. And that's -- I
21 think there's a lot of things going on there.

22 COMMISSIONER CHANG: So your -- the
23 conclusion that, one, there's no trails, there's no
24 burials, there's no --

25 THE WITNESS: Correct, that's correct.

1 COMMISSIONER CHANG: But let me ask you.
2 You had indicated in your report, your CIA, you note
3 under consultation, that you had interviewed, I think
4 there was three people, Albert, Stanley and there was
5 another person, Mr. Souza?

6 THE WITNESS: I think I mentioned Mr.
7 Fukushima, Sanchez, Vasquez, Martine.

8 COMMISSIONER CHANG: Yet you provided us
9 much greater information about others that you had
10 spoken to but they -- you said they told you nothing
11 was on there or they didn't follow up.

12 Is any of that in the report?

13 THE WITNESS: No. And that's where I
14 started my discussion and general reference to when I
15 was doing mine, versus I gave that story to come
16 forward. When I was at the State, and people would
17 tell me why they didn't want to come forward, not to
18 me so much, but to other people they didn't like the
19 documents listed. They sent me a letter and we
20 didn't respond. Or they noted my name in something
21 or I didn't see it. So I had a sensitivity that I
22 didn't want to put them in there, because they didn't
23 really want to be in the document.

24 COMMISSIONER CHANG: But for purposes of
25 the Land Use Commission's constitutional obligation,

1 we have an obligation to preserve and protect
2 traditional customary practices, but to a large
3 extent that is based upon the information that the
4 project proponent provides us.

5 And it's not you that make a determination
6 that there are no traditional customary practices,
7 but really the Land Use Commission?

8 THE WITNESS: It's the agencies' call.

9 COMMISSIONER CHANG: And we can only make a
10 call based upon the information that is in the
11 record.

12 So we've got documentation from three of
13 your consultants. They're not native Hawaiians.
14 They're all related to sugar plantation.

15 But you also talked about -- you had talked
16 to others, but they were -- but it wasn't included in
17 your report?

18 THE WITNESS: Correct.

19 COMMISSIONER CHANG: So you understand that
20 for us -- at least for me to fulfill my
21 constitutional obligation, I can evaluate it based
22 upon what you submit to us, not what you tell us, but
23 what is submitted in the record.

24 So let me ask you this question. Did you
25 see the final archaeological assessment and cultural

1 impact assessment that was submitted in the Final
2 Environmental Impact Statement?

3 A No, I have not looked at it. I gave what
4 was approved copies with the letter, and then I gave
5 my documents, at that time, was to Peter Young. How
6 they were putting it together, I did not see that.

7 COMMISSIONER CHANG: But you understand
8 that the project proponent is relying upon your
9 information for to us make a conclusion?

10 THE WITNESS: Correct.

11 COMMISSIONER CHANG: So it is -- and based
12 upon -- you've done this for a very long time.
13 Sitting in our shoes, looking at the information that
14 we've received, do you believe that your cultural
15 impact assessment is adequate for the Land Use
16 Commission to make a determination?

17 THE WITNESS: So I always know from, as you
18 said, it's a huge burden to make this decision and
19 call. And how Ka Pa'akai happened was because of the
20 land use decision, and it was about the salt. So I'm
21 very familiar with all the cases, because I either
22 had to go inspect the areas for SHPD, and follow up
23 what was going on. So I know that. And I know I was
24 in that position. It's a very heavy burden. So I do
25 appreciate.

1 I do think we looked at everything. I do
2 think that sometimes I think there's -- I said if we
3 found something, or something new comes up. It's
4 like an archaeological site, we mitigate it.

5 At that time I when went out there -- and
6 granted, no one asked me to update this report,
7 either one, right, nobody asked me. If you notice,
8 different names are on here, projects names have
9 changed. Would I add more information or maybe I
10 would do that, but -- and if we -- and the gray areas
11 of traditional culture, as I say, it's gray.

12 If we find something new, I think we have
13 to address that.

14 COMMISSIONER CHANG: But you would also --
15 because I know you were opining about traditional
16 customary practices that someone has to, I think you
17 said ten years. I think Mr. Yuen asked you if -- and
18 you might have said if they came here and they just
19 came here in six years, you would not consider that
20 traditional practice. Is that your testimony?

21 THE WITNESS: He asked me if somebody had
22 just showed up on the property, and they had no
23 connection, they had no cultural connection or lineal
24 connection, but they started doing something that was
25 maybe a traditional activity, would I consider

1 that -- I think that was the question.

2 COMMISSIONER CHANG: Under the Supreme
3 Court's decision in Pele Defense Fund -- excuse me,
4 PASH.

5 THE WITNESS: Okay, yeah.

6 COMMISSIONER CHANG: The Supreme Court
7 specifically said that traditional customary
8 practices does not have to be continuous, you never
9 abandoned that right. So even if someone isn't
10 practicing it, but they can demonstrate that their
11 ancestors used a particular pathway through this
12 Project Area, that that right continues.

13 Would you agree?

14 THE WITNESS: That's correct. I think PASH
15 also said it doesn't have to be native Hawaiians.

16 COMMISSIONER CHANG: Right, no blood
17 quantum. They couldn't determine -- the whole
18 question about halaus, so you're right.

19 But they specifically said there is no --
20 you don't abandon that right.

21 THE WITNESS: Correct.

22 COMMISSIONER CHANG: As long as at some
23 point in time you can show that your family exercised
24 those rights, those rights continue to exist today
25 even if they no longer occur on the property, right?

1 THE WITNESS: Correct.

2 COMMISSIONER CHANG: And with respect to
3 pig hunting, I believe the Supreme Court also said
4 that the scope of native Hawaiian rights are much
5 broader than those enumerated in 7-1.

6 So even the question of, you know, if pig
7 hunting subsistence isn't a traditional customary
8 practice, I will tell you, I find it as a Hawaiian
9 very difficult to judge the legitimacy of another
10 Hawaiian who says this is what their practice is.

11 THE WITNESS: Correct.

12 COMMISSIONER CHANG: Wouldn't you agree
13 with that too?

14 THE WITNESS: I would agree with that. And
15 I'm sure that -- you know, Joe was an example here,
16 but in other places people did go pig hunting. I
17 know people do that that are not Hawaiian and pig
18 hunt.

19 So I think I was asked the question
20 general, it typically wasn't, and in situations we
21 haven't determined that -- there is some gray area.
22 And there was a recent case --

23 COMMISSIONER CHANG: And I believe that
24 there have been academic papers written about whether
25 pig hunting is a traditional customary practices

1 other than if you shoot it with a bow and arrow, or
2 like pig (indecipherable).

3 But nonetheless, I think the Supreme Court
4 has said that the definition of traditional customary
5 practices is much broader than what we see in 7-1, so
6 that really is dependent upon if your ancestor gets
7 some activity on that piece of property, I think we
8 give credence to them. We have to weigh that.

9 But your cultural impact assessment just
10 makes very broad conclusions, and your recommendation
11 is that no -- I'm trying to find it here -- but you
12 make a very broad conclusion that because you didn't
13 find anything, none exist.

14 And I'm always troubled by that, because,
15 you know, conclusion is being drawn on a point in
16 time based upon a limited number of people that we
17 may have spoken to. That I find that sometimes the
18 better course of action is to acknowledge that maybe
19 we haven't heard -- we don't see anything, or we
20 haven't heard testimony, but that doesn't mean that
21 something doesn't exist.

22 And so for mitigation purposes that the
23 Land Use Commission has to consider, what about
24 those, the public testimony about gathering, certain
25 gathering of plants, or was there a historic trail

1 system that went through here.

2 And I'm having a real difficult time with
3 your report finding factual information for us to
4 draw the conclusion, because you made the conclusion.

5 Do you see the dilemma that I'm kind of
6 faced with?

7 Let me see if I've got any more questions
8 for you, okay.

9 THE WITNESS: Yep.

10 CHAIRPERSON SCHEUER: Can I have a show of
11 hands while Commissioner Chang is looking?

12 Commissioners, your virtual hands, who else
13 has questions? Commissioner Okuda.

14 COMMISSIONER CHANG: I did have a final
15 question.

16 In your cultural impact assessment, because
17 I actually found this to be extremely telling, and I
18 appreciate it that you included that in here, you
19 talk about in general, and I'm quoting from page 46.
20 This is what's in the FEIS.

21 In general, the community emphasize the
22 importance of communicating with the ohana of Kapa'a
23 regarding changes to the land. This includes asking
24 permission of the ohana, including ohana'e
25 (phonetic), immortal spirits for opening up the land

1 for proposed new uses. It was stressed that this and
2 other protocols are necessary to open the path for
3 change, thus, avoiding accidents and potential
4 obstacles of a cultural nature.

5 Then you conclude: In summary, there are
6 no traditional resources or cultural practices
7 associated with the Kapa'a finance project area.

8 Do you know whether this developer asked
9 permission of the ohana?

10 THE WITNESS: I do not, Dawn. And, yes,
11 correct, I don't know that. It's like going into
12 somebody's house without knocking, and opening the
13 door. And that's how I wrote it that way, correct.

14 COMMISSIONER CHANG: And I appreciate that
15 you acknowledge the cultural protocols of asking
16 permission before entering. This developer is merely
17 a guest. He does not -- he's not from there, but --

18 THE WITNESS: It was a different owner,
19 just so you know. I know that it changed and we
20 don't control that.

21 COMMISSIONER CHANG: But your own cultural
22 protocols, there is no evidence that that has been
23 complied with, which probably could have avoided
24 maybe some of this hurt feelings. But I do have
25 trouble with your conclusion in summary, there are no

1 unknown traditional cultural resources or cultural
2 practices associated with Kapa'a Highlands project
3 area, without any qualifications that you are aware
4 of, but -- it's -- I think that was -- I find it
5 difficult when there is conclusionary statements like
6 that, just to let you know that I appreciated, you
7 know.

8 I know how long you have worked in this
9 area, and I appreciate the cultural protocol.

10 But I think, Mr. Chair, that is the only
11 question. That's the questions I have in the
12 interest of time.

13 CHAIRPERSON SCHEUER: I very much
14 appreciate, Commissioner Chang, your trying to be
15 mindful of our time.

16 Commissioner Okuda has questions. I have a
17 few questions. I want to make sure that Petitioner
18 has a chance to redirect.

19 COMMISSIONER OKUDA: Commissioner Chang
20 actually just asked the question I was about to ask.
21 So I have no questions. Thank you, Mr. Chair.

22 CHAIRPERSON SCHEUER: Commissioners,
23 further questions for the witness? If not, I have a
24 few questions.

25 On your direct testimony from Mr. Yuen you

1 made reference to the date of 1778 and Hawaii State
2 Constitution as a potential bracketing date for the
3 exercise of traditional and customary practices; is
4 that correct?

5 THE WITNESS: That is correct.

6 CHAIRPERSON SCHEUER: But doesn't Article
7 XII, Section 7 merely refer to a date from which
8 native Hawaiians must be descended, not the actual
9 practice must be descended?

10 THE WITNESS: Yes, you're correct on that.
11 And then I clarified the other date I used too.

12 CHAIRPERSON SCHEUER: You made reference to
13 Mr. Peter Young, a former consultant from the
14 project, and correct me if I am wrong, I understand
15 that you have relied on his outreach activities, in
16 part, to determine whether or not there were people
17 who were exercising traditional and customary
18 practices on the site; is that correct?

19 THE WITNESS: So he -- I got information
20 from him on that. But I didn't rely on that was my
21 only source, correct. He just happened to bring
22 those up in the discussion -- in sum, I don't think
23 he talked with everybody about that.

24 CHAIRPERSON SCHEUER: I'm not suggesting
25 you said it was your only source of information, but

1 you did rely on the fact that he had done outreach to
2 see whether or not he had heard of the exercise of
3 traditional customary?

4 THE WITNESS: Yes.

5 CHAIRPERSON SCHEUER: Are you aware of Mr.
6 Young having any qualifications in anthropology,
7 archaeology or other relevant areas that his
8 inquiries on these matters would be informative?

9 THE WITNESS: I have no knowledge of that
10 background other than his passion for Hawaiian
11 history.

12 CHAIRPERSON SCHEUER: Regarding heiau, are
13 there multiple types of heiau that exist in Hawaii?

14 THE WITNESS: There are, yes.

15 CHAIRPERSON SCHEUER: So they don't all
16 physically look the same, correct?

17 THE WITNESS: Correct, there is various
18 shapes and sizes. Kaua'i has a quite a different
19 number. There are difference sizes. Different types
20 of heiaus, and different things for difference uses,
21 correct.

22 CHAIRPERSON SCHEUER: So it's possible that
23 -- and is it true that some heiau are very minimally
24 constructed, whereas others have extensive walls that
25 are constructed?

1 THE WITNESS: That's correct.

2 CHAIRPERSON SCHEUER: Thank you.

3 I want to go to Ka Pa'akai analysis, duties
4 that we have. The Intervenor asked you a question
5 about the potential offsite impacts of the proposed
6 project. And at least what I heard in the
7 Intervenor's question, for instance, runoff from the
8 property, even if it is planned to be controlled, is
9 improperly controlled and there's runoff that
10 smothers the reef.

11 Is that something that should fall
12 within -- or let me ask.

13 Is that something that you considered in
14 conducting your cultural impact assessment of offsite
15 impacts from the project?

16 THE WITNESS: I did not look at that area.
17 I looked at thinking -- because I had already heard
18 of some concerns from water issues and other things,
19 that I would assume modernly we would have to have
20 approvals and permits to get that taken care of so we
21 don't have that kind of runoff.

22 So therefore, the bigger picture in a
23 project like that should not -- hopefully today's
24 conditions and requirements -- cause that kind of
25 action.

1 CHAIRPERSON SCHEUER: But, again --

2 THE WITNESS: I did not look at it.

3 CHAIRPERSON SCHEUER: And because there was
4 public testimony regarding sewage spills in Wailua,
5 I'm including -- and the sewage collection area
6 extends to Kapa'a, you didn't look at any potential
7 impacts from sewage capacity systems on the cultural
8 resources that exist in Wailua; is that correct?

9 THE WITNESS: No, sir.

10 CHAIRPERSON SCHEUER: I believe you started
11 to answer this. Did you look at kuleana or other LCA
12 awards that were applied for and not awarded in this
13 area?

14 THE WITNESS: I usually do, and I tried to
15 look for some and couldn't find any in this area,
16 thinking maybe there were some up of the river or the
17 stream or maybe below. I did not find any in the
18 documents. There probably is for all of Kapa'a, but
19 I did the not look at the whole area, I just looked
20 in this area.

21 CHAIRPERSON SCHEUER: Thank you.

22 I served for three years on the Oahu Island
23 Burial Council and two kona moku representatives, so
24 I want to get to the possible presence of burials.
25 You reference that there is no sandy soils in that

1 area, therefore, you believe that there might not be
2 burials. But isn't it true that most of our deep
3 ground disturbing activities have been in the coastal
4 areas where there are sandy soils?

5 THE WITNESS: That is correct. Usually
6 when you do subject on leach fields and sewers, or
7 connections that are deeper, we find burials.

8 CHAIRPERSON SCHEUER: And I've asked other
9 well-known cultural consultants this question.

10 Is it possible that we think of burials
11 existing in sandy areas, also mostly because that's
12 where we have been looking, rather than because
13 that's where they are?

14 THE WITNESS: And it is where most of the
15 development is at, so we deal sort of as it happens,
16 you're correct.

17 CHAIRPERSON SCHEUER: To phrase it slightly
18 differently. Do we have any evidence that shows that
19 we don't have burials in these other areas, any
20 affirmative evidence, for instance, we've done lots
21 of test trenching and never found anything?

22 THE WITNESS: So I know of one in Kapa'a
23 way mauka that is in obviously soil, and people have
24 told me about it. It's on a private property today.
25 I have been told about it. I've driven by it, but

1 not actually looked physically to see how it's
2 marked. I think it's with some stones and some ti
3 plants around it.

4 So those are indicators to help you try to
5 find something, but if somebody's abandoned it for
6 years, some of those things don't exist.

7 CHAIRPERSON SCHEUER: So you are aware at
8 least of being told one area in Kapa'a area that's
9 not in sandy area.

10 But my question is, do we have an
11 evidentiary basis really to conclude that there is
12 not extensive burials in non-sandy areas?

13 THE WITNESS: That's correct.

14 CHAIRPERSON SCHEUER: My last question is,
15 Hawaiian language is listed on your resume. Is there
16 a particular meaning to HoKua?

17 THE WITNESS: I don't know where they got
18 that from, and I did not give that to the
19 consultants. And it threw me when they told me they
20 were changing the project name to that.

21 I try -- as I said at the very beginning of
22 my testimony, I try to help people out when I do
23 these to give them a broad list of names and place
24 names that are used there. I try to show them if
25 there is names that might be close by that might be

1 more appropriate. And maybe if I can find on a map a
2 name I see, because some of the plantation maps used
3 Hawaiian names instead of field number.

4 CHAIRPERSON SCHEUER: Would you say that
5 it's -- in your professional opinion, your experience
6 in this case -- would be considered generally
7 respectful or disrespectful to make up a Hawaiian
8 name for something?

9 THE WITNESS: It would be disrespectful.

10 CHAIRPERSON SCHEUER: I don't have anything
11 further.

12 THE WITNESS: So, Mr. Chair, I did want to
13 tell you, I remember it is Ken Woods that did the
14 botanical studies.

15 CHAIRPERSON SCHEUER: You did remember.

16 Commissioners, anything further? If not,
17 it's your witness to redirect, Mr. Yuen.

18 MR. YUEN: Thank you. I have a couple
19 questions.

20 REDIRECT EXAMINATION

21 BY MR. YUEN:

22 Q First, Ms. McMahon, can you clarify, did
23 you ever keep human remains at your personal
24 residence?

25 A No, I did not. I had an office. So when I

1 was relocated to Kaua'i, I worked out of Oahu and
2 used to commute over. The grounds for relocation was
3 based on the burial council, and so from Kaua'i and
4 Niihau, to ask that they wanted an archaeologist on
5 Kaua'i after Hurricane Iniki.

6 After Hurricane Iniki, because I was
7 involved with the FEMA projects and some of the
8 assessments, I actually got money for the State to
9 get a container, because that's what the police were
10 using for evidence containers, because their
11 buildings, some were no roofs and things likes that.

12 So following that, FEMA agreed, because we
13 were having a number of burials exposed on the
14 shoreline. And so that's what we did.

15 So I never once -- one, I wasn't there, and
16 I got a container before I even moved there. So we
17 had a container on the baseyard for DLNR. And that
18 is where they were at.

19 Then I always worked at my house. And
20 there was an issue that -- even everybody that I
21 never got compensated for working out of my house for
22 18 years. And then I was asked to become the branch
23 chief for archaeology.

24 CHAIRPERSON SCHEUER: Sorry, I'm a little
25 lost in the response to the question.

1 THE WITNESS: He asked if I had burials in
2 my house, I said no. Sorry about that.

3 Q (By Mr. Yuen): You completed your
4 archaeological assessment and your cultural
5 assessment, I believe, in 2012, 2013, 2014, that
6 area, when SHPD approved them?

7 A Correct.

8 Q Since that time, and certainly since the
9 start of this hearing, we have heard from public
10 witnesses and others of possible use of the Petition
11 Area for gathering and other activities.

12 Have you heard anything that would cause
13 you to change your conclusions in your cultural
14 assessment that there is no traditional resources or
15 cultural practices associated with the Petition Area?

16 A So would I change my conclusion?

17 Q Yes, based on --

18 A -- that one of the Commissioners doesn't
19 like -- yes, of course, I remember that part.

20 Based on what I got, I didn't get any
21 information, and I never said people didn't talk to
22 me. I refer to people in general about that, that I
23 felt -- when I was oversighting it, not doing this
24 kind of work, people didn't want to give information
25 to people.

1 There's people that come forward, and I
2 think -- and this is the biggest role the Commission
3 has here. And I know this, because I was on the
4 other side.

5 Right now, based on what I had, I couldn't
6 find anything, but I think you have to be open minded
7 that maybe we just never reach everybody. And the
8 fact that -- can a project still be feasible by still
9 allowing this, and is there long term -- now I'm
10 hearing from other Commissioners, the long-term
11 impact, but it goes back to ask permission and work
12 it out.

13 It goes back to getting access to people.
14 So maybe I would change it to say that.

15 I didn't find anything based on what I did.
16 That is the honest truth. I didn't find anything. I
17 don't think I missed a heiau in there, I really
18 don't.

19 But I'm open minded, because I do agree
20 heiaus come in different forms. We lost heiaus for a
21 hurricane, and I still I think -- I fenced off that
22 area. There's no rocks out there any more. So I do
23 think that's important.

24 I think it's a sacred place. I think if
25 somebody wants access to something, and we can kind

1 of look at it and see if that's really happening,
2 then work this out together.

3 If you want a project to move forward,
4 you've got to be open minded to work together, and
5 yes, the Hawaiians were here first, so I think we
6 need to look at that, respect that.

7 My only caveat, I didn't find anything, but
8 instead of me saying, cutting it off, and saying this
9 is the end of the deal, I would open up my testimony
10 to say the best deal is if somebody comes forward and
11 we can look at what they're saying.

12 I need informants to come out there and
13 show me things, then we got to see what we can do
14 with the project. Like an archaeological site, if we
15 find something, the County attorney asked in the
16 middle of the project, after we're going under, we
17 kind of stop and redesign. And I think that -- and I
18 think when you look at those kind of things, and look
19 at it from -- maybe it's not the western perspective,
20 so could I change my last paragraph, yeah, maybe I
21 would add some stuff in there. But how to figure
22 this out if something comes up, and come up with a
23 mitigation to allow all to happen so that everybody
24 still has their reasonable access and they're
25 reasonably accounted for. And then somehow when all

1 that connects, the projects happen better.

2 MR. YUEN: Thank you. I have no further
3 questions.

4 CHAIRPERSON SCHEUER: Thank you. Is there
5 anything further parties?

6 MS. ISAKI: We have one recross question if
7 the other parties want to go.

8 CHAIRPERSON SCHEUER: Any recross from
9 County?

10 MR. DONOHOE: No, Chair. Thank you.

11 CHAIRPERSON SCHEUER: Office of Planning?

12 MR. YEE: Nothing from OP.

13 CHAIRPERSON SCHEUER: Intervenor, go ahead.

14 RE CROSS-EXAMINATION

15 BY MS. ISAKI:

16 Q Did you ever ask the federal government to
17 correct its report stating that human remains were
18 stored at your house or your house office?

19 A I never saw that in the report. So it was
20 in the -- if it was in the office, that's a different
21 story, because that was part of the State office.

22 Q I meant your home office.

23 A There was nothing in my home office, and I
24 never saw that in a report.

25 Q Thank you.

1 CHAIRPERSON SCHEUER: We made it through.

2 I want to thank all parties, Petitioner,
3 the County, and in particular our Staff for making it
4 through today.

5 Mr. Yuen, we are going to start tomorrow
6 morning at 9:00. You'll have both your witnesses
7 available?

8 MR. YUEN: Yes, we will.

9 CHAIRPERSON SCHEUER: With that --

10 MR. YEE: Chair, may I ask, how long are we
11 going to go on this matter tomorrow?

12 CHAIRPERSON SCHEUER: We have one other
13 item on the agenda. I would like to take it up no
14 later than 2:30, so hopefully we will at least be
15 done with the Petitioner's witnesses by 2:30
16 tomorrow, then we can take up the agendized
17 discussion of legislature matters.

18 Does that answer your question, Mr. Yee?

19 MR. YEE: Yes, thank you very much.

20 CHAIRPERSON SCHEUER: Is there anything
21 further, Commissioners, staff?

22 COMMISSIONER OKUDA: Chair, can we all
23 thank Jean McManus, the court reporter. We really
24 appreciate her work, and especially her speed in
25 providing us transcripts which, especially in this

1 case, allows us to carefully review the testimony.

2 So thank you very much to Ms. McManus.

3 CHAIRPERSON SCHEUER: Yes, thank you very
4 much and to the Staff who also stayed beyond. We
5 really appreciate it.

6 With that, it is 4:57. We're going to
7 recess until tomorrow morning at 9:00 A.M.

8 (The proceedings recessed at 4:58 p.m.)

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CERTIFICATE

1 STATE OF HAWAII)
2) SS.
3 COUNTY OF HONOLULU)

4 I, JEAN MARIE McMANUS, do hereby certify:

5 That on May 12, 2021, at 9:00 a.m ., the
6 proceedings contained herein was taken down by me in
7 machine shorthand and was thereafter reduced to
8 typewriting under my supervision; that the foregoing
9 represents, to the best of my ability, a true and
10 correct copy of the proceedings had in the foregoing
11 matter.

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

15 Dated this 12th day of May, 2021, in Honolulu,
16 Hawaii.

17
18
19 /s/ Jean Marie McManus
20 JEAN MARIE McMANUS, CSR #156
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