

LAND USE COMMISSION
STATE OF HAWAI'I

Hearing held on June 24, 2020
Commencing at 9:00 a.m.

Held via ZOOM by Interactive Conference Technology
and
YouTube Streaming Video link

I. Call to Order

II. Adoption of Minutes

III. Tentative Meeting Schedule

IV. CONTINUED HEARING AND ACTION

A17-804 Hawaiian Memorial Life Plan, Ltd.

To Consider Petition to Amend the Conservation
Land Use District Boundary into the Urban Land
Use District for Approximately 53.449 acres of
land at Kane'ohe, Island of O'ahu, State of
Hawai'i TMK (1)4-5-033:por.001

V. Recess/Adjournment

BEFORE: Jean Marie McManus, CSR #156

1 APPEARANCES:

2 JONATHAN SCHEUER, Chair (Oahu)
NANCY CABRAL, Vice Chair (Big Island)
3 EDMUND ACZON (Oahu)
GARY OKUDA (Oahu)
4 LEE OHIGASHI (Maui)
ARNOLD WONG (Oahu)

5
6 STAFF:

LINDA CHOW, ESQ.
7 Deputy Attorney General

8 DANIEL ORODENKER, Executive Officer
RILEY K. HAKODA, Planner/Chief Clerk
9 SCOTT DERRICKSON, AICP/Planner

10 DAWN APUNA, ESQ.
Deputy Attorney General
11 State of Hawaii, Office of Planning

12 DUANE PANG, ESQ.
Deputy Corporation Counsel
13 Department of Planning and Permitting
City and County of Honolulu

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16 GRANT YOSHIMORI, Pro Se
17 RICH McCREEDY, Pro Se
For Intervenor Hui O Pikoiloa

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1 CHAIRPERSON SCHEUER: Aloha mai kakou.
2 Good morning. This is the June 24th, 2020 Land Use
3 Commission Meeting, and it's being held using
4 interactive conferencing technology linking
5 videoconference participants and other interested
6 individuals of the public via "ZOOM" internet
7 conferencing program to comply with the ongoing State
8 and County official operational directives during the
9 current COVID pandemic.

10 Members of the public are viewing the
11 meeting either via ZOOM or via YouTube streaming that
12 is going on at the same time.

13 I will remind you, as I did last time, all
14 meeting participants, please, be aware that unlike
15 in-person meetings where our court reporter can voice
16 that she cannot hear or ask for a repeat, or at least
17 easily do so, in our ZOOM meetings this is hard. I
18 would like to stress for everyone the importance of
19 speaking slowly, clearly, directly at your
20 microphone, and that before speaking, you identify
21 yourself for the record.

22 Please also be aware that your
23 participation in the meeting means you are being
24 recorded in the record of the ZOOM meeting and on the
25 YouTube platform as well. Your continued

1 participation is your implied consent to be part of
2 the public record of this event. If you do not wish
3 to be a part of the public record, please exit this
4 meeting now.

5 Our ZOOM conferencing and technology allows
6 the Parties and each participating Commissioner
7 individual remote access to the meeting proceedings
8 via our personal digital devices.

9 Myself as Chair, Jonathan Scheuer,
10 Commissioner Aczon, Chang, Okuda, and Wong, the LUC
11 Executive Officer, Daniel Orodener, support staff,
12 including Scott Derrickson, and LUC Deputy Attorney
13 General Linda Chow, as well as the Court Reporter,
14 Jean McManus are all on Oahu.

15 Actually, Commissioner Cabral appears to
16 not be logged in yet. Mr. Orodener, is Commissioner
17 Cabral expected?

18 EXECUTIVE OFFICER: Yes, she is. I was
19 just trying to find though where she is.

20 Scott, she says she can't find the link.
21 Can you resend it to her, please?

22 CHAIRPERSON SCHEUER: Commissioner Cabral,
23 we expect you to link in on the Big Island and it
24 will reflect on the record when she links in.

25 Commissioner Ohigashi is on Maui.

1 Commissioner Giovanni from Kauai is
2 excused.

3 We currently have eight seated
4 Commissioners, of which six are currently in
5 attendance, and seven will be in attendance when
6 Commissioner Cabral has joined us.

7 The meeting minutes for June 9th through
8 10th, 2020 are not yet completed, therefore, we will
9 plan to continue them at our next scheduled meeting
10 on July 8th and 9th, 2020, which is expected to be in
11 person on Maui.

12 Our next agenda item is the tentative
13 meeting schedule. Mr. Orodener.

14 You are muted, Mr. Orodener.

15 EXECUTIVE OFFICER: Thank you, Mr. Chair,
16 my bad.

17 Tomorrow we will be meeting again by ZOOM.
18 We will be discussing matters with regard to the Big
19 Island DR20-69 which is submittal by the City, by the
20 County of Hawaii and Linda Rosehill, A18-805 the
21 Church matter; A18-806, the Barry matter; and
22 A99-729, which is Hawaiian Islands Land Trust.

23 On July 8th, the current status for us to
24 travel to Maui to resume the Ka'ono'ula Ranch motion
25 to dismiss, and the Maui RNT Park matter.

1 On Thursday the 9th, we will also be on
2 Maui for the Central Landfill matter, Lanai matter,
3 Kulalahahele adoption of order -- Pulelehua, excuse me,
4 adoption of order.

5 On July 22nd, we will again take up this
6 matter, location yet to be determined.

7 On July 23rd we will be on Hilo for the
8 University of Nations matter.

9 On August 21st, we will again be in Hilo
10 for University of Nations matter if necessary.

11 On the 13th we will again be on Hilo for
12 Hawaiian Islands Land Trust and the Motion to Amend.

13 On August 26th, we will take up any
14 remaining matters with Ka'ono'ulu Ranch on Maui.

15 August 27th, we will again be on Maui for
16 the C. Brewer bifurcation and Kihei High School.

17 On September 9, we will be on Maui again on
18 the C. Brewer bifurcation matter, if necessary, as
19 well as September 10th we will also take up the
20 Motion to Amend on the Hanohano matter.

21 On September 23rd we have set aside,
22 assuming things go well with this matter, the
23 Hawaiian Memorial Park.

24 And that takes us to the end of September.

25 Would remind, again, the Commissioners

1 again that we do have a number of pending matters
2 that we have as yet not scheduled, but we anticipate
3 October and November to be quite busy as well.

4 Thank you, Mr. Chair.

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

7 Commissioners, any questions for Mr.
8 Orodener at this time? If there is none, I'm going
9 to actually ask for a few minute recess until we can
10 have Commissioner Cabral join us. So I'm going to go
11 into brief recess right now while our staff, Scott
12 Derrickson, gets Commissioner Cabral on screen.
13 We're in recess.

14 (Recess taken.)

15 CHAIRPERSON SCHEUER: We're going to go
16 back on the record now.

17 It is 9:12 A.M., we now have seven of our
18 eight Commissioners. I will double check with each
19 of them that they are here.

20 Commissioner Okuda?

21 COMMISSIONER OKUDA: Yes, present.

22 CHAIRPERSON SCHEUER: Commissioner Cabral?

23 VICE CHAIR CABRAL: Yes.

24 CHAIRPERSON SCHEUER: Commissioner Wong?

25 COMMISSIONER WONG: Present.

1 CHAIRPERSON SCHEUER: Commissioner
2 Ohigashi?

3 COMMISSIONER OHIGASHI: Here.

4 CHAIRPERSON SCHEUER: Chang?

5 COMMISSIONER CHANG: Present.

6 CHAIRPERSON SCHEUER: And Aczon?

7 VICE CHAIR ACZON: Present.

8 CHAIRPERSON SCHEUER: Thank you very much.

9 Let me now update record in this matter.

10 On June 9th and 10th, 2020, the Commission
11 met using the interactive conference technology for
12 an action meeting on Docket A17-804 for Hawaiian
13 Memorial Life Plan, Ltd., to consider the Petition to
14 Amend the Land Use District Boundary into the Urban
15 Land Use District to begin proceedings on this
16 matter.

17 Petitioner had offered its witnesses, Scott
18 Ezer, Tom Holliday, Tom Nance, Jay Morford, Jami
19 Hirota, Reggie David, Steve Montgomery, Steve
20 Spengler, Maya LeGrande, Susan Burr, Todd Beiler and
21 Matt Nakamoto.

22 Petitioner indicated that it has several
23 more witnesses he intends to call.

24 From June 10th till recently, the
25 Commissioner received public comments via email and

1 written correspondence on this matter which have been
2 added to the website and made part of the record.

3 On June 16th, the Commission had mailed the
4 June 24-25th Notice of Agenda to the Parties, to the
5 Statewide, O'ahu and Hawai'i regular email mailing
6 lists.

7 On June 19, 2020, the Commission received
8 Petitioner's First Amended List of Witnesses; the
9 Third Supplemental List of Exhibits, and Exhibit 60
10 through 69, as well as our First Amended List of
11 Rebuttal Witnesses.

12 Let's do appearances at this time, starting
13 with Petitioner.

14 MR. TABATA: Good morning, Chair, members
15 of the Commission, Curtis Tabata and Ben Matsubara
16 for the Petitioner.

17 CHAIRPERSON SCHEUER: Thank you, welcome.
18 City and County, you're muted.

19 MR. PANG: Duane Pang, Deputy Corporation
20 Counsel on behalf of the City.

21 CHAIRPERSON SCHEUER: Thank you, Mr. Pang.

22 MS. APUNA: Good morning, Deputy Attorney
23 General Dawn Apuna on behalf of the Office of
24 Planning.

25 CHAIRPERSON SCHEUER: Welcome.

1 MR. YOSHIMORI: Good morning. This is
2 Grant Yoshimori and with me is Rich McCreedy for
3 Intervenors pro see.

4 CHAIRPERSON SCHEUER: Mahalo.

5 Let me run over for all the parties and
6 Commissioners our procedures.

7 First, I will, as I have already done,
8 recognize the public testimony that's been submitted
9 in this matter. And then I will identify the person
10 or organization that submitted the testimony.

11 At our last hearing on June 8th and 9th,
12 this Commission allowed public testimony as there had
13 been a significant time gap since the initial hearing
14 in this matter.

15 After all public testimony had been heard
16 on June 8th, as Chair, I made it clear to --
17 (inaudible) -- public testimony on this matter, then
18 closed, in order to move forward with the evidentiary
19 portion of the docket. Therefore, there will be no
20 further oral public testimony in this docket.

21 The Commission will continue to accept
22 written testimony until a final decision is made.

23 I will then give an opportunity for the
24 parties to admit any further exhibits into the
25 record.

1 After the admission of exhibits into the
2 record, Petitioner will resume presenting their case.
3 Once the Petitioner is completed with its
4 presentation, they will be followed in turn by City
5 and County of Honolulu, State Office of Planning and
6 Intervenor Hui o Pikoiloa.

7 For the parties and Commissioner, and for
8 everyone listening, from time to time we will be
9 taking short breaks, approximately one every hour.

10 Are there any questions from the parties or
11 the Commissioners on our procedures for today?

12 MR. TABATA: No questions.

13 MS. APUNA: No questions.

14 MR. PANG: No questions.

15 MR. YOSHIMORI: No questions.

16 CHAIRPERSON SCHEUER: Commissioners?

17 I will now recognize the written public
18 testimony that's been submitted in this matter since
19 our last meeting: Richard and Donna Perkins have
20 submitted written testimony, as well as Lokahi Cuban,
21 Eadean Buffington from Mililani Group Incorporated,
22 Sarah Houghtailing, Vanita Rae Smith, Pane Meatoga
23 III, of the Hawaii Operating Engineers Industry
24 Stabilization Fund, Senator Jarrett Keohokalole, Kera
25 Wong-Miyasato, Kalama Wong, I believe, Alec

1 Wong-Miyasato, Teresa Chao, Kathleen O'Malley and
2 Paulette Tam.

3 Mr. Derrickson, have any further written
4 testimonies been received by LUC this morning?

5 MR. DERRICKSON: No.

6 CHAIRPERSON SCHEUER: Next I will call on
7 any parties to provide any new exhibits to be
8 considered for the record.

9 Mr. Tabata, will you describe the new
10 exhibits you have that you wish to be admitted.

11 MR. TABATA: Thank you, Chair.

12 Petitioner's requesting that Exhibits 60 to
13 69 be admitted into record.

14 Exhibit No. 60 is a rockfall historic
15 properties map.

16 Exhibit 61 is a conservation easement map.

17 62 is a tax Article XI, Section 1 of the
18 Hawaii State Constitution.

19 63 is the resume of Lance Wilhelm.

20 64 is the written testimony of Lance
21 Wilhelm.

22 65 is the City's Storm Drainage Standards
23 2017.

24 66 is Article XII, Section 14 of the
25 Revised Ordinances of Honolulu.

1 67 is the Department of Health Community
2 Moist Control Rules.

3 68 is the Department of Health Noise Permit
4 Application.

5 And Exhibit 69 is a guide for filing a
6 community noise permit application.

7 CHAIRPERSON SCHEUER: Thank you, Mr.
8 Tabata.

9 Are there any objections from the parties
10 for admitting these into the record?

11 MR. PANG: City has no objections.

12 MS. APUNA: No objections from the State.

13 MR. YOSHIMORI: Intervenors have no
14 objections.

15 CHAIRPERSON SCHEUER: Commissioners?
16 Hearing none, Petitioner's Exhibits 60 through 69 are
17 admitted into the record.

18 (Petitioner's Exhibits 60 through 69 were
19 received into evidence.)

20 County, do you have any additional
21 exhibits?

22 MR. PANG: City has no further exhibits.

23 CHAIRPERSON SCHEUER: State?

24 MS. APUNA: No exhibits, no additional
25 exhibits.

1 CHAIRPERSON SCHEUER: Mr. Yoshimori?

2 MR. YOSHIMORI: No additional exhibits.

3 Thank you.

4 CHAIRPERSON SCHEUER: Thank you for that.

5 Now, Mr. Tabata, can you give us an
6 overview of what remains in your presentation and
7 begin?

8 MR. TABATA: Thank you. Our next two
9 witnesses will be Rosanna Thurman and Dr. Trisha
10 Kehaulani Watson. And Mr. Matsubara will be
11 conducting those examinations.

12 CHAIRPERSON SCHEUER: Where are they
13 available?

14 MR. TABATA: I believe Rosanna Thurman
15 should be listed under her name.

16 CHAIRPERSON SCHEUER: I will admit her in
17 as a panelist. She should be coming on screen now.

18 Ms. Thurman, if you can unmute yourself and
19 allow your video to come through.

20 THE WITNESS: Hello, good morning. Aloha.

21 CHAIRPERSON SCHEUER: Good morning.

22 Mr. Matsubara, I will swear in your witness
23 and then you can proceed.

24 MR. MATSUBARA: Thank you.

25 CHAIRPERSON SCHEUER: Do you swear or

1 affirm that the testimony you're about to give is the
2 truth?

3 THE WITNESS: I do.

4 CHAIRPERSON SCHEUER: Mr. Matsubara.

5 MR. MATSUBARA: Good morning, Chair,
6 members of the Commission. Our first witness will be
7 Rosanna Thurman, our archaeological expert.

8 ROSANNA THURMAN

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

12 DIRECT EXAMINATION

13 BY MR. MATSUBARA:

14 Q Rosanna, could you state your name and
15 business address, please?

16 A My name is Rosanna Marie Runyon Thurman.
17 And my business address for Honua Consulting is 4348
18 Waiialae Avenue, Honolulu, Hawaii 96816.

19 Q Would you state your area of expertise,
20 please?

21 A Hawaiian archeology in general, as well as
22 regulatory measures and coordinating with the State
23 Historic Preservation Division.

24 Q And the purpose of your retention was?

25 A So I supervised all fieldwork and report

1 writing for the HMP project.

2 Q And you provided written testimony of your
3 investigation and findings, correct?

4 A I did.

5 Q That's attached as Petitioner's Exhibit 42?

6 A Yes.

7 Q There is a curricula vitae attached to the
8 written testimony which reflects that you received
9 with honors your Bachelor's of Anthropology in 2004,
10 and Master's was from the University of Hawaii in
11 2014. Is that correct?

12 A That is correct.

13 Q So you have been practicing for 13 years?

14 A Yeah, just over 13, 14, yes.

15 Q I can't even remember how long I've been
16 doing this. It's much longer than you have.

17 I would like to have Ms. Thurman admitted
18 as an expert in archeology.

19 CHAIRPERSON SCHEUER: Are there any
20 objections?

21 MR. PANG: City has no objections.

22 MS. APUNA: State has no objections.

23 MR. YOSHIMORI: Intervenors have no
24 objection.

25 CHAIRPERSON SCHEUER: Commissioners?

1 Seeing none, she is so admitted. Please
2 proceed.

3 MR. MATSUBARA: Thank you.

4 Q Rosanna, could you please summarize your
5 testimony, please?

6 A Yes, I can.

7 So please refer to Exhibit 42 for my
8 testimony and Appendix J of the EIS report for our
9 AIS or Archeological Inventory Survey Report.

10 My role on the HMP project was to oversee
11 archeological inventory survey fieldwork and
12 reporting for the 53-acre Project Area, and to
13 coordinate with SHPD to assure our methodology was
14 appropriate in guidance recommendations regarding our
15 findings were communicated.

16 In general, an AIS is conducted to assess
17 what sites and site types exist within a project
18 area. Evaluate their integrity and significance, and
19 that is based on Secretary of the Interior
20 Guidelines.

21 When you're assessing a site, you're
22 looking at how old it is. If it's over 50 years old,
23 and the integrity is based on the location, study,
24 design, material, workmanship, feelings and
25 associations.

1 And significance is based on five criteria:

2 A. Associated with important events.

3 B. Associated with the life of the
4 significant person.

5 C. Embodies distinctive characteristics of
6 a type, period, method of construction or represents
7 the work of a master, or has distinctive
8 characteristics of a type, period or method of
9 construction, higher value, et cetera.

10 D. Yield or may likely may yield
11 information important in history.

12 And in Hawaii we have criteria E, which is
13 defined broadly as significant to a cultural group.

14 Other important factors to consider include
15 enhancing the environmental quality of the State for
16 the social, cultural, educational and recreational
17 value when preserved to contribute significantly to
18 the understanding and culture of Hawaii.

19 So our AIS methodology was designed in
20 consultation with the SHPD and included a full 100
21 pedestrian survey with limited hand excavations, as
22 determined appropriate in order to further understand
23 the significance of a site or feature and for it to
24 be assessed.

25 An AIS is only the first step of the

1 Historic Preservation regulatory process in Hawaii.
2 Therefore, under guidance of SHPD, the field
3 methodology for the HMP project was determined to be
4 appropriate, particularly as two previous
5 archaeological studies had been completed within the
6 project area prior, one in 1989, and the second study
7 2009, which included limited excavation with very
8 minimal results.

9 Furthermore, it was not known whether the
10 project would proceed, thus, to avoid undue harm to
11 sites, the landowner recommended a data recovery
12 phase be conducted to investigate certain sites in
13 more detail if the project were approved to proceed,
14 which was then relayed to SHPD.

15 And it discussed that as long as the AIS
16 was able to sufficiently document and determine the
17 integrity and significance of all encountered sites,
18 then the regulatory requirements for the AIS would be
19 fulfilled.

20 It should be noted that despite multiple
21 surveys that have been completed, there is always the
22 possibility that additional sites or artifacts could
23 exist.

24 Protocols for documenting and addressing
25 any potential future finds would be addressed within

1 the proposed recommended archeological plans for the
2 project.

3 The AIS was conducted in accordance with
4 Hawaii Administrative Rules 13-276 for AIS
5 investigations. Fieldwork was completed between
6 September 2017 and February 2018. A pedestrian
7 survey ws conducted by a team of four to six Honua
8 Consulting archaeologist, including myself.

9 The Project Area surveyed by walking
10 transects throughout the parcel, spaced approximately
11 4 to 6 meters, or 13 to 20 feet apart, depending on
12 ground visibility.

13 We GPS'd potential sites during the survey,
14 and then went back to further assess each one,
15 clearing away vegetation, and determining if a
16 historic property was present.

17 We mapped and documented all historic
18 properties encountered and feel very confident that
19 we were thorough.

20 AIS fieldwork at HMP documented a total of
21 24 sites throughout the Project Area. You can refer
22 to Table 1 in my testimony, which is pages 3 through
23 6 of Exhibit 42 for each site type, site assessments
24 and recommendations.

25 I would also like to show you Exhibit 2

1 which is page 7 of my testimony, if I could use the
2 "share screen" function.

3 CHAIRPERSON SCHEUER: Yes, one moment. Let
4 me allow that. You should be able to.

5 THE WITNESS: I just have to find where
6 that button is at here.

7 CHAIRPERSON SCHEUER: Should be at the
8 bottom, if you are looking at the grid of video.

9 THE WITNESS: It usually is. And here we
10 are, I got it now.

11 I want to make sure I can select the right
12 one. Doesn't seem to be showing me -- give me one
13 second, I apologize. Well, what I can do is share
14 this.

15 MR. MATSUBARA: After you select, you have
16 to press "share".

17 A Let me see if I can go back in here. Can
18 you see my screen right now?

19 Q Yes.

20 A So you can see a map?

21 Q Yes.

22 A Okay, perfect. Okay, wonderful.

23 The figure in Exhibit 2 shows all the sites
24 documented during our AIS investigation. It also
25 shows the initial CP boundary that was proposed

1 following the 2009 AIS.

2 This figure, as well as Table 1 in my
3 testimony, provides both the temporary Honua used in
4 the field and in regular conversations, as well as
5 the site numbers.

6 So all the Honua numbers, they all have
7 site numbers as well, but if I do refer to them as
8 Honua number, that's just because, in regular
9 conversation, it's easier for us to converse rather
10 than just talking numbers.

11 Also please notice the north arrow so you
12 have a good understanding of the orientation. So you
13 have makai is up here, mauka is this direction, and
14 then you have the Kapaa Ridge along the east side of
15 the Project Area. (Indicating.)

16 You can see the southern CP boundary here,
17 you see my cursor. (Indicating.) It originally did
18 not include Honua 4 or area Honua 14. So the next
19 exhibit I want to show you is RT-A which is page 16
20 of my testimony. Can you guys see this one?

21 CHAIRPERSON SCHEUER: Yes.

22 THE WITNESS: Thank you.

23 So this map here shows how the CP was
24 revised to incorporate some of the findings.

25 Of the 24 documented sites, ten were

1 previously recorded, and 14 were newly identified.
2 So the newly identified sites are going to be Honua 1
3 through Honua 14.

4 Of the 24 sites, 22 are within the Petition
5 Area and two are outside, and they will be preserved.
6 So the two outside, you can see this area here, 4681
7 (indicating), this is a traditional habitation
8 complex that's outside the Project Area and will be
9 preserved.

10 And then Honua 8, this one here is a
11 habitation site which will also be preserved
12 (indicating).

13 Of the 22 sites within the Petition Area,
14 11 are within the 14-and-a-half acre proposed
15 cultural preserve. So up here you have 11 sites. Of
16 the 11 outside the CP, two sites within the Petition
17 Area will not be affected, and nine sites would be
18 impacted by the proposed project.

19 Site types within the cultural preserve
20 include a heiau, a traditional habitation complex, a
21 remnant agricultural complex, a stone enclosure,
22 stone alignments, terraces, a terraced auwai, a
23 storage feature, and three pit features utilized as
24 charcoal kilns.

25 Two sites which are within the Petition

1 Area, which will not be impacted, include a historic
2 auwai with native damselfly habitat, which is Honua 3
3 over here. And a historic water diversion terrace,
4 which is 4680, right here (indicating).

5 Sites which would be impacted are within
6 the orange area here (indicating), and include a
7 possible habitation site with agricultural terraces,
8 a modified outcrop, an earthen pit, and a traditional
9 terrace, which are all recommended for data recovery
10 fieldwork.

11 So that's going to be this site here, this
12 one, this one, and this one (indicating), so four
13 sites, 1, 2, 3, 4, that are recommended for data
14 recovery fieldwork, as well as additional traditional
15 terrace remnants, a historic water retention feature,
16 and historic road remnants.

17 So these are the three traditional terraces
18 here, which are not recommended for data recovery.
19 These are the roads over in this area. Another road
20 segment here (indicating). And then this is a
21 historic water diversion site that is in the proposed
22 project area.

23 The AIS project ended up conducting hand
24 excavations at one site, a walled circular pit, which
25 is Honua 14, right here (indicating). It was found

1 to be historic guava charcoal.

2 This site was excavated for two reasons:
3 To understand the site's function and significance
4 and because it was located on the boundary of the
5 cultural preserve, and therefore, the landowner, as
6 well as SHPD, recommended we be clear on its
7 significance and preservation value to provide
8 appropriate mitigations recommendations.

9 All parties agreed that the site had
10 integrity and was significant, and had ample
11 educational value to warrant being included within
12 the cultural preserve, and therefore, the CP boundary
13 was amended to include the site.

14 The boundary was also amended to include
15 the terraced auwai here (indicating) Honua 4.

16 No other excavations were deemed necessary
17 during the AIS, however, recommended mitigation
18 measures outlined within the AIS include a battery
19 recovery program, completion of a preservation plan,
20 and a monitoring program.

21 The AIS report was accepted by the SHPD in
22 April of 2019, and you can refer to Exhibit 1 for
23 that review letter.

24 So let's turn our attention now to RT-B,
25 which is page 12 of my testimony. So these photos

1 are meant to explain what we look for when
2 determining integrity and significance.

3 We determine these characteristics by
4 standards of individual type sites and applicability
5 to being eligible for nomination to the State or
6 National Register.

7 A site may be argued to retain integrity or
8 significance, but still may or may not be deemed
9 eligible to the registers. Even within a broader
10 cultural landscape, the individual site or
11 character-defining features of the site's history
12 must possess historic integrity and significance.

13 The top row of the exhibit shows several
14 site features within the CP, which include
15 well-defined, nicely-stacked stone terraces, an
16 enclosure, a terrace within an 'auwai, and a charcoal
17 kiln. They are well built and their forms are easily
18 discernable. They retain integrity and significance
19 and hold a high social, cultural, educational, and
20 recreational value.

21 These sites shown in the second and third
22 row are newly identified by our study and have been
23 chosen because they represent portions of sites in
24 the best condition within the area proposed to be
25 impacted.

1 You can see the terraces are in very
2 remnant condition, heavily disturbed by natural
3 erosion from rainfall on the steep hillside causing
4 significant loss of soil and stone facings. These
5 sites are typically one to two courses tall, and are
6 not recommended eligible for nomination to the State
7 or National Registers.

8 So just so you guys see it clearly, I just
9 want to use my cursor so you can see within the CP
10 you have these really well-defined terraces. This is
11 an enclosure (indicating).

12 You can see the wall here, the wall
13 continues up here (indicating), and this is what we
14 call facing where the wall is very vertical, very
15 well-built.

16 This is the auwai or ditch feature where
17 there is some real nicely built terraces that go
18 across the features.

19 And this is a historic kiln. This was the
20 one we excavated, kind of C-shaped structure. And on
21 the mauka side back here, it's a real nice stone
22 wall. It's a little dark, hard to see. I just
23 wanted to point that out.

24 So for the sites within the cemetery
25 expansion, also a little bit difficult to see because

1 they are in very remnant condition. But my purpose
2 here, I wanted to point out some of them that the
3 sites are in very remnant condition but there are
4 small portions that still remain.

5 So as an example, Honua 5, there's a little
6 terrace back here, and you can see it's stacked
7 between one and two courses of stone. This one here
8 has basically one course of stone, and it's being
9 held up by a tree.

10 So the condition of the sites within the
11 Petition Area, in the area that is proposed to be
12 impacted, they are far more remnant in poor
13 condition.

14 You can see this one here, there's a little
15 one course terrace that kind of comes down into this
16 area. And there is another one up in here
17 (indicating).

18 This feature here is a little bit more
19 intact. (Indicating.) You can see where the stones
20 are, kind of this general area here (indicating), so
21 it is intact. It's very small, though. And that one
22 we are recommending data recovery for.

23 This one down here, actually a terraced
24 area right here, you can see some stones that are
25 built into the side. Little cobble stones throughout

1 this whole area.

2 So it looks like at one time this was kind
3 of supporting the edge or buttressing this area to
4 have a level surface up above, but the natural
5 erosion is just kind of eating away at this hillside,
6 and so it's also in very remnant condition.

7 So that's some of the sites in both of
8 those areas.

9 So I just want to also point out that the
10 captions below these photos, they say if they're
11 determined to have no further work because we've
12 already documented them. We photographed them, and
13 we have mapped them and documented them to a level
14 where we say we recommend no further work. There's
15 not -- they don't rise to a level to recommend
16 preservation or anything like that.

17 Where these -- the third photo on the
18 second row in the bottom photo, those two we do
19 recommend data recovery for.

20 So just to explain this a little bit
21 further.

22 The first two sites on the second row here,
23 they are not recommended for data recovery because
24 they were determined to have low excavation
25 potential, particularly because the terraces are only

1 one to two courses of stone and they lack sufficient
2 soil retention to obtain reliable results for
3 radiocarbon analysis.

4 The other two sites are more intact and are
5 recommended for data recovery. The data recovery
6 project will begin in preparation of the data
7 recovery plan to be coordinated and approved by the
8 SHPD and would outline a reasonable and adequate
9 amount of information to be gathered.

10 To better understand how sites throughout
11 the project area relate chronologically to one
12 another, currently that data is only relatively
13 inferred by construction style and function. Through
14 a radiocarbon dating it can more absolutely
15 evidenced.

16 A preservation plan would then be written
17 for sites within the CP, as well other sites being
18 preserved outside of the CP. The CP or preservation
19 plan would cover short-term and long-term
20 preservation measures and address management,
21 stewardship, maintenance, access and educational
22 opportunities.

23 Following completion of the preservation
24 plan, the proposed project would then be conducted
25 pursuant to archaeological monitoring program, which

1 would begin with completion of an AMP and review and
2 acceptance of that by the SHPD.

3 That concludes my summary.

4 MR. MATSUBARA: Thank you, Rosanna, she is
5 available for questions.

6 CHAIRPERSON SCHEUER: Thank you, Mr.
7 Matsubara. We will start with City and County. If
8 you can take off your sharing, please, for now.

9 THE WITNESS: I will try to do that.

10 MR. PANG: The city has no questions for
11 this witness.

12 CHAIRPERSON SCHEUER: Thank you, Mr. Pang.
13 Ms. Apuna?

14 MS. APUNA: State has no questions.

15 CHAIRPERSON SCHEUER: Mr. Yoshimori?

16 CROSS-EXAMINATION

17 BY MR. YOSHIMORI:

18 Q Thank you for your testimony, Ms. Thurman.
19 I did have a couple questions on Exhibit 2.

20 Can you confirm that nine sites will be
21 graded over for the proposed project?

22 A There are nine sites within that proposed
23 area for the cemetery expansion.

24 Q I don't know if this question is -- if you
25 can answer this question.

1 In the AIS, you mentioned that there's
2 going to be walking trails as part of the cultural
3 preserve.

4 Do you know if that's still in the plan?

5 A I'm sure that it is. So whenever the
6 preservation plan becomes to be designed and written,
7 then that can be more discussion, and those things
8 will be more concrete, but that's a pretty typical
9 thing when you have a preservation plan, you want to
10 have proper access, proper routes through the site so
11 people don't block unintentionally.

12 It's a preservation protection measure to
13 make sure that the site is just protected long term
14 so people will know how to treat it, how to act.

15 Q Are those trails most likely go all the way
16 to the top most artifact that was found in the area,
17 is that correct?

18 A You know, I'm not sure. That will all be
19 determined when we go to design and preservation
20 plan.

21 Q Okay. Thank you.

22 Those are all the questions I have.

23 CHAIRPERSON SCHEUER: Commissioner Okuda?
24 Commissioner Cabral.

25 VICE CHAIR CABRAL: I find this really

1 fascinating, and having done some hiking and riding
2 in areas, I often run into stones. I think, well,
3 that's unique, maybe they were put there by man.

4 What happens, because I've seen where the
5 jungle takes over, and there's all these trees and
6 roots and everything, so these areas don't get
7 attention because they're not deemed for recovery,
8 and even the greater ones where you have three
9 stackings and that. If nobody finds these, or if
10 nobody finds them and then decides to recover them or
11 preserve them in any way, is it just going to become
12 eventually lost?

13 How many years has it been since these were
14 touched by man and how many years more would they
15 last before they would be destroyed? Any idea on how
16 long these type of historic treasures can last if we
17 don't find them and preserve them?

18 THE WITNESS: I think that's an interesting
19 conversation. There is no set time limit, but I can
20 say for the heiau there was a significant amount of
21 clearing at one time, about 20 years ago it was
22 pretty well cleared, and then it's pretty covered
23 with vegetation now.

24 So when we're talking about some of the
25 sites, like I was showing you photos of those

1 terraces, they're on a steep slope, and there's only
2 one or two course where a lot of those features have
3 already been crumbling quite a bit. It's hard to
4 know exactly how long those would survive. But they
5 are definitely being impacted greatly just by the
6 runoff of water and such.

7 COMMISSIONER CABRAL: Thank you.

8 CHAIRPERSON SCHEUER: Commissioner Okuda,
9 followed by Commissioner Chang.

10 COMMISSIONER OKUDA: Thank you very much
11 for your testimony. I find it really interesting,
12 especially as someone who was raised on the Windward
13 side. I frankly didn't know about all these sites.

14 Can I ask you this? You used the word
15 "stewardship" in your testimony. When you use the
16 word "stewardship", what do you mean?

17 THE WITNESS: Maintaining and caring for a
18 site.

19 COMMISSIONER OKUDA: When you observe the
20 historic sites or the sites that you documented in
21 your report, besides the clearing of the heiau, which
22 you said might have happened about 20 years ago, have
23 you seen any evidence of stewardship by the landowner
24 over the sites which you documented in your report?

25 THE WITNESS: I don't believe the landowner

1 was aware of any of the other sites out there, other
2 than the ones that were already known in the CP, and
3 as far as I know, I don't believe that the landowner
4 had really touched anything. But I know that he had
5 been active in helping to maintain the heiau.

6 COMMISSIONER OKUDA: I'm just trying to see
7 what stewardship was actually used or performed
8 regarding the property.

9 So regarding the heiau, you mentioned
10 clearing of the heiau about 20 years ago. But the --
11 so that would predate the purchase of Hawaiian
12 Memorial Park by Service Corporation International,
13 correct?

14 THE WITNESS: You know, I'm not exactly
15 sure, exactly, the date of that purchase. And when I
16 say 20 years ago, that's kind of general. I've seen
17 photos from back in that time. It could be more
18 15 years ago, but there was a lot more clearing, and
19 you could actually see all the way down to the ocean.

20 COMMISSIONER OKUDA: Besides that clearing,
21 do you know of any evidence in the record which
22 indicates any stewardship over the sites that are
23 located in this subject property which is now
24 designated Conservation?

25 THE WITNESS: I do not.

1 COMMISSIONER OKUDA: Thank you. No further
2 questions, Mr. Chair.

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

5 Commissioner Chang?

6 COMMISSIONER CHANG: Thank you very much.
7 Quite frankly I found your testimony to be thorough
8 and very clear. Thank you so much.

9 THE WITNESS: You're welcome. I was trying
10 to save time by trying to get as much out to you guys
11 right up front.

12 COMMISSIONER CHANG: I appreciate that. I
13 just have a few questions.

14 So under your data recovery, the nine
15 sites, the Honua newly discovered sites in the
16 proposed expansion area, they would either be data
17 recovery or no further work, but they will
18 nonetheless be destroyed; is that correct?

19 THE WITNESS: Basically, yes.

20 COMMISSIONER CHANG: Were any of those --
21 and I saw pictures that you had in your slides -- are
22 there other examples of those same types of features
23 that will be preserved in the cultural preserve
24 preservation area?

25 THE WITNESS: That's a really good

1 question. So we did find a new site in the cultural
2 preserve area during our survey, which was some
3 traditional terraces with some really nice kae'e
4 plants growing out of them. So that site is in the
5 cultural preserve and will be preserved.

6 Also the Honua 4 site, which has an auwai
7 and several terraces throughout it, that's another
8 traditional style feature that will be preserved.

9 COMMISSIONER CHANG: Because that's really
10 important. If the sites that are going to be
11 destroyed, if they are unique and there are no other
12 sites that are representative, then data recovery is
13 generally not the preferred mitigation.

14 So based on your expert opinion, there are
15 other types of sites that are representative of those
16 that will be -- the nine that will be destroyed; is
17 that your testimony?

18 THE WITNESS: Yes.

19 COMMISSIONER CHANG: Now, the methodology
20 for the AIS. Is it my understanding that there were
21 no trenching performed, it was pedestrian surveys
22 only; is that correct?

23 THE WITNESS: So no mechanical trenching at
24 all. There was just the hand excavation at Honua 14.

25 COMMISSIONER CHANG: Because there's

1 numerous habitation sites, primarily in the cultural
2 preserve area, but I would suspect that there would
3 be other habitation sites.

4 In your opinion, is there a likelihood of
5 subsurface human burials that may be below the area
6 where the cemetery expansion is being proposed?

7 THE WITNESS: So I would say the
8 probability for burials is pretty low, and that has a
9 lot to do with the terrain, because it is on a very
10 steeply sloped to moderately sloped area. You have a
11 lot of soil erosion.

12 So we investigated the hillside very
13 thoroughly, I feel. We were looking for any
14 indication of caves or anything that's been eroding
15 out where at times when you go up to other areas, if
16 there are burials on hillsides, a lot of times they
17 will be eroding out.

18 So we had that in mind, and we did look for
19 that. That was something we wanted to be pretty
20 clear on. And we didn't see any indication or
21 anything like that. So I would say the probability
22 is pretty low.

23 COMMISSIONER CHANG: When I was trying to
24 go through your previous archaeological work in these
25 areas, were there any evidence of human burial

1 remains that may have been found in these area?

2 THE WITNESS: No. There has not been any
3 previously documented burials in the mountain slopes.
4 As you're very well aware, I'm sure, most of the time
5 we find burials in sandy deposits. I was looking at
6 inland areas, they would be in caves, but there
7 hasn't been anything documented within the vicinity
8 of the Hawaiian Memorial Park project.

9 COMMISSIONER CHANG: Did you -- there
10 are -- are you aware of whether families have been
11 recognized or associated with this site?

12 THE WITNESS: I wouldn't say I am extremely
13 aware of that. That would probably be more a
14 question for Trisha Watson because she deals directly
15 with all the cultural side of things.

16 COMMISSIONER CHANG: In the development of
17 the mitigation, did you consult with any of the
18 cultural families, or was this mitigation measure
19 just developed by the archeologists?

20 THE WITNESS: So the methodology for any
21 project is always directly done with SHPD. Every
22 project is different, but the standard is you deal
23 with SHPD, and depending on your terrain and all the
24 circumstances of the project, you come up with a
25 proper methodology.

1 COMMISSIONER CHANG: So in this case you
2 did not -- you did not consult with any, for example,
3 the Koolaupoko Hawaiian Civic Club or others in the
4 community regarding the proposed mitigation?

5 THE WITNESS: I would say not to my
6 knowledge.

7 COMMISSIONER CHANG: You have listed down,
8 you know, for the preservation plan, you have a list
9 for proposed mitigation.

10 Is it -- would it be reasonable mitigation,
11 since you are going to essentially destroy, after you
12 do the data recovery of those sites that are in the
13 cemetery expansion area, because there were some of
14 those stone features, while they may not be totally
15 intact, but there were some stone features still
16 present.

17 Is it a reasonable form of mitigation to
18 relocate those stones to the cultural preserve area
19 for future use as part of cultural preserve area?

20 THE WITNESS: It's an interesting question.
21 So basically the levels of mitigation options that we
22 typically go by, it's dictated by Secretary of
23 Interior standards.

24 So if you have a site that is kind of at
25 the level that you could recommend it for

1 preservation, then you can then also be thinking
2 about maybe a higher level of protection and
3 mitigation.

4 So you have rehabilitation, restoration,
5 reconstruction. So I would say reconstruction might
6 be perhaps what you're talking about. And none of
7 the sites that are within the Petition Area that are
8 in that impacted area really rise to anywhere near
9 the level of even preservation. So we wouldn't
10 necessarily recommend that the landowner needs to
11 relocate and reconstruct them. That's a little bit
12 above and beyond.

13 COMMISSIONER CHANG: Maybe I wasn't clear.
14 I wasn't proposing to reconstruct the sites that will
15 be destroyed. It is more for purposes of relocating
16 those stones to the preservation area for the
17 possible use of some of the other sites, whether it
18 be the heiau or some of these other features that are
19 being preserved within the cultural preservation
20 area, because it is very difficult to find comparable
21 stones that have been used for rock formations, and
22 your cultural preserve area has quite a few sites
23 that you are preserving rather than destroying and --
24 rather than destroying and bulldozing over these
25 rocks, at one time they served some purpose, that the

1 possible mitigation would be before they get
2 destroyed, to actually relocate them to the
3 preservation area for future use, possible future
4 use.

5 Would that be something that would be a
6 reasonable mitigation?

7 THE WITNESS: So what I would say, the best
8 place to talk about that would be within the
9 development of the data recovery plans, that would be
10 the next phase. And during that process, there can
11 be all this conversation, and it can be discussed,
12 that seems like a viable thing to be discussed as far
13 as the data recovery processes and the process before
14 construction starts, so that it would be planned into
15 the project.

16 COMMISSIONER CHANG: All right. Very good.
17 My last question has to do with signage,
18 interpretive signage, because you have up here
19 education and interpretative programs.

20 Is that something that you're prepared to
21 talk about, or is that something that Ms. Watson will
22 talking about?

23 THE WITNESS: So that's a standard of a
24 preservation plan. So I write preservation plans,
25 and I help communities and landowners create

1 preservation plans, so I'm pretty familiar with
2 signage. But if you want any if specific information
3 particularly about the heiau or Kaneohe, anything, it
4 might be more appropriate for Trisha, she would
5 probably love to field that.

6 COMMISSIONER CHANG: Thank you very. Much,
7 I appreciate you're answering my questions.

8 THE WITNESS: You're welcome.

9 CHAIRPERSON SCHEUER: Anything further,
10 Commissioner?

11 COMMISSIONER CHANG: No, thank you very
12 much, Chair.

13 CHAIRPERSON SCHEUER: Commissioners, are
14 there further questions for Ms. Thurman?

15 Commissioner Ohigashi.

16 COMMISSIONER OHIGASHI: This might be
17 jumping a little further, but I notice in Ms.
18 Watson's testimony that she mentions some concern
19 about the community members, that there are
20 trespassers on that property.

21 Did you observe any type of damage that can
22 be attributed to trespassers in the area?

23 THE WITNESS: I definitely did see a lot of
24 modifications. It's all very kind of cosmetic, for
25 paintballing, and likely some kind of air gun, you

1 know, war game-type thing just for play. The people
2 do build fortresses and such that they can hide
3 behind and shoot opponents from. So that is going on
4 out there. There is pretty current constant use by
5 trespassers for those purposes.

6 COMMISSIONER OHIGASHI: Is that a type of
7 trespasser that you guys -- that these comments are
8 directed at, are there people who are intentionally
9 going in there for the purposes of destroying certain
10 items in that area, or is that just the paintball
11 guys, users?

12 THE WITNESS: I haven't seen any destroying
13 of sites, but there was also some spray painting. So
14 disrespectful behavior, but not too much more than
15 that, the paintballing and maybe just some
16 inappropriate behavior.

17 COMMISSIONER OHIGASHI: Thank you. I'll
18 ask Ms. Watson more about that.

19 THE WITNESS: Thank you.

20 CHAIRPERSON SCHEUER: Anything further,
21 Commissioner Ohigashi?

22 COMMISSIONER OHIGASHI: No.

23 CHAIRPERSON SCHEUER: Commissioners? If
24 not, I have a couple of questions for Ms. Thurman.

25 Ms. Thurman, in addition to your recognized

1 expertise as an archeologist, would you consider
2 yourself a cultural practitioner of any practices
3 associated with the cultural sites in your survey?

4 THE WITNESS: I would say no.

5 CHAIRPERSON SCHEUER: So what occurred to
6 me during presentation, when you were asked for a
7 professional -- to make a professional evaluation as
8 an archeologist on the significance of a site, or on
9 whether data recovery should be performed, or whether
10 a site has integrity or not, do you think that a
11 practitioner might reach different conclusions than
12 an archeologist?

13 THE WITNESS: So there is a level of
14 objectivity we have to have, so that can be skewed at
15 times. But I feel that we work very closely with
16 cultural practitioners as well.

17 For instance, we had Mark Stride, who's an
18 archeologist, but he's definitely also a cultural
19 practitioner. He works in the Kaneohe area, grows
20 lo'i. He maintains a very beautiful terrace field
21 system. And so, you know, he was out there with us,
22 and so, you know, we definitely listened to what he
23 has to say. And we all communicate together to
24 create our decisions.

25 But I do have the final say as the

1 supervisor and the permit holder, but I definitely
2 don't disregard that aspect.

3 CHAIRPERSON SCHEUER: So just to understand
4 your response. You believe, as opposed to a cultural
5 practitioner, your perspective is objective, is that
6 what I heard you to say?

7 THE WITNESS: I didn't mean it in any kind
8 of a rude way. Say, for instance, criteria E, which
9 means that it's significant to a cultural group, so
10 that's kind of hard to say, no, that's not
11 significant to me, because that's hard to objective
12 to say, you know, perhaps what one person thinks is
13 significant, another one might not.

14 So, you know, every evaluation has a lot of
15 things that you take into consideration. But there's
16 always room for a little gray area in there. And I
17 think that when you have a direct experience with
18 something, that you might be more with the
19 understanding that it could be looked at different
20 ways.

21 Honestly, there is not one set way of
22 anything. So that's why it's important to talk to
23 each other.

24 CHAIRPERSON SCHEUER: So what I'm trying to
25 get at, which came clear to me as it's never been

1 before during your testimony, is that while we
2 certainly rely on archeologists, and there is a
3 process in the State where a geologists' opinions are
4 valued for making these determinations, but in some
5 ways there's a disjointedness, because sometimes
6 we're asking a archeologist to determine what should
7 be preserved for a practice rather than necessarily a
8 practitioner to determine what should be preserved
9 for a practice.

10 I was just interested in your thoughts on
11 that.

12 THE WITNESS: So I actually see those as
13 two separate things.

14 So the archeology is really the history and
15 the material culture that survives from that. And
16 then the practice would be more the intangible side
17 of things. So the practice can then be talked about
18 in preservation plan as ways to have people come back
19 to review the site, to understand the site, to really
20 be more involved with that cultural side of things.

21 So we do meld our approaches, but the
22 archeology side is very regulatory binded.

23 So we really -- our mindset is geared
24 towards looking at the Secretary of Interior criteria
25 and the Hawaii Administrative Rules and using those

1 as our guides.

2 CHAIRPERSON SCHEUER: I have nothing
3 further.

4 Commissioners, is there anything further?

5 Mr. Matsubara, is there any redirect?

6 MR. MATSUBARA: No redirect.

7 CHAIRPERSON SCHEUER: Then we're done with
8 your testimony, Ms. Thurman.

9 It is 10:09 A.M., I suggest that we take a
10 recess until 10:20 A.M., and we will continue with
11 your second witness at that time.

12 Is that acceptable?

13 MR. MATSUBARA: Yes, it is.

14 CHAIRPERSON SCHEUER: Thank you very much.

15 (Recess taken.)

16 CHAIRPERSON SCHEUER: Let's go back on the
17 record. We're done with your witness.

18 Mr. Matsubara, who is next?

19 MR. MATSUBARA: My next witness is Trisha
20 Kehaulani Watson, and she did the Cultural Impact
21 Assessment.

22 CHAIRPERSON SCHEUER: Where is she going to
23 be physically, HMP 2?

24 MR. MATSUBARA: Correct.

25 CHAIRPERSON SCHEUER: Good morning

1 Dr. Watson.

2 THE WITNESS: Good morning, Chair.

3 CHAIRPERSON SCHEUER: Aloha. I'll swear
4 you in, then Mr. Matsubara will proceed.

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

7 THE WITNESS: Yes.

8 CHAIRPERSON SCHEUER: Please proceed.

9 TRISHA KEHAULANI WATSON

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

13 DIRECT EXAMINATION

14 BY MR. MATSUBARA:

15 Q Dr. Watson, could you state your name and
16 business address for the record, please?

17 A My name is Trisha Kehaulani Watson. My
18 business address 4348 Waiialae Avenue, Honolulu,
19 Hawaii.

20 Q Could you tell me your area of expertise?

21 A My area of expertise for these proceedings
22 are: I have a background in environmental law. I
23 have background in ethnography. I do conservation
24 work and I do a lot work around -- (inaudible).

25 THE COURT REPORTER: Excuse me, Ben, I'm

1 sorry to interrupt. Jean McManus, court reporter.

2 The witness, her voice goes down at the
3 end, and I cannot hear what she's saying at the end
4 of her sentences.

5 Q (By Mr. Matsubara): Why don't we go back
6 on your area of expertise and keep your voice up.

7 A Okay. I have a background in environmental
8 law, ethnography, conservation and cultural resource
9 management.

10 Q And that would fall under the broad
11 category of environment law and justice?

12 A Yes.

13 Q Which includes discussion on conservation
14 easements?

15 A Correct.

16 Q Now you prepared a Cultural Impact Analysis
17 for this project, did you not?

18 A Yes.

19 Q And that's attached as Exhibit A -- Exhibit
20 K. Excuse me.

21 A Yes, to the EIS, Appendix K to the EIS.

22 Q You drafted written testimony marked as
23 Petitioner's Exhibit 43.

24 A Correct.

25 Q And we provided it to the Land Use

1 Commissioners.

2 A Correct.

3 Q Now, attached to your testimony is your CV,
4 curriculum vitae which details your educational and
5 professional experience, does it not?

6 A Yes.

7 Q Could you briefly go over it, please?

8 A Sure. I have Bachelor's degrees in
9 sociology and American studies. I have a Master's
10 degree in American studies, which my Master's thesis
11 was on environmental racism.

12 I have a law degree from the William S.
13 Richardson School of Law. I am a graduate also of
14 the Environmental Law Program, and have environmental
15 law certificate, which is a graduate certificate
16 awarded, and I have a Ph.D. in American studies where
17 I studied indigenous epistemologies, some native
18 knowledge systems and studies of -- (inaudible).

19 Q So you have a JD and a Ph.D.?

20 A I really just didn't want to go into the
21 working world. I wanted to stay in school as long as
22 possible. I ultimately failed, but I tried.

23 Q I'll ask you at this time to please
24 summarize your written testimony.

25 A I'll keep it brief. I know we are short on

1 time today.

2 We conducted a Cultural Impact Assessment
3 for the project. Our particular methodology for my
4 company is we look at primarily three categories. We
5 look at cultural resources, tangible resources.
6 Those are things you can touch.

7 We look at intangible cultural resources,
8 mo'olelo, this is stories, these are traditional
9 practices.

10 We do this through conducting of
11 interviews, and looking at resources in both English
12 historic resources and Hawaiian language resources.
13 And then we also look at natural resources.

14 Q For the sake of the court reporter, I know
15 you want to cover things as much --

16 A I'll speak slower, sorry. Keep telling me,
17 though. I'm very Portuguese. I can get -- we also
18 look at natural resources.

19 So this is taking the botanical assessment
20 and then looking at the cultural significance of the
21 different flora and fauna identified within the area,
22 and looking for any potential cultural significance
23 there.

24 We conducted 11 new interviews for that.
25 There was another Cultural Impact Assessment

1 previously conducted. We effectively completely did
2 a new one. What we focused on in particular is
3 interviewing cultural practitioners.

4 So we look for hula practitioners,
5 different types of practitioners who are from or
6 utilize the project area for this particular project.
7 We interviewed several well-known kumu hula from the
8 area who provided interviews as to the areas they
9 access and the resources they access within the
10 Petition Area.

11 What we discovered during the course of the
12 interviews is that all of the resources that are
13 utilized, the cultural resources that are utilized
14 for traditional customary practices are exclusive to
15 the cultural preserve.

16 So we have a series of recommendations
17 including the creation of the conservation easement,
18 which was my recommendation to the landowner. So I'm
19 happy to talk more about that and why I made that
20 recommendation.

21 The establishment of the cultural preserve
22 which will be an area that is stewarded by a native
23 Hawaiian organization and practitioners. The
24 recommendations that were made by Rosanna and the
25 team that did the AIS, and then their continued use

1 of the cultural resources by practitioners.

2 Throughout the course -- I know this is
3 about the previous testimony -- but we did work very
4 closely with practitioners throughout the entire
5 process. As discussed in her testimony, they were
6 redesigned to the cultural preserve, and that was in
7 consultation with the practitioners from the area.

8 We have regularly communicated with
9 practitioners throughout the entire process, and are
10 very confident that the recommendations we are making
11 will result in no adverse impacts to any traditional
12 and customary practices.

13 Q Thank you. Some housekeeping. I have you
14 qualified in various areas and curriculum vitae. I
15 would like to have Dr. Watson admitted as expert in
16 environmental and cultural assessment, and
17 environmental law and justice; and in regard to
18 conservation easements.

19 CHAIRPERSON SCHEUER: Are there any
20 comments or objections or questions from the parties?

21 MR. PANG: City has no objections.

22 MS. APUNA: State has no objections.

23 MR. YOSHIMORI: Intervenor has no
24 objections.

25 CHAIRPERSON SCHEUER: Commissioners,

1 questions or objections?

2 Just for the record, Dr. Watson, would you
3 go over a little bit more of your experience with
4 conservation easements?

5 THE WITNESS: Sure. It's largely been in
6 protecting areas generally, so I have sat on for the
7 International Union for the Conservation of Nature,
8 the World Commission on protected areas and done
9 numerous studies on protected areas, so, conservation
10 easements are an important legal tool, in being able
11 to achieve and create a protected area, and I'm happy
12 to discuss what I think this is actually the creation
13 of a protected area.

14 I've sat on the United States Federal
15 Advisory Commission for Marine Protected Areas. And
16 I have studies on it.

17 Most recently I published this month in
18 Marine Policy about areas behind national
19 jurisdiction.

20 I won't bore you folks to tears, but I've
21 done extensive work specifically in conservation
22 protected areas and using conservation easements as a
23 tool to protect.

24 CHAIRPERSON SCHEUER: Thank you.

25 Any objections or concerns? If not, she is

1 so admitted. You may continue.

2 MR. MATSUBARA: Thank you for your
3 testimony, Dr. Watson,

4 Q Let me ask you how the conservation
5 easement that is being proposed for this project came
6 to be.

7 A Okay. I was regularly attending community
8 meetings and working with stakeholders. And in
9 hearing the concerns, specifically of the community,
10 and we heard some of that two weeks ago that there
11 was potential that they could come back again, HMP
12 could come back later for additional development,
13 additional use of the land.

14 It was my very strong opinion that the best
15 way to create a permanent protection for the
16 remainder of the resources and ensure that in
17 perpetuity there would be no additional development,
18 would be to place all of the lands, including the
19 Petition Area, and all of the remaining parcel into a
20 conservation easement.

21 If I can pull up my new exhibit,
22 Exhibit 61. Chair, can I please have access to
23 "share screen"?

24 CHAIRPERSON SCHEUER: It's done.

25 THE WITNESS: Good, I have technical help.

1 Sorry, my teenager is better at technology than I am
2 these days.

3 So you should be able to see Exhibit 61 in
4 the front of all of you. Is that correct?

5 CHAIRPERSON SCHEUER: We don't see the
6 exhibit number, but we see a map with three large
7 areas on it.

8 THE WITNESS: If I may, the green area is
9 the Petition Area. So this is what we're asking to
10 have taken from Conservation, currently zoned
11 Conservation and put into Urban. The green is the
12 expansion area for the cemetery. The blue is the
13 cultural preserve.

14 There are no cemetery expansion activities
15 to take place here with the exception of HMP giving
16 to a Hawaiian organization 100 spaces for traditional
17 Hawaiian burials.

18 So the only reason the cultural preserve,
19 is a part of the Petition is to allow for this
20 traditional practice. The conservation easement
21 would include this entire area. So all the way up to
22 Pohai Nani, all the buffer area, all of this ground
23 (indicating).

24 So in recognizing the concerns of the
25 community about potential expansion beyond this

1 Petition, we felt the best way -- or I felt the best
2 way to address that was to place all of it within a
3 conservation easement which would be held in
4 perpetuity, therefore, prohibiting forever any
5 additional development.

6 Q (By Mr. Matsubara): Thank you.

7 Let me talk about the preserve. Now, in
8 regard to the management of the cultural preserve,
9 you've had discussion with Koolaupoko Hawaiian Civic
10 Club and other organizations with regard to
11 management of that cultural preserve?

12 A Correct.

13 Q Now, in regard to the management of the
14 cultural preserve, it would include areas within the
15 preserve that would be accessible by those interested
16 in examining it, and it would include areas that will
17 be off limits or kapu, because of various artifacts
18 or because of rockfall issues; is that correct?

19 A Correct.

20 So let me turn you to Exhibit 60. So this
21 is a closer exhibit of the Petition Area, including
22 the cultural preserve. It also overlays the rockfall
23 hazard area and the potential new access area.

24 So when we conducted our interviews with
25 the practitioners, all of the practitioners currently

1 access the cultural resources, which if you can see
2 my little hand here, are really exclusive to this
3 area, the lower west corner of the cultural preserve.

4 So they currently access through Lipalu
5 Street, and then access, whether the heiau, which is
6 quite a difficult access. So there were numerous
7 practitioners who commented on the difficulty of that
8 access.

9 And then the laua'e, which I'm not going to
10 show because we don't want everybody running in and
11 stealing all the laua'e. But it is in this western
12 portion of the cultural preserve.

13 At no point did any of the practitioners,
14 including the Intervenor's practitioner, identify use
15 behind this area or cultural preserve.

16 What needs to be decided by the LUC is,
17 one, if we maintain this access, I do not believe the
18 access itself is significant, it's always been
19 identified as an access of convenience because of the
20 location of Lipalu Street.

21 So if we can move access to this area
22 (indicating), which would come through the new
23 expansion area, which would be a less difficult
24 access for practitioners.

25 Within the management of this area, first,

1 access would be controlled. As was pointed out
2 earlier by Commissioner Ohigashi, there are
3 paintballers. We saw evidence of pallets being
4 burned. There was all sorts of damage that is very
5 concerning to practitioners and community members.

6 So access would be primarily to actively
7 steward the heiau, and then for cultural access to
8 the hula plants that are primarily in this area.

9 We would recommend prohibiting any access
10 within the boulder deposit area, which is highlighted
11 in yellow, and this eastern portion of the cultural
12 preserve.

13 This is in the cultural preserve not
14 because people access it, but when we went through
15 the previous CIA, there was commentary recommending
16 moving away from a model where we were looking only
17 at the tangible resources which, again, primarily the
18 heiau, and looking rather at the plants, how the
19 plants need to thrive.

20 So this is the water route for the laua'e
21 and pala'a and other hula plants that exist. So we
22 have the preserve, because we are trying to preserve
23 the landscape. We do not extend the preserve into
24 this area because people actively access it.

25 These sites that were identified as the new

1 Honua sites, they're not actively accessed. We
2 recognize that they are actual cultural resources,
3 but there was no evidence that they are currently
4 accessed for any traditional or customary uses. And
5 throughout all our interviews, nobody identified any
6 current use, known use, or desire to access this
7 eastern portion.

8 Q Thank you.

9 So in terms of concerns relating to
10 rockfall in that area, which has a low to moderate
11 chance, the area would be closed off basically to
12 prevent parties from going beyond that area that's
13 designated as the rockfall deposit in yellow?

14 A I don't know if we would use the word
15 "prohibit". I think we would need significant
16 justification as to why they would need to be
17 accessed for traditional and customary purposes, and
18 it would be on a very limited basis.

19 We do not anticipate allowing regular
20 access to that area at all. Currently there's no
21 management measures in place here, and we do know
22 that there's numerous trespassers that come through
23 this area.

24 So I firmly believe, and it is my expert
25 opinion, that management measures would make this

1 area more safer, and that the management measures we
2 would have in place would be sufficient to mitigate
3 any potential injury that takes place in that area.

4 Q Thank you.

5 Is there anything else you wanted to add?

6 A No. Thank you.

7 Q Thank you, Dr. Watson.

8 A You're welcome.

9 MR. MATSUBARA: Dr. Watson is available for
10 questions.

11 CHAIRPERSON SCHEUER: Dr. Watson, if your
12 assistant can stop screen share.

13 THE WITNESS: I did it right.

14 CHAIRPERSON SCHEUER: City and County.

15 MR. PANG: Thank you, Mr. Chair.

16 CROSS-EXAMINATION

17 BY DR. WATSON:

18 Q My name is Duane Pang. I'm with the City
19 and County of Honolulu. I have a few questions.

20 So the next step is to develop a cultural
21 preservation and management plan?

22 A The next step, if the Petition is approved,
23 would be to move on the conservation easement itself.
24 That would need to take place itself with a land
25 trust, and then the land trust would hold the

1 easement. And then it would likely be a three-party
2 agreement, likely an MOA. That would allow for the
3 management of the cultural preserve. But the
4 easement would have to take place first.

5 Q Okay. The easement owner would not
6 necessarily be the management entity; is that
7 correct?

8 A No, it would not be. It would be a
9 qualified institution.

10 So under State law you have to be a
11 qualified land grant non-profit or a government
12 agency to hold a conservation easement. And we do
13 not anticipate that the native Hawaiian organization
14 that would serve as the steward, would be that
15 entity. It would be two separate entities.

16 Q Let's go to native Hawaiian group.

17 It's mentioned in a number of pleadings
18 from Hawaiian Memorial that the Koolaupoko Hawaiian
19 Civic Club would be the intended entity to be manage
20 the preservation plan; is that correct?

21 A That is correct.

22 Q Based on your experience and knowledge, do
23 you believe that this entity has the experience and
24 knowledge and experience to manage whatever plan you
25 come up with?

1 A Absolutely. They regularly do stewardship
2 throughout the Kaneohe area. They have long wanted
3 to be able to have an area of their own to manage.
4 They have advocated for the preservation of heiau and
5 historic sites. So this would be something they have
6 long been ready to do, and quite frankly, it's long
7 overdo to have them have that area, or an area.

8 Q And part of the plan would include access
9 for cultural practices. And, again, you believe that
10 this entity has sufficient resources and management
11 capability to manage those access for practitioner
12 purposes?

13 A Yes. I will qualify that by saying that
14 the landowner has committed to provide funding to do
15 a lot off the tree removal, vegetation removal,
16 creation of the walking paths.

17 So they would not be on their own, so to
18 say. It really would be a partnership with whoever
19 held the easement. The landowner who has already
20 committed to provide support, and then the native
21 Hawaiian organization has a 501(c)(3), who would then
22 be eligible to obtain their own funding and support
23 for their activities in there.

24 But the landowner has committed generously
25 to provide support to the activities.

1 Q So the preservation plan, would that cover
2 areas outside the blue area in your map?

3 A Yes. The preservation plan, because that
4 is a document regulated by the State Historic
5 Preservation Division. Would it cover the
6 preservation of all of the historic sites within the
7 Petition Area? So for those -- as I have pointed
8 out -- there are some sites that are outside the
9 Petition Area. Things like that we have identified
10 for preservation, there would be -- there's a lot of
11 land, I apologize.

12 After the preservation plan, in concert
13 with the land grant institution, there would be a
14 management plan for the cultural preserve. That
15 would be exclusive to the cultural preserve.

16 And that would be yet another document.
17 That would be created with the civic club or whatever
18 entity takes that stewardship role. And that is
19 really what would primarily govern. And it would
20 make reference to all the many other documents that
21 work with and in concert with that plan.

22 And this is commonly done. It's not --
23 this is a pretty standard protocol for the creation
24 of conservation easements and the stewardship of
25 areas.

1 Maunawila Heiau, I believe, has a similar
2 structure. So we do have examples in the state where
3 this has worked, which is why we recommended it.

4 MR. PANG: Thank you, Mr. Chair. No
5 further questions.

6 CHAIRPERSON SCHEUER: Thank you, very much.
7 State, Ms. Apuna?

8 MS. APUNA: No questions.

9 CHAIRPERSON SCHEUER: Intervenors, Mr.
10 Yoshimori?

11 CROSS-EXAMINATION

12 BY MR. YOSHIMORI:

13 Q I have a couple of questions to ask you.
14 How long does it normally take to create
15 and establish the conservation easement?

16 A It can take any period of time. I mean, I
17 think there is some that have taken a long time. I
18 don't anticipate this taking very long. We will need
19 to do data recovery next, and my hope is that, in
20 that approximately one-year period where data
21 recovery is taking place, we would be able to
22 finalize the conservation.

23 Q You anticipate at least a year for the
24 conservation easement to be created?

25 A Approximately a year, yes.

1 Q And this is more for my curiosity.

2 Is there a way to revoke a conservation
3 easement?

4 A Not to my knowledge, no. And at least I'm
5 not aware of one in Hawaii ever being revoked, and
6 that is not the intent here. The intent is for it to
7 exist in perpetuity.

8 Q Is the Koolaupoko Hawaiian Civic Club, do
9 those people have native gathering rights and native
10 access to the heiau complex under the Supreme Court
11 case on Public Access Shoreline Hawaii?

12 A We have acknowledged and stipulated to the
13 fact that they have traditional and customary
14 practice rights there, if that's the question.

15 Q My question is: Is the landowner obligated
16 to let them onto the property currently because of
17 their PASH rights?

18 A Yes. And he does.

19 Q So Ms. Thurman testified that she didn't
20 believe that there is any historic burials currently
21 in the area. And you mentioned that during
22 traditional burial practices it was going to be part
23 of the cultural preserve.

24 So was it a common practice in pre contact
25 Hawaii to allow burials within the heiau complex?

1 A It would not be within the heiau. So I
2 think that leaves the impression that we would be
3 conducting burials within the heiau, and that's not
4 correct, that is not what we are proposing.

5 We're proposing that a fair buffer away in
6 the cultural preserve where other activities do take
7 place, that is where we would work with the
8 practitioners to determine an appropriate area for
9 those burials.

10 And I should emphasize, we're not talking
11 about burials that already exist, so traditional
12 burials. We are talking about -- 2015, and I think
13 this was mentioned two weeks ago -- the Koolaupoko
14 Hawaiian Civic Club and other practitioners lobbied
15 to change the law, HRS 711-1108, to no longer make it
16 a crime to be able to do clean burial.

17 So these are traditional burials where the
18 body is reduced down to only iwi, then they are
19 placed in a basket and buried.

20 Since the passage of that law there has not
21 been any cemeteries that has offered space for that,
22 and Hawaiian Memorial Park is offering to give the
23 practitioners space for free to conduct those
24 activities, as they -- because this is regulated by
25 the Department of Health -- would help to oversee

1 that so it is compliant with existing law.

2 So we are really talking about new burials,
3 and new sites, as opposed to reinterments, which is
4 perhaps something I just needed to make clear.

5 Q I apologize for the confusion. I wasn't
6 implying that we were going to bury people within the
7 heiau, but within the complex. I think in the past
8 this area has been referred to as the heiau complex,
9 with the heiau and the associated sites with it.

10 So would traditional burials be allowed in
11 the heiau complex like that?

12 A Well, if you look at the testimony from Bud
13 Miller who was first interviewed, when he talks about
14 the heiau complex, he really talks about the features
15 that were downslope that were most likely destroyed
16 by the housing development.

17 So I would not consider where we are
18 recommending for the burials to be part of a heiau
19 complex. I would say this is more of a cultural
20 landscape that has a range of cultural resources that
21 were utilized, and considering things like
22 agricultural terraces, potential habitation sites.

23 As Commissioner Chang said earlier, it was
24 very common to find burials around habitation sites.
25 We've certainly, in our work, identified burials

1 within agricultural areas.

2 So I would say in my opinion that these are
3 all appropriate activities for the cultural preserve.

4 Q Historically, it doesn't look like there
5 have been burials in this area up to this point.

6 A That is correct. But I should note that if
7 you look at the Hawaiian language resources, it's
8 surprising in the sense that there are extensive
9 mo'olelo about battles that took place in the area,
10 particularly between the Oahu Chief 'Olopana and
11 Kamapua'a.

12 So if you look at the stories of the area,
13 we would have expected to potentially find burials,
14 but as Rosanna pointed out, we have not found any,
15 but I would not be surprised, again, if at some
16 point, but we have not found anything that would be
17 consistent with the Hawaiian language resources that
18 we found.

19 Q Do we know who is going to be allowed to be
20 buried in the heiau complex?

21 A That will be entirely at the discretion of
22 the Hawaiian organization. So a certificate of
23 ownership will be provided to those stewards, and
24 they will have to designate and authorize -- someone
25 to authorize it, and it would have to go through

1 that -- so that would be under the exclusive control
2 of the civic club.

3 Q So the civic club can determine who can be
4 buried there?

5 A If the civic club is manager of the site,
6 yes.

7 Q Have they already established guidelines or
8 rules of who would be allowed, or how the application
9 process would be?

10 A No. We are in very early discussions,
11 though, with the practitioners of the area as to what
12 appropriate protocols would be, so I imagine that
13 that discussion would have been inappropriate.

14 Q You also mentioned that a fence would be
15 erected to keep out trespassers, but practitioners
16 would have access.

17 So who's going to be determining who is a
18 practitioner and who has access?

19 A Again, that would all go through the civic
20 club or whatever recipient of the stewardship site,
21 but I do believe it's well within the discretion of
22 the LUC to assure that any of practitioner that came
23 forward would always be afforded access, and that has
24 always been the practice of the landowner.

25 Q And is it similar that the civic club has

1 not yet come up with procedures or guidelines of who
2 they would allow, or what the decision criteria would
3 be to let people on?

4 A That would be premature at this time.

5 Q The preservation plan, and I think you
6 called it a management plan, so preservation and
7 management plan has not yet been developed, is that
8 correct?

9 A We have a draft, a very early draft of the
10 preservation plan that we have written in
11 consultation with the practitioners. We have not
12 started the management plan, but we have, as I
13 mentioned, ongoing discussion about appropriate
14 practice within the cultural.

15 Q So timing-wise, the Petitioner is asking
16 the Land Use Commission to approve the District
17 Boundary Amendment now, and the preservation and the
18 management plan will be drafted later by the
19 Koolaupoko Hawaiian Civic Club and Hawaiian Memorial?

20 A And I imagine we would have a heavy hand in
21 the technical aspects of those documents.

22 Q And your written testimony mentioned the
23 Supreme Court case of Ka Pa'akai versus the LUC. I
24 looked it up, and in it, it says quote:

25 "The power and responsibility to determine

1 the effects on customary and traditional native
2 Hawaiian practices, and the means to protect such
3 practices may not validly be delegated by the LUC to
4 a private petitioner, who unlike a public body, is
5 not subject to be public accountability."

6 So the questions that we talked about that
7 still don't have an answer to them, those won't be
8 answered until after the District Boundary Amendment
9 is granted; is that correct?

10 A That's incorrect. It is well within the
11 discretion and opinion that the appropriate authority
12 is the LUC to find in their Findings of Fact and
13 Conclusions of Law, where, again, identification and
14 scope of quote:

15 Valued cultural historical or natural
16 resources in the Petition Area, including the extent
17 to which traditional and customary native Hawaiian
18 rights are exercised in the area.

19 And I believe the CIA more than provides
20 sufficient information to answer that first question,
21 Ka Pa'akai.

22 The second question of Ka Pa'akai is the
23 extent to which those resources, including
24 traditional and customary native Hawaiian rights,
25 will be effected or impaired -- proposed action.

1 I believe between the CIA and the Cultural
2 Impact Assessment we have, again, provided more than
3 enough information for the LUC to make that
4 determination in their Decision and Order,
5 specifically, there are cultural resources within the
6 Petition Area that will be adversely impacted.

7 I believe that is a distinct determination
8 from the impact of traditional and customary
9 practices.

10 As I have testified to, all of the
11 traditional and customary practices have been
12 identified for the cultural preserve, and I firmly
13 believe will not be adversely impacted by this
14 Petition as they are being preserved and also
15 enhanced.

16 Therefore, the third part of Ka Pa'akai,
17 feasible action, if any, to be taken by the LUC to
18 reasonably protect native Hawaiian rights if they are
19 found to exist. I don't even believe is applicable,
20 because we are not adversely effecting traditional
21 and customary --

22 Q Thank you, Dr. Watson, those are all the
23 questions I have. Thank you.

24 CHAIRPERSON SCHEUER: Thank you very much,
25 Mr. Yoshimori.

1 Commissioners, starting with Commissioner
2 Wong, followed by Commissioner Ohigashi.

3 COMMISSIONER WONG: Thank you, Chair.

4 Dr. Watson, I have couple questions. The
5 first -- can you hear me?

6 THE WITNESS: I can hear you. Thank you.

7 COMMISSIONER WONG: First question I have
8 is the previous testifier or witness stated that
9 they're going to, I guess, tear down some sites; is
10 that correct?

11 THE WITNESS: That is correct.

12 COMMISSIONER WONG: How does that effect, I
13 mean, the Hawaii issues or Hawaiian rights?

14 THE WITNESS: So, again, I think we're
15 talking about two categories. One is tangible
16 historic sites. So these are historic sites, and
17 there are, let's call them cultural rights for the
18 discussion around Ka Pa'akai, cultural resources.

19 So there are cultural resources, historic
20 sites, some laua'e that will be adversely effected.
21 So they are going to be removed by the project.

22 When we did the interviews, which I believe
23 were exhaustive or at least extensive, none of the
24 practitioners we talked to said they go to any of
25 those sites or utilize any of those cultural

1 resources.

2 So I do believe you need to look at
3 cultural resources differently than you look at
4 traditional and customary practices. The traditional
5 and customary practices that were identified through
6 the study for access to the heiau, and then use
7 access to the laua'e and pala'a that exist in the
8 cultural preserve for Hawaiian cultural practices.

9 So those resources are being preserved.
10 And in the case of the laua'e and pala'a, any of
11 those, they're actually going to be actively managed,
12 and I believe it will be enhanced because of it.

13 Additionally, by taking action to stop
14 trespassers, the paintballers, the guy that burned
15 pallets, we are further protecting these resources
16 for use by traditional practitioners.

17 Again, you folks will have to decide the
18 access issue. But if we can provide a less difficult
19 access through the cemetery, it will actually be
20 easier for some of our practitioners who are reaching
21 kupuna age to access some of those resources. So I
22 do not believe traditional and customary rights as
23 currently practiced are being adversely effected.
24 But we do recognize that cultural resources will be
25 impacted.

1 The mitigation has been approved by the
2 State Historic Preservation Division, and we believe
3 that that mitigation is feasible to the extent
4 permitted by law.

5 COMMISSIONER WONG: The second question I
6 have is, if, let's say the landowner says, you know
7 what, I'm just going to fence the place, let the
8 practitioners go in, but I'm not going to do anything
9 else.

10 Would that be a possibility too?

11 THE WITNESS: That is not plan. I would
12 not advocate for that plan. I do think -- my primary
13 concern is the albezia. Albezia was not the same
14 issue a decade ago when they came in. Albezia
15 possess, in my opinion, an immediate threat to some
16 of the historic sites, and therefore some of the
17 cultural resources. They need to be moved.

18 Some of the other invasive trees, this area
19 is primarily invasive trees that really do not belong
20 there. So the landowner had committed, again, to
21 creating a pathway to removing vegetation that poses
22 a threat to resources.

23 And then, also, I mean, the laua'e and
24 others are very healthy, so there's not really a
25 threat there. But it would be appropriate to better

1 manage the invasive species as to not become a threat
2 to some of those.

3 COMMISSIONER WONG: Okay. Thank you,
4 Dr. Watson. Thank you, Mr. Chair.

5 CHAIRPERSON SCHEUER: Commissioner
6 Ohigashi.

7 COMMISSIONER OHIGASHI: When I read your
8 testimony on page 5 on the third paragraph down, it
9 says:

10 As a result, the Petitioner is considering
11 erecting a fence around the Petition Area.

12 Do you mean the cultural preservation
13 easement?

14 THE WITNESS: It would be the entire
15 easement. I don't know that I think a fence is
16 necessary everywhere. A lot of areas simply aren't
17 accessible. But absolutely Lipalu Street, we know
18 that is the primary area of trespassers coming
19 through. And then perhaps near where Kokokahi Trail
20 is, and if not a fence, per se, then ample signage to
21 notify people that the area is -- (indecipherable).

22 COMMISSIONER OHIGASHI: Okay. But it's not
23 the whole Petition Area, it's the cultural preserve,
24 preservation easement?

25 THE WITNESS: Correct.

1 COMMISSIONER OHIGASHI: Okay, I just wanted
2 to clear that up.

3 Next thing is, when you testified you said
4 we are -- we will be determining the access to the
5 cultural preservation easement.

6 Is that part of your recommendation that we
7 determine whether to use existing Lipalu Street or
8 provide specifically in the D and O that access will
9 be provided through the expanded area, cemetery area?

10 THE WITNESS: That's exactly correct. And
11 the reason I draw that out is because of Ka Pa'akai.
12 In Ka Pa'akai, one of the issues that became of issue
13 was the route that was used for access. What I think
14 is very different here is in Ka Pa'akai it was a
15 historic trail that was being used by practitioners.

16 So it was the trail and the access itself
17 was a cultural resource, but as I noted here it's
18 more an access of convenience, and I do not believe
19 the access route itself has any cultural
20 significance. And we have had no indicator from any
21 of the practitioners that the route itself has any
22 significance.

23 But we do recognize that access to the
24 cultural resource is a fundamental right of these
25 practitioners. So I just draw it out because I want

1 to make sure that the situation here is distinguished
2 from the situation that was in Ka Pa'akai.

3 COMMISSIONER OHIGASHI: If you're asking
4 the LUC to put in a condition in the D and O
5 identifying the proper access site, shouldn't there
6 be additional evidence to establish which site, or to
7 support the use of either site, or to support the
8 use, because right now I'm not sure what evidence is
9 in the record that can lead us to a conclusion to
10 choose between the different access sites.

11 THE WITNESS: So first I would like to say
12 the landowner doesn't particularly have a preference.
13 I think it is recognizing concerns of the neighbors
14 in that surrounding community who I do not believe
15 have enjoyed having trespassers walking through their
16 neighborhood.

17 The access, the route we show in green on
18 Exhibit 60 is what we would recommend. And I will
19 say on the record now that that access would provide
20 actually a shorter route to the cultural resources
21 that are utilized. And really it is access to that
22 western portion of the cultural preserve.

23 COMMISSIONER OHIGASHI: I'm sure that Mr.
24 Matsubara is thinking in his head what he should be
25 doing right now. But rather than that, the next

1 question that I have is assuming that -- it seems to
2 me that if we adopt the Petition and authorize the
3 use, is that we are -- would we be creating more of a
4 problem for trespassers?

5 THE WITNESS: I'm perhaps not
6 understanding. How would you be creating an
7 additional process for --

8 COMMISSIONER OHIGASHI: Right now you're
9 saying that the Lipalu Street access is the most
10 difficult access into that cultural -- that specific
11 area you want to preserve for cultural purposes.

12 What the development of this does is create
13 an easier access accessibility into the cultural
14 site. The question that I have is, would that
15 welcome -- wouldn't the development of this
16 particular area contribute to potential additional
17 trespassers to show desecration, additional use that
18 shouldn't be going on in that area?

19 THE WITNESS: No, sir, it would not. Let
20 me explain why.

21 First, because Lipalu is a public street,
22 there is no real ability for the landowner to
23 restrict access with the exception of erecting a gate
24 or a fence. Whereas access through the cemetery area
25 you would have -- you would have to come onto the

1 Hawaiian Memorial property. Would have to come into
2 the expansion area. And then if need be, there would
3 be some sort of additional restriction, whether
4 fences or gate of some sort which could be erected if
5 that's determined appropriate to ensure that access
6 is controlled.

7 So I believe that we have numerous means of
8 restricting access. But I do believe the alternative
9 route does not create increase in trespassers use of
10 additional damage. I believe the greater danger is
11 to leave Lipalu Street as it is now.

12 COMMISSIONER OHIGASHI: My last set of
13 questions were the cultural preserve easement.
14 Especially what is being described to me as an
15 easement is sort of like a gift or a transfer of
16 property rights to the trust. If we grant this
17 Petition and the land becomes Urban, does the
18 creation of an easement of such magnitude create a
19 subdivision problem for the city?

20 I'm just curious, because I'm familiar a
21 little bit -- a long time ago with being with the --
22 (indecipherable) -- here on Maui, I recall
23 discussions relating to potential of use of land
24 being made subject to the subdivision ordinance. So
25 I'm just curious if that is a problem.

1 THE WITNESS: I don't have that level of
2 expertise. I'm unclear as to what would trigger
3 that, and I don't believe so, but I will let counsel
4 or DPP answer that question.

5 COMMISSIONER OHIGASHI: The second thing is
6 cultural preserve easement. Would it be your
7 recommendation that it be a condition precedent to
8 any substantial commencement of the project?

9 THE WITNESS: I would not -- I don't know
10 that I should answer that question.

11 Are you asking me personally or
12 professionally if I think we should -- I believe we
13 should use conservation measures to the extent
14 possible to protect land whenever we can, and I think
15 this particular case, my hope is it becomes a very
16 strong model and encouragement for other projects
17 going forward to take steps to appropriately protect
18 natural and cultural resources.

19 COMMISSIONER OHIGASHI: Well, you know,
20 lawyers ask questions just to signal what they're
21 thinking sometimes.

22 THE WITNESS: I don't want to get myself in
23 trouble.

24 COMMISSIONER OHIGASHI: No further
25 questions, Mr. Chair.

1 CHAIRPERSON SCHEUER: Thank you,
2 Commissioner Ohigashi.

3 Commissioner Aczon.

4 VICE CHAIR ACZON: Thank you, Mr. Chair.

5 Good morning, Ms. Watson. Followup with
6 Commissioner Ohigashi's question about the access.

7 On your exhibit you showed two access
8 points, the one coming from the community, the red
9 line you have, and the other one, because what I
10 understand what kind of decision we have to make, are
11 you asking the LUC which access point you want, or
12 can it be both of them open?

13 THE WITNESS: Of course. It's ultimately
14 up to you folks. And maybe I'll back up a bit.

15 When we did the interviews, again, we very
16 specifically look for the route practitioners take to
17 access resources. We believe that in certain
18 circumstances the route itself can be significant,
19 can be a cultural resource.

20 What we did not want to do in simply saying
21 we were going to close this was to unintentionally
22 create an adverse impact to the traditional and
23 customary practices. So there is certainly an
24 interpretation that if we change the route by which
25 they have been accessing this area, we could be

1 creating an adverse impact. Our goal was to make
2 sure we did not -- our recommendation would be for
3 the LUC, if they find that we need to maintain access
4 but access can be provided through an alternative
5 route, as opposed to the route that is currently --
6 that is what we are asking.

7 VICE CHAIR ACZON: It cannot be old access
8 can be your recommendation?

9 THE WITNESS: We certainly can. I think if
10 this proceeds, we would want to close Lipalu Street
11 to the extent that we are stopping trespassers and
12 hikers from coming through there. But if need be, we
13 could create a gate of some sort where practitioners
14 would still be allowed to access, but that would be
15 exclusively for practitioners. We are trying to stop
16 the trespassers, basically.

17 VICE CHAIR ACZON: My second question is
18 regarding the cultural preserve. You kind of
19 mentioned in your testimony that the owners are
20 willing to support the operation of that cultural
21 preserve.

22 Can you -- I just want to kind of get some
23 idea on the extent of the owner's participation or
24 support that you were saying, and also the extent of
25 the civic organization to set up -- take over the

1 extent of their responsibility.

2 I just want to get some clear understanding
3 of what is the owner's responsibility. Just
4 maintaining the preserve, and the cultural -- the
5 civic organization is responsible for cultural
6 programs, for example.

7 THE WITNESS: That's a good way to put it.
8 I will say that the owners have offered to help with
9 the restoration and removal of vegetation and the
10 access and the hiking trails simply because they have
11 a very good relationship with the civic club and the
12 community.

13 This is not anything they have an
14 obligation to do. For many years, as Rose talked
15 about, have worked with the civic club and have
16 supported them, and I think they simply want to
17 continue to work with them and support them in their
18 efforts.

19 The details of what that looks like long
20 term I think are premature. It is, again, a
21 three-party discussion with both the entity that will
22 hold the conservation easement, the civic club who,
23 as you said, is likely to just run cultural
24 programming and educational programming, clean up
25 days, things like that.

1 Whereas the landowner would still be
2 responsible for overall basic maintenance of the
3 land. They would still be the landowners.

4 VICE CHAIR ACZON: This is in perpetuity?

5 THE WITNESS: Correct. The ownership is
6 clearly not in perpetuity. They could sell the land,
7 but the conservation easement is in perpetuity. So
8 if Hawaiian Memorial Park made the decision say in
9 ten years to sell the land to company X, that
10 conservation easement would still be in place.

11 So the conservation easement -- and it is
12 recorded with the Bureau of Conveyances, so it runs
13 with the land, even if the landowner changes, so that
14 would be in perpetuity.

15 VICE CHAIR ACZON: Thank you for the
16 clarification. Thank you, Mr. Chair.

17 CHAIRPERSON SCHEUER: Thank you very much,
18 Commissioner Aczon.

19 We have three Commissioners who have
20 questions for the witness. Commissioner Chang
21 followed by Commissioner Okuda, followed by
22 Commissioner Wong.

23 In terms of managing the proceedings, and
24 our time before lunch, are the three of you willing
25 to give me a little bit of an estimate -- I won't

1 hold you to it -- but how many minutes of questions
2 do you have?

3 COMMISSIONER WONG: I only have two
4 questions.

5 CHAIRPERSON SCHEUER: Commissioner Chang?

6 COMMISSIONER CHANG: I have more than two
7 questions. Not too much more.

8 CHAIRPERSON SCHEUER: Commissioner Okuda,
9 the number of questions?

10 COMMISSIONER OKUDA: This is Gary Okuda.
11 Yes, I plan to go over the deferred questions.

12 CHAIRPERSON SCHEUER: What I'm going to
13 suggest, it's 11:15 and we've been going 55 minutes,
14 is that we take a ten-minute break. We reconvene at
15 11:25, work our way through this witness, and then
16 take a lunch break.

17 Is that acceptable, Mr. Matsubara?

18 MR. MATSUBARA: That's fine, Mr. Chairman.

19 CHAIRPERSON SCHEUER: It's 11:15. We will
20 reconvene at 11:25. We're in recess.

21 (Recess taken.)

22 CHAIRPERSON SCHEUER: We are back on the
23 record.

24 We are continuing with the questioning of
25 Petitioner's witness Dr. Trisha Kehaulani Watson.

1 I'm going to start with Commissioner Okuda,
2 followed by Commissioners Wong, then Chang.

3 Commissioner Okuda.

4 COMMISSIONER OKUDA: Thank you very much,
5 Mr. Chair.

6 Dr. Watson, thank you very much for your
7 testimony. Let me follow up with some of the
8 questions or follow up on some of the recent
9 questions that you were asked.

10 First of all, regarding the preservation
11 plan and the management plan, do those plans exist in
12 a draft written form?

13 THE WITNESS: As I testified earlier, there
14 is an early draft of the preservation plan. There is
15 no draft to date on the management plan.

16 COMMISSIONER OKUDA: Can you please tell us
17 who -- let me withdraw the question.

18 Did you share the draft of the preservation
19 plan with the Koolaupoko Hawaiian Civic Club?

20 THE WITNESS: I believe we did. We've had,
21 as I mentioned, ongoing meetings. So I think we have
22 discussed the context at various points, but I cannot
23 recall if we officially submitted any draft to them.
24 That is premature.

25 COMMISSIONER OKUDA: Dr. Watson, let me

1 just give a prefatory comment here. Please do not
2 construe my questions to mean that I have prejudged
3 or have even an inclination one way or the other in
4 this proceeding. Frankly, I'm trying to take in all
5 information and evidence and these questions are
6 intended to do that. So please don't construe my
7 questions to mean that I'm viewing this case one way
8 or another.

9 THE WITNESS: I would never do so.

10 COMMISSIONER OKUDA: Thank you very much.

11 Is there anything in writing anywhere in
12 the record where there's even a presentation of a
13 preliminary draft of the preservation plan or the
14 management plan?

15 THE WITNESS: That's a bit of a difficult
16 question. So if you look both at Cultural Impact
17 Assessment and Archeological Inventory Survey, they
18 identify in them areas for preservation and cultural
19 resources for preservation. Much of those contents
20 will be the same for the preservation plan, so
21 there's going to be a lot of overlap.

22 So to the extent that we strongly draw upon
23 the existing technical reports in the crafting of a
24 preservation plan, yes. A lot of the information is
25 in the record.

1 If it is structured in a tracked
2 preservation plan format, no, that is not in the
3 record, and that would have been premature to put
4 into the record because that would not be triggered
5 prior to the approval of this Petition.

6 COMMISSIONER OKUDA: Thank you. That's a
7 very clear explanation.

8 You gave some testimony about customary
9 types of native Hawaiian funeral burial practices,
10 for lack of a better term, would be facilitated if
11 this plan goes forward.

12 And I believe you testified that it would
13 be handled or facilitated by Hawaiian Memorial Park
14 at no cost.

15 Am I fairly stating your testimony?

16 THE WITNESS: Yes, to some degree. So the
17 sites themselves are being given to the stewards,
18 whoever they will be.

19 The facilitation of the burials themselves
20 would be conducted by the stewards. So Hawaiian
21 Memorial Park, as a regulated cemetery, still has an
22 obligation to record those cemetery sites as required
23 by the Department of Health. But the practice -- I
24 mean, it's not like they would be present or
25 determine who would be buried in those sites. That

1 would be facilitated by the civic club, and those
2 sites are being given for free to the civic club.

3 So it's a bit complicated, and we will have
4 to continue to figure it out also because this is the
5 first time since Act 171 was passed in 2015 that we
6 were able to do this, but that's the basic idea.

7 They're still responsible for what the
8 Department of Health's standpoint, but it will be
9 owned and managed by the civic if that makes sense.

10 COMMISSIONER OKUDA: It does, and I
11 apologize. My question was not that clear.

12 If there are miscellaneous actions that
13 have to be taken because, you know, even though the
14 statute was amended to allow this type of funerary
15 process to take place, there still needs to be
16 compliance with Department of Health or possibly
17 other requirements.

18 Who will pay for those requirements or be
19 responsible for compliance with those other
20 requirements, whatever they may be, related to
21 traditional burials?

22 Will that be Hawaiian Memorial Park? Will
23 that be the responsibility of the custodian such as
24 Koolaupoko Hawaiian Civic Club? Or at this point we
25 don't know?

1 THE WITNESS: I simply don't have enough
2 familiarity with Department of Health standards
3 regarding that activity, so I would defer that back
4 to the landowner. I apologize, wish I had a better
5 answer.

6 COMMISSIONER OKUDA: No apology necessary.
7 I'll ask the landowner later.

8 Before you prepared your report and
9 testified here, did you read the entire report
10 prepared by Geolabs with respect to the conditions on
11 the site including rockfall hazard?

12 THE WITNESS: I read it. I don't think I
13 could recite it verbatim for you, but I did go
14 through the entire Appendix C of the EIS, and I do
15 have it in front of me.

16 COMMISSIONER OKUDA: So you reviewed
17 Appendix C. I'm not asking you to recite verbatim or
18 even less than verbatim, this is not a memory test,
19 but did you review it before giving testimony?

20 THE WITNESS: I did, I even brought it with
21 me today.

22 COMMISSIONER OKUDA: Were you present when
23 their engineer, Mr. Lim, was testifying regarding
24 rockfall hazards?

25 THE WITNESS: In January?

1 COMMISSIONER OKUDA: Yes.

2 THE WITNESS: Unfortunately my grandmother
3 died during that hearing and I had to leave, so I did
4 not read the witness' entire testimony.

5 COMMISSIONER OKUDA: I'm sorry to hear
6 that. My mother passed away around that period of
7 time.

8 THE WITNESS: I'm very sorry to hear that
9 as well.

10 COMMISSIONER OKUDA: Since then, have you
11 reviewed the transcript of Lim's testimony?

12 THE WITNESS: I have briefly read through
13 it. Again, if there's a quiz coming, I may have to
14 defer you to someone else.

15 COMMISSIONER OKUDA: My final question
16 regarding that is, with respect to rockfall hazards
17 or the risk of rockfall, would you defer to the
18 testimony and report of Geolabs and their engineer?

19 THE WITNESS: Not testimony that he
20 provided in January. I am familiar enough with the
21 testimony that I do believe that I provided
22 sufficient clarification as to how we can mitigate
23 and manage for any potential hazard to individuals
24 who may enter the cultural preserve.

25 So I stand on the testimony I provided

1 earlier today, that I am 100 percent confident that
2 we can provide mitigation measures for the cultural
3 preserve that it should protect individuals in that
4 area.

5 COMMISSIONER OKUDA: Now, you have a law
6 degree, correct?

7 THE WITNESS: I do.

8 COMMISSIONER OKUDA: At Richardson Law
9 School. Would it be fair or accurate that you took
10 real property from Professor David Callies?

11 THE WITNESS: I did. I also took land use
12 from David Callies, so yes -- you know, I didn't take
13 property. I believe he was on sabbatical that year,
14 but I have had the pleasure of knowing David Callies.

15 COMMISSIONER OKUDA: As part of your
16 expertise that you have explained to us, you provided
17 us your background, your legal background and your
18 expertise regarding certain areas of the law such as
19 environmental law; correct?

20 THE WITNESS: Correct.

21 COMMISSIONER OKUDA: Is it true or not true
22 that under Hawaii law, and more specifically, the
23 common law, and common law is basically the legal
24 standards or principles that judges set out in cases,
25 common law.

1 Under Hawaii common law, potential
2 liability for hazards on the property are imposed on
3 the occupier of the land, not just who might hold
4 legal title, but basically the occupier or person who
5 has control over the parcels of property?

6 THE WITNESS: Yes. There can be liability
7 for an operator of a parcel of land.

8 COMMISSIONER OKUDA: And not to get too
9 technical here, but since we are dealing with expert
10 testimony, that that comes from Pickard,
11 P-i-c-k-a-r-d versus City and County of Honolulu
12 case.

13 THE WITNESS: I will date myself and say I
14 have not been in law school for 20 years, so I'm not
15 as familiar with case law as I perhaps could be, but
16 I don't dispute there is liability and I simply could
17 not quote that particular case, I apologize.

18 COMMISSIONER OKUDA: No problem, but we
19 agree on the legal principle here?

20 THE WITNESS: Yes.

21 COMMISSIONER OKUDA: Was the Koolaupoko
22 Hawaiian Civic Club told at any time there might be a
23 potential for liability if it became the manager of
24 the cultural preserve?

25 THE WITNESS: I don't believe there was --

1 they were told there was a discussion with the entire
2 civic club, I want to say January we attended a
3 meeting, a general meeting, of the civic club where
4 we addressed the project and the discussion of
5 liability did come up. So they are aware of the
6 potential for liability. I am extremely confident
7 that liability can be managed whether through
8 indemnification agreement, hold-harmless agreement,
9 waivers, appropriate insurance for the property.

10 This is something I have done for other
11 projects with other non-profits, and I am very
12 confident that any concerns regarding liability can
13 be -- (indecipherable).

14 COMMISSIONER OKUDA: So if we're talking
15 about indemnification, just so that we're all on the
16 same page, and we try not to use these ancient Latin
17 words, indemnification is basically a promise where
18 one party, such as Hawaiian Memorial park, if it
19 indemnifies the Koolaupoko Hawaiian Civic Club, HMP
20 would agree to basically take on and protect and
21 basically payoff any claims which the Koolaupoko
22 Hawaiian Civic Club may become responsible for;
23 correct?

24 THE WITNESS: That is not correct.

25 I think it is premature to have any

1 discussion about what agreements or mechanisms would
2 be in place to provide sufficient cover for
3 liability. Again, I am very confident that -- and,
4 again, remember there's multiple parties here, so
5 there's not only the civic club, but also the land
6 trust, and so we're really talking about three
7 parties.

8 So, again, you're talking about
9 constructing management mechanisms that I think would
10 require discussion with multiple parties at the
11 appropriate time but, again, I am confident all of
12 those discussions can take place to the satisfaction
13 of the parties involved.

14 COMMISSIONER OKUDA: Dr. Watson, I wasn't
15 asking about what the agreements might possibly be.
16 I'm going to get to that, because I frankly have a
17 laundry list of points that I was told to defer to
18 you.

19 So my only question was whether or not what
20 I explained as an example of indemnification. I was
21 not saying, number one, that would be the agreement.
22 I'm definitely not suggesting that that would be a
23 condition that the Land Use Commission could or
24 should impose, it's just to explain what
25 indemnification is, which is simply if, for example,

1 Hawaiian Memorial Park, or Service Corporation
2 International agrees to indemnify the Koolaupoko
3 Hawaiian Civic Club, it would mean that if the
4 Hawaiian civic club became responsible or liable, for
5 example, someone injured by a rockfall, the Hawaiian
6 Memorial Park or SCI would indemnify and basically
7 payoff or take care of that liability. Just to
8 explain what the concept of indemnification is.

9 Is that a fair statement of what the
10 concept of indemnification is?

11 THE WITNESS: That would be a fair
12 description of what the concept of indemnification
13 is, yes.

14 COMMISSIONER OKUDA: Now, at this meeting
15 that you describe or testified to where the issue of
16 liability came up, were there any other meetings or
17 discussions you had with anyone connected or
18 representing the Koolaupoko Hawaiian Civic Club about
19 the potential liability it may incur if it took over
20 or agreed to manage the cultural preserve?

21 THE WITNESS: No, because at the general
22 meeting we had with the civic club, it was determined
23 that those conversations would be premature and we
24 would revisit the discussion if the Petition was
25 granted.

1 COMMISSIONER OKUDA: Can you please tell me
2 what you or anyone else acting on behalf of Hawaiian
3 Memorial Park told Koolaupoko Hawaiian Civic Club
4 about their potential liability if it became the
5 manager of the cultural preserve?

6 THE WITNESS: I don't have a timeframe of
7 the discussion, but what I remember generally
8 conveying when the question arose was that I would
9 work with the civic club to assure that their
10 liability was mitigated and managed.

11 Again, I have worked with numerous
12 non-profit organizations that steward land areas and
13 I have yet to have a situation where we have not been
14 able to reach --

15 MR. MATSUBARA: All of these discussions so
16 far relating to what would happen in discussions
17 between parties that are subject to the conservation
18 easement or management of the cultural preservation,
19 the witness indicates this is all premature because
20 it would depend upon whether the Petition is granted
21 or not.

22 So parties have not sat down across the
23 table of each other and discussed all the potential
24 aspects of what the agreement may involve.

25 At this point in time it's asking things

1 that are purely conjectural since it's premature.
2 Those things will be fleshed out and decided. But at
3 this point in time, I think you have to accept the
4 fact that it is premature, as the witness indicated,
5 because the Petitioner hasn't even been granted,
6 which would create the cultural preserve, create the
7 conservation easement and everything else.

8 So these questions at this point are
9 premature.

10 CHAIRPERSON SCHEUER: If I may, as Chair.

11 Thank you for your comments, Mr. Matsubara.
12 I think that at this point in the evidentiary portion
13 of the hearings, it is good for us to get onto the
14 record information about what might or might not be
15 included in any condition should the Petition be
16 granted.

17 So I would encourage Commissioner Okuda to
18 focus tightly on questions for the witness that are
19 within her realm of expertise and capability of
20 answering, and then we will also be recalling, if you
21 recall, Mr. Morford, who can actually bind the
22 Petitioner to commit.

23 COMMISSIONER OKUDA: I'll try to adhere to
24 Chair's instruction. The reason why I'm asking these
25 questions are, for example, the resolution of the Ahu

1 Moku Council and also certain documents from the
2 Koolaupoko Hawaiian Civic Club were submitted in
3 support of the Petition. And my question is intended
4 to determine to what extent information or knowledge
5 was given to these entities before they gave, or
6 before they submitted their documents in support.

7 If the Petitioner is going to withdraw
8 these documents of support, then my questions are
9 irrelevant, but I really only have one more question
10 along this line, and I have other things to move
11 onto, if I can ask the question.

12 CHAIRPERSON SCHEUER: Proceed.

13 COMMISSIONER OKUDA: Thank you, Mr. Chair.

14 Dr. Watson, do you believe that the
15 Koolaupoko Hawaiian Civic Club should have been
16 informed about the rockfall hazards, as documented in
17 the Geolabs' document or report, and explained by Mr.
18 Lim in his testimony, before or in connection with
19 these discussions that have led to their resolution
20 in support of the project?

21 THE WITNESS: So that presumes that these
22 individuals are not intimately familiar with this
23 area. These are individuals that we interviewed at
24 length, some multiple times, who grew up in this
25 area. They have visited this area. We have

1 interviewed Aunty Hellen Hewitt who lived very near
2 the area, used to ride horses in the area.

3 So I believe that they are fully aware of
4 the conditions of the land. I believe they are fully
5 informed as to the situation.

6 And the civic club resolution that we
7 submitted, they drafted themselves. So these are
8 people who are intelligent and knowledgeable and very
9 intimately aware of the conditions of this place.

10 So do I think we need to submit a specific
11 technical report to them? No. Do I believe that
12 they are fully aware of what is on this land? Yes.

13 COMMISSIONER OKUDA: When you were speaking
14 to the Koolaupoko Hawaiian Civic Club, who did you
15 believe you were speaking on behalf?

16 THE WITNESS: I was there representing
17 Hawaiian Memorial Park.

18 COMMISSIONER OKUDA: Were you there at all
19 advocating or protecting the interest of the
20 Koolaupoko Hawaiian Civic Club?

21 THE WITNESS: I believe that my history and
22 experience of working with the Hawaiian communities
23 for literally decades, and being native Hawaiian
24 myself, I always first and foremost protect the
25 native Hawaiian community at every step.

1 I have advocated for, and strongly
2 supported the will of the civic club. We are here
3 because the kupuna asked for this preserve. We are
4 here because this is something they have long wanted.
5 That is always first and foremost in my mind.

6 COMMISSIONER OKUDA: Let me ask you these
7 questions about -- which may go to whether or not
8 certain conditions should attach to the Petition, and
9 again, by asking these questions, I'm not indicating
10 any inclination whether to approve or disapprove the
11 Petition with or without conditions. I'm just asking
12 whether or not this is something the landowner,
13 Hawaiian Memorial Park, is willing to offer, and you
14 can tell me yes, to your knowledge, the landowner is
15 willing to offer this; no, it's not, or you really
16 don't know.

17 And I'm not asking for whether or not there
18 was an agreement with anyone in the community,
19 whether it's the Koolaupoko Hawaiian Civic Club or
20 anyone else. I just want to know whether or not the
21 landowner is willing to offer these things.

22 So first of all, would the landowner be
23 willing, during the negotiations with the Koolaupoko
24 Hawaiian Civic Club, would the landowner be willing
25 to pay for an attorney picked by the civic club in

1 its sole discretion to advise and represent the civic
2 club in its negotiations with the landowner?

3 THE WITNESS: You would have to --

4 MR. MATSUBARA: I object to the question in
5 terms of its prematurity in regards to Hawaiian
6 Memorial Park, civic club, and whoever has the
7 conservation will have to sit down and discuss all
8 aspects of that agreement.

9 To ask those questions now is, as we said
10 before, extremely premature to say what one would do
11 until one has fully discussed it as a courtesy to the
12 other party to the agreement.

13 I think we're straying off again and
14 getting into areas that have been asked and answered
15 or premature and inappropriate at this time.

16 CHAIRPERSON SCHEUER: I actually don't see
17 this question -- while it is highly specific -- I
18 don't see this question as premature. But if the
19 knowledge of the witness is that she doesn't know or
20 cannot bind the landowner to it, she can simply
21 answer it as that has not been discussed yet and I
22 can therefore not answer.

23 THE WITNESS: This has not been discussed
24 yet and I cannot answer.

25 COMMISSIONER OKUDA: Okay, thank you.

1 If the club agrees to become the manager,
2 will the landowner offer to make that appointment or
3 designation irrevocable? In other words, not subject
4 to revocation or change unless, of course, the civic
5 club decides it no longer wants to be the manager of
6 the cultural preserve.

7 THE WITNESS: That has not been discussed
8 yet, and I therefore cannot answer.

9 COMMISSIONER OKUDA: Will the landowner be
10 willing to offer to pay for all the costs and
11 expenses incurred by the civic club as manager of the
12 cultural preserve?

13 THE WITNESS: As I have stated before, the
14 landowner has offered and agreed to cover
15 considerable cost. As to anything in perpetuity
16 would be premature and cannot be answered at this
17 time.

18 COMMISSIONER OKUDA: When you say
19 "considerable cost", what is the dollar amount of the
20 cost that the landowner is willing to pay for?

21 THE WITNESS: There is no specific dollar
22 amount. It is the commitment to, again, remove
23 invasive species, create access trails, restoration
24 efforts of that sort.

25 So we have no estimate, and it would be

1 agree --

2 CHAIRPERSON SCHEUER: Commissioner Aczon.

3 VICE CHAIR ACZON: Mr. Chair, I believe the
4 owner is going to be testifying again later. I
5 believe those questions are better asked to the
6 landowner who can commit to those questions.

7 CHAIRPERSON SCHEUER: Thank very much,
8 Commissioner Aczon. I've struggled during this line
9 of questions. On the one hand, the witness is
10 offered as an expert regarding conservation
11 easements. We know the landowner himself is not
12 necessarily an expert in conservation easements.

13 So we need to establish some information on
14 the record about the nature and the scope of the
15 easement and the potential conditions and other
16 agreements around the easement, around other possible
17 easements, cultural aspect.

18 Again, some of these questions are, as you
19 suggested, Commissioner Aczon, going to what can bind
20 the landowner. So I want to not restrict discussion
21 unduly, but I want to be efficient with our use of
22 time.

23 Commissioner Okuda?

24 COMMISSIONER OKUDA: Yes. I started asking
25 these questions of Mr. Morford, and I was told to

1 defer it to Dr. Watson, and he would be brought back
2 in the end, so that if Dr. Watson couldn't answer
3 them, we could go back to him.

4 That's why I'm asking her basically yes, no
5 or I don't know questions. If she doesn't know, she
6 doesn't know. I'll take it up with Mr. Morford.

7 CHAIRPERSON SCHEUER: Respectfully, my
8 recollection of the questions that were deferred to
9 Dr. Watson were ones of a technical nature, and we
10 ensured Mr. Morford would be here to bind any further
11 representations necessary on behalf of the landowner.

12 So I think the purpose of this witness
13 right now is to take questions about the nature of
14 the easement, what could be or not be included in
15 certain agreements, that's fine, but --

16 COMMISSIONER OKUDA: Okay, Chair, I'll skip
17 over this. I don't want to be in a ping pong later
18 where he comes back and says you should have asked
19 Dr. Watson.

20 CHAIRPERSON SCHEUER: No desire to do that,
21 and if that happens, I would work extremely hard to
22 ensure Dr. Watson will be recalled, if that happens.

23 COMMISSIONER OKUDA: Thank you.

24 Dr. Watson, you testified about certain
25 mitigation efforts with respect to liability issues,

1 I guess, such as arising out of rockfall.

2 Let me ask a followup question regarding
3 that.

4 Will the landowner, Hawaiian Memorial Park,
5 pay for a liability insurance policy in a form
6 approved by the Koolaupoko Hawaiian Civic Club,
7 naming the club as the insured, and protecting it
8 against claims or liabilities or causes of action
9 arising out of rockfall?

10 THE WITNESS: Sir, with all due respect, I
11 do think that's a question related to binding the
12 owner and not necessarily a question related to
13 technical aspects of the cultural preserve. And I
14 also would say that it is a premature question to ask
15 at the point we are with the regulatory process.

16 COMMISSIONER OKUDA: With respect to
17 enforcement of promises regarding the cultural
18 preserve, would the landowner be willing to give
19 standing to recognized cultural practitioners to
20 bring actions or lawsuits in court to enforce
21 promises or representations made by the landowner in
22 the course of this Land Use Commission proceeding
23 with respect to promises it makes regarding the
24 cultural preserve?

25 THE WITNESS: I'm not sure if I have enough

1 expertise regarding standing to answer that question,
2 so I actually would defer to counsel on the issue of
3 when it is appropriate to grant standing.

4 CHAIRPERSON SCHEUER: If I may,
5 Commissioner Okuda, to a certain degree, and just
6 correct me if I am wrong and say that I'm not helpful
7 here, but it seems that quite of few of your
8 questions in this regard have to do with the
9 testimony we have on the record from the civic club
10 and what they might seek out of this agreement.

11 These questions might be better posed to an
12 actual representative of the civic club, rather than
13 the owner, but I was wondering whether or not Mr.
14 Matsubara was planning to possibly call a
15 representative of the civic club as a witness to
16 answer these kinds of questions?

17 MR. MATSUBARA: We have no plans to call
18 members of the civic club, because in their
19 estimation that would be premature in terms of
20 getting involved in that discussion at this point,
21 seeing as the Petition hasn't even been granted and
22 there is no designation of the cultural preserve.

23 But once all those things are done, the
24 parties will discuss with each other what the
25 benefits and liabilities are and how to proceed

1 further to each other's satisfaction.

2 I think it will be premature for me to call
3 anybody from there now in that regard.

4 COMMISSIONER OKUDA: Chair, I was just
5 asking about what the landowner was willing to offer.
6 I tell you what, I will defer these questions to the
7 representative of the landowner.

8 So based on that, I have no further
9 questions of this witness.

10 CHAIRPERSON SCHEUER: Thank you,
11 Commissioner Okuda. Thank you as we figure our way
12 through this proceeding.

13 Commissioner Wong followed by Commissioner
14 Chang.

15 COMMISSIONER WONG: Thank you, Chair.
16 Thank you again, Dr. Watson.

17 I'm going to say something like I just
18 remembered a couple other questions like Commissioner
19 Chang, but I forgot her statement.

20 Anyway, couple things. I used to work at
21 the Nature Conservancy, and when the Nature
22 Conservancy received conservation easement, the land
23 trust -- you know, Nature Conservancy is accredited
24 by alliance.

25 So will the -- when we give the easement --

1 I'm saying "we" as in Petitioner -- will the person
2 who receives the easement be accredited also?

3 THE WITNESS: Yes.

4 COMMISSIONER WONG: That's all I wanted to
5 know. I just don't want any Tom, Dick and Harry
6 taking over the easement and they get all screwed.

7 THE WITNESS: Exactly. As you well know,
8 it is incredibly complicated, but as you aptly note,
9 the easement does need to be held by a qualified
10 entity, which is why we have multiple parties playing
11 multiple roles going forward.

12 But you are absolutely correct, and it will
13 go to a qualified institution.

14 COMMISSIONER WONG: One other question. I
15 guess I'm going to state it for the record, but you
16 don't need to answer it because this is just to state
17 when I used to work at Nature Conservancy, it took a
18 lot of money, and even to just build fences around
19 that area. And I just want to put on the record, you
20 don't need to say anything, but I want to make sure
21 when we build these fences or anything else to take
22 care of the land, that either the Petitioner or
23 someone has enough money or an endowment to continue,
24 you know, keep that fence up and protect that land.

25 THE WITNESS: And I do have an answer for

1 you. So the landowner has agreed to endow the
2 easement. So the easement is being donated to a land
3 trust, so they will not being compensated in any way
4 for it.

5 And second, they have agreed to provide an
6 endowment to the institution for perpetual care.

7 COMMISSIONER WONG: That's great. That's
8 all I want to ask. Thank you.

9 CHAIRPERSON SCHEUER: Commissioner Chang
10 followed by Commissioner Okuda.

11 COMMISSIONER CHANG: Thank you so very
12 much. Thank you, Ms. Watson, for being here today.
13 I just have a couple of questions that I want to
14 clarify, and I'm hoping I'm not going to go too far
15 over.

16 First, I just wanted to clarify with
17 respect to the 100 burial spaces that will be in the
18 cultural preserve. Was it your testimony that that
19 would be managed by the cultural preserve manager,
20 but that Hawaiian Memorial Park would ensure
21 compliance of the regulatory requirements by
22 Department of Health?

23 THE WITNESS: Yes. So they would have
24 ownership of it, and thereby determine who was
25 allowed to use those spaces, and certainly management

1 from a cultural perspective as to protocols and
2 process, but HMP is still legally obligated for the
3 compliance.

4 So, yes. I might not be explaining it
5 effectively, I apologize.

6 COMMISSIONER CHANG: That's okay. I just
7 wanted to make sure it was clear in my mind,
8 distinctive role between the cultural preserve
9 manager and Hawaiian Memorial Park.

10 And I totally appreciate and understand the
11 issues regarding some of these questions may be
12 premature, but I think that you can appreciate the
13 position that the Land Use Commission is in.

14 We essentially -- we get to do it right the
15 first time, and so if we choose to grant the
16 Petition, there will be certain kinds of conditions.

17 So either if we can -- you know, we can
18 discuss now what those conditions would be. Because
19 I do disagree with your analysis of Ka Pa'akai. I
20 think you said that step one, that you did, in your
21 CIA and archaeological report, identified the valued
22 resources, I believe you did that.

23 I also believe step two says that you have
24 to then identify the potential affect of the project
25 on those valuable resources.

1 And I will say that your CIA was very
2 exhaustive. You had a lot of interviews from people
3 who directly have connections and they provided you
4 testimony.

5 And I think the third comment on the third
6 step, you said LUC doesn't even have to go any
7 further than that, because there is going to be no
8 adverse effect.

9 I read Ka Pa'akai to say, one, we cannot
10 delegate that responsibility. We have to make an
11 independent assessment. So the fact that a lot of
12 these valued resources are going to be in the
13 cultural preserve, that fact in and of itself with no
14 conditions, I don't think LUC has fulfilled its
15 obligations.

16 We cannot just delegate to Hawaiian
17 Memorial Park or the cultural manager to say, okay,
18 you guys can decide how you're going to address
19 traditional and customary practices without LUC
20 placing any kind of conditions. So difference of
21 interpretation of Ka Pa'akai.

22 THE WITNESS: I don't think we do, if I may
23 stop you. I 100 percent agree that LUC cannot
24 delegate that authority. I think Ka Pa'akai is
25 incredibly clear as to that point.

1 I think what I was trying to convey and
2 perhaps didn't communicate it clearly, is the role
3 insofar as mitigation action.

4 What I am saying is I don't believe,
5 looking at mitigation for traditional and customary
6 practice, is necessarily applicable, because there is
7 not an adverse effect. I believe the adverse effect
8 is to the historic site which falls under the
9 jurisdiction of the State Historic Preservation
10 Division, but I agree that there needs to be findings
11 and decisions on the LUC independently so the
12 technical reports just support your own independent
13 assessment of the Ka Pa'akai framework, and then any
14 conditions that would be appropriate under that.

15 So I apologize if I came off unclear, but I
16 don't disagree with what you're saying.

17 COMMISSIONER CHANG: I think we both --
18 (indecipherable) -- so our interpretation and
19 analysis.

20 So with that, with that agreement, and the
21 fact that you have been qualified as an expert on
22 numerous expertise, I'm going to ask you a series of
23 questions in regard to potential Land Use Commission
24 conditions.

25 So the first one I want to talk about is

1 access. So currently, you know, as the testimony and
2 the reports have identified, there is, because Lipalu
3 Street is right there, people have been accessing
4 that area, including people who may exercise
5 traditional and customary practices, because it's the
6 most convenient to the resources. And the
7 recommendation is not to have that access continue
8 on, but to perhaps have it at another location within
9 Hawaiian Memorial Park.

10 So with respect to access, based upon your
11 expert opinion, is it reasonable for Land Use
12 Commission to include, as a condition, that access
13 shall be provided to the cultural preserve subject to
14 consultation with the cultural practitioners and the
15 cultural preserve manager, but access shall be
16 provided. So we can put that as a condition.

17 THE WITNESS: Absolutely.

18 COMMISSIONER CHANG: We don't know at this
19 time where that access is going to be, but just that
20 access will be provided.

21 THE WITNESS: Absolutely. I believe is
22 frankly a necessity to be able to protect traditional
23 and customary practices.

24 COMMISSIONER CHANG: So we have an
25 agreement on that.

1 One, Hawaiian Memorial Park. I am familiar
2 with that area. It closes its gates. It has
3 operating hours.

4 Now, if cultural practitioners want to
5 access the site at times other than when Hawaiian
6 Memorial Park is open, would you agree, based upon
7 your expert opinion, that LUC could include as a
8 condition of the land use approval, that not only
9 access shall be required, but that access beyond the
10 operations of Hawaiian Memorial Park shall be
11 provided to cultural practitioners to access the
12 cultural preserve?

13 THE WITNESS: Yes, that should be included
14 and that would be appropriate.

15 COMMISSIONER CHANG: Is there a distinction
16 between the preservation plan and the cultural
17 preserve?

18 THE WITNESS: Yes, in only that the
19 preservation plan will include all the historic sites
20 within the Petition Area. It will obviously lean
21 heavily upon those within the cultural preserve, but
22 it will include all of them.

23 The management plan will focus more
24 specifically and exclusively on the cultural preserve
25 and the access that you are talking about now.

1 that was Rosanna Thurman's standard, it sounded like
2 it was -- that would be separate from the culture
3 preserve.

4 So you have no objections to --

5 THE WITNESS: None at all.

6 COMMISSIONER CHANG: Now, with respect --

7 CHAIRPERSON SCHEUER: For the record, this
8 is more than two questions.

9 COMMISSIONER CHANG: I had more than two.

10 (Many speakers at once.)

11 CHAIRPERSON SCHEUER: That was correct.

12 COMMISSIONER CHANG: Not too much more.

13 With respect to the rockfalls, based upon
14 your expert opinion, and based upon the testimony of,
15 I guess, Mr. Lim, there is a known dangerous
16 condition. I mean, I think he said it is almost
17 inevitable that there will be rockfalls, and I think
18 just in the reports that he provided.

19 So based upon your expert opinion, would it
20 be reasonable for the LUC to include as a condition
21 of both the cultural preserve as well as the
22 conservation easement that Hawaiian Memorial Park
23 shall provide liability insurance and shall indemnify
24 both the cultural preserve manager and the
25 conservation easement holder from all liability

1 related to limited to rockfall?

2 Would that be a conclusion for Land Use
3 Commission?

4 THE WITNESS: I cannot bind the landowner
5 in that regard because we have not discussed that
6 issue. But I think that question is better asked of
7 the landowner who I do believe will be coming back.

8 COMMISSIONER CHANG: But you've been
9 qualified as legal expert. I don't think he's a
10 lawyer.

11 So within your legal expertise there is a
12 known hazardous condition. We have on the record
13 testimony from Hawaiian Memorial Park's expert that
14 the rockfall conditions and the proposed construction
15 will inevitably cause rockfall, and one of the
16 hazardous places was by the cultural preserve.

17 So in your expert legal opinion, because
18 you've been qualified, is that a reasonable condition
19 by the LUC to require that the landowner provide
20 liability insurance and indemnify and defend both the
21 cultural preserve manager as well as the conservation
22 easement holder, liability related to rockfalls, not
23 anything else, just rockfalls?

24 MR. MATSUBARA: Mr. Chair, let me just
25 interject. In terms of the characterization of the

1 hazard, my recollection of the testimony is
2 different, but we have Mr. Lim available and he was
3 planning to testify today further on that issue.

4 But in regard to how real of a hazard it is
5 can be clarified further when he takes the stand.

6 CHAIRPERSON SCHEUER: Question that could
7 perhaps get to the -- Commissioner Chang, I think to
8 get to what I believe, or understanding is your area
9 of interest that would take advantage of the
10 expertise of this witness might be something along
11 the lines of, what kinds of conditions could the Land
12 Use Commission put into place that would balance the
13 need to continue to provide cultural access with the
14 hazards that are associated with accessing this
15 property based on the witness' expertise.

16 I'm trying I have a productive discussion.
17 Forgive me if I've --

18 COMMISSIONER CHANG: I actually thought my
19 question was very specific, because of the cultural
20 preserve and the fact that you are qualified as a
21 legal expert, because I do not believe Mr. Lim is a
22 legal expert. I do not believe Mr. Morford is a
23 legal expert.

24 So the question is related specifically to
25 the cultural preserve area where it was his testimony

1 and the terms that he provided, and while there may
2 be a dispute as to the extent or degree of the
3 rockfall, but I do believe that it would be
4 reasonable to conclude that it's a hazardous
5 condition. That's why you've got mitigation.

6 So I think my question is rather specific.
7 It is based upon your expert opinion, legal expert
8 opinion, and the fact that you know the cultural
9 preserve better than anybody else, that it would be a
10 reasonable condition for the Land Use Commission to
11 include as a condition that the landowner shall
12 provide liability insurance and indemnify and defend
13 the cultural preserve manager as well as the
14 conservation easement holder from liability related
15 to rockfall?

16 THE WITNESS: So yes and no.

17 Yes, as to liability insurance that would
18 appropriately cover the other parties.

19 I would not necessarily say indemnification
20 across-the-board though. So, again, I think they
21 absolutely could cover and it would be appropriate to
22 require as a condition liability insurance that not
23 only covers the activities, but the club in its
24 entirety so they would be a named insured party.
25 Same with the conservation easement holder, whoever

1 that is.

2 I don't know that I would utilize
3 indemnification. I would probably say each party was
4 individually liable for any negligent action, but I
5 would absolutely say that they would have appropriate
6 insurance and possibly even support the club to
7 obtain their own insurance just so you have multiple
8 policies in place to protect. That would be my
9 recommendation to the club.

10 COMMISSIONER CHANG: I appreciate that.
11 That wasn't that hard. Thank you so very much for
12 your testimony. I think that that may be the last
13 of --

14 THE WITNESS: And I will add that is
15 something we commonly ask multiple parties to have,
16 appropriate insurance to a certain limit and very
17 specific insurance that covers it appropriately and
18 then name all the parties. That's not an uncommon
19 mechanism to use.

20 COMMISSIONER CHANG: Just have a couple
21 more.

22 THE WITNESS: I enjoy your questions.

23 COMMISSIONER CHANG: This is related to
24 Rosanna Thurman's testimony about the newly found
25 historic sites within the cemetery expansion that

1 will not be preserved. They will either be subject
2 to data recovery before they are destroyed, or there
3 will be no further work. But nine sites have been
4 identified for data recovery.

5 And I had asked her, and so I'm going to
6 ask you this question.

7 Would it be reasonable mitigation that
8 before those features are destroyed after data
9 recovery, that any of the rocks that were part of the
10 historic features be relocated to the cultural
11 preserve subject to appropriateness, subject to
12 consultation with the cultural preserve manager, or
13 if you don't have a preservation plan, the Koolaupoko
14 Hawaiian Civic Club as to the appropriateness of
15 relocating those stones to the cultural preserve,
16 because it's hard enough to find rocks?

17 THE WITNESS: It is hard enough to find
18 rocks. I totally agree. We would be fine with that
19 condition. Again, I think specifying that it does
20 not create any adverse effects on other historic
21 sites, but in concert with a preservation plan that
22 leads to restoration.

23 But I agree, it's hard to find rocks. So
24 we would absolutely want to keep the rocks in the
25 area. So that's fine.

1 COMMISSIONER CHANG: My last question is to
2 the mitigation plan where you talked about
3 interpretative signage.

4 So is it a reasonable mitigation to specify
5 that there would be appropriate interpretative signs
6 in consultation with the cultural preserve manager,
7 or where the cultural preserve does not establish the
8 Koolaupoko Hawaiian Civic Club, and other known
9 cultural practitioners appropriate signage that
10 could -- understanding what these resources are?

11 THE WITNESS: Absolutely. And we would
12 encourage that and that is something that has been
13 asked for by the practitioners, the nuance to that.

14 So the first phase is likely to be two
15 types of signs. One that just alerts passerbyers,
16 trespassers, that this is not an appropriate area to
17 be conducting recreational activities in. So
18 basically signs notifying people that it is sacred
19 and kapu.

20 This is what we did at Kaneakupuku
21 (phonetic). So we have two types, one is just one
22 sign over and over that says you should not be here.
23 Then we have interpretative signs that provide
24 history and culture in the area both in Hawaiian and
25 English. The nuance to it being we don't want to

1 alert trespassers who might not be respectful of our
2 kapu signs as to where certain features are. We have
3 had to, on numerous occasions, remove directional
4 signs to the heiau because there were people going,
5 so I would strongly recommend signage with the caveat
6 that it not create an attractive nuisance or create
7 any potential adverse effect to the historic or
8 cultural -- (indecipherable.)

9 And that would be in consultation with the
10 cultural manager or Hawaiian civic club, of course.

11 COMMISSIONER CHANG: I believe sometimes
12 trespassers and people who disrespect, it's actually
13 because they don't know any better. So I think it is
14 our responsibility to provide some level of
15 education.

16 Thank you very much for your testimony.
17 Chair, I have no further questions.

18 CHAIRPERSON SCHEUER: Thank you very much.
19 Commissioner Okuda.

20 COMMISSIONER OKUDA: Thank you very much,
21 Chair. Three questions which I hope will remain
22 short.

23 Dr. Watson, you testified a little while
24 ago about an endowment that the landowner is willing
25 to endow. How much money is the landowner willing to

1 place in this endowment?

2 THE WITNESS: Again, that has not been --
3 the amount of that has not been determined. It's
4 actually determined by the land trust after they have
5 conducted some baseline studies. So that has not
6 been determined, just a commitment.

7 COMMISSIONER OKUDA: Let me ask you this.

8 Based on your expert opinion as you've been
9 qualified, and as Commissioner Chang has brought out
10 in some of her questions and commentary, do you
11 believe that it is inappropriate for this parcel of
12 property to remain in the Conservation District under
13 the standards set forth for Conservation District
14 properties that 205-2(e), E as in elephant?

15 THE WITNESS: Inappropriate is -- I'm not
16 quite sure why that word has been used. I believe
17 the Petition is asking to change it from Conservation
18 to Urban for the purposes of being able to expand the
19 cemetery, and then conduct Hawaiian burial practices
20 in the cultural preserve.

21 In that regard it is a highly appropriate
22 change, but again, we are placing all of it within
23 the conservation easement, which I believe more than
24 meets the obligations to continue to protect this
25 area as cultural resource, conservation area, and

1 open green space.

2 COMMISSIONER OKUDA: But my question is, if
3 the Land Use Commission declines to adopt the
4 Petition, would that be an inappropriate -- or would
5 it be inappropriate to keep the parcel of property in
6 conservation?

7 THE WITNESS: If it declines the Petition,
8 I believe there would be adverse affect to the
9 cultural resources in the cultural preserve and
10 continued ongoing damage. So if it declines it, I
11 think there would be adverse effect.

12 COMMISSIONER OKUDA: And my final question,
13 and this is based on what your last response is, and
14 also based your expertise and, you know, in
15 environmental law and the laws in the State of
16 Hawaii.

17 Is it true or not true that no matter what
18 we might think is the moral or right thing to do,
19 there is absolutely no legal requirement for an owner
20 of Conservation Districted property to preserve or
21 affirmatively preserve and affirmatively protect
22 cultural sites on that landowner's property?

23 In other words, if I owned a parcel of
24 Conservation Districted property, which had cultural
25 sites, as long as perhaps I don't affirmatively

1 damage those sites, I can just neglect those sites
2 and I would be within my legal rights; is that a fair
3 statement of your understanding of the law?

4 THE WITNESS: That is a fair statement.
5 Yes, that is correct.

6 COMMISSIONER OKUDA: Thank you, Mr. Chair.
7 No further questions.

8 CHAIRPERSON SCHEUER: Commissioners are
9 there further questions for Dr. Watson? I only have
10 one question with 15 parts.

11 I just want to confirm something I asked of
12 Mr. Morford.

13 Are you aware of any other place in Hawaii,
14 since the law was passed, that once again makes
15 traditional Hawaiian burial practices legal within
16 the state, are you aware of anyplace that has been
17 made available that those burial practices can be
18 continued?

19 THE WITNESS: To my knowledge there is no
20 place that has made it available, and this is not
21 currently available at any other location in the
22 state to my knowledge.

23 CHAIRPERSON SCHEUER: One other question.

24 As a legal and cultural scholar and expert,
25 do you believe that the State of Hawaii and its

1 agencies have an affirmative duty, not just to not
2 harm traditional and customary native Hawaiian
3 practices, but to enhance them where practicable?

4 THE WITNESS: Personally, and in my
5 opinion, yes, there is a duty to enhance and more
6 practicable. I do not believe that is the current
7 practice, and I think there are many people who would
8 say that there is not an affirmative duty, but in my
9 opinion there is no affirmative duty to enhance them.

10 CHAIRPERSON SCHEUER: Any other questions,
11 Commissioners? If not, I'll offer Mr. Matsubara the
12 opportunity to redirect.

13 MR. MATSUBARA: I have no redirect.

14 Just to be at peace with the Commissioners,
15 way past the lunch hour.

16 CHAIRPERSON SCHEUER: I love our
17 inquisitive Commission that takes their duties very,
18 very seriously. The fact that some people have to
19 wait for lunch, I don't feel too bad about.

20 It is 12:33. I'm going to suggest a
21 45-minute break. We would reconvene for the
22 afternoon at 1:20. Is that acceptable to everybody
23 to go on recess until then?

24 THE WITNESS: Thank you very much. I
25 enjoyed that very much, lovely.

1 CHAIRPERSON SCHEUER: Mr. Matsubara, is
2 this the last witness for the Petition now, or who
3 are you calling next?

4 MR. MATSUBARA: Lance Wilhelm next. And
5 witnesses who testified before raised questions that
6 the Commissioners asked, so if the Commission is
7 interested in that I have Robin Lim, the geotech
8 engineer, and Todd Beiler, who was an acoustic
9 engineer.

10 CHAIRPERSON SCHEUER: We will reconvene at
11 1:20 for hopefully the conclusion of the Petitioner's
12 witnesses. We are in recess.

13 (Noon recess taken.)

14 CHAIRPERSON SCHEUER: Mr. Matsubara, your
15 witness is ready?

16 MR. MATSUBARA: Yes, he's sitting down,
17 bright, bushy tailed.

18 CHAIRPERSON SCHEUER: Mr. Wilhelm, do you
19 swear the testimony you're about to give is the
20 truth?

21 THE WITNESS: Yes.

22 CHAIRPERSON SCHEUER: Please proceed.

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

1 and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. MATSUBARA:

4 Q For the record, Lance, can you provide your
5 name and business address, please?

6 A Yes. My name is Lance Wilhelm. Business
7 address is 1003 Bishop Street, Suite 765, Honolulu
8 96813.

9 Q For the benefit of the Commission, there
10 are two exhibits which we --

11 CHAIRPERSON SCHEUER: One moment.
12 Commissioner Aczon.

13 VICE CHAIR ACZON: Mr. Chair, I just want
14 to disclose for full disclosure that I know Mr.
15 Wilhelm through the construction industry. He's very
16 well-connected in the construction industry. And I
17 just want to make sure that, you know, I'm ready to
18 participate in this one and render a fair decision.

19 CHAIRPERSON SCHEUER: Thank you for that.
20 Commissioner Wong.

21 COMMISSIONER WONG: Chair, I also know Mr.
22 Wilhelm from the construction industry. I didn't
23 receive any lunch or anything from him recently or
24 even past, still waiting for that lunch, but I'll
25 wait until after we make a decision and can be fair

1 and impartial.

2 CHAIRPERSON SCHEUER: Thank you for those
3 disclosures. Just as a practice, we generally don't
4 do disclosures about witnesses, but we do about the
5 relationships we have with any of the parties in the
6 proceedings. That's it. Thank you very much.

7 Please continue, Mr. Matsubara.

8 MR. MATSUBARA: Thank you, Chair. I'll be
9 referring to two exhibits today while Mr. Wilhelm
10 testifies.

11 Exhibit 63 is his resume, background.

12 Exhibit 64 is his written testimony.

13 Q Mr. Wilhelm, can you give us a summary of
14 your background in regard to -- give us a resume of
15 your background.

16 A Sure. I have approximately 30 years,
17 little over 30 years in the construction industry and
18 real estate development.

19 I spent the first 25 years of my career
20 with companies and essentially held virtually every
21 line of responsibility in the company from entry
22 level clerk to senior vice president of Hawaii
23 operations.

24 Of those 25 years, I spent 16 of those
25 years in the heavy civil group, which does all of the

1 infrastructure and civil operations.

2 Subsequent to working for Kiewit, I worked
3 for a real estate development group called Irongate
4 where we built the Ritz Carlton residences in
5 Waikiki, among other real estate transactions that I
6 undertook on their behalf.

7 A few years ago I formed and found the
8 Wilhelm Group construction, management and real
9 estate development consulting business.

10 Q Thank you.

11 Would you summarize your written testimony,
12 please?

13 A Sure.

14 I was asked to consider previous testimony
15 provided with respect to this project, specifically
16 related to how export material, excess soil materials
17 would be handled, and apparently there was what
18 appears on the surface to be a discrepancy in the way
19 that those soil materials were to be handled. In the
20 EIS work, it was described that the materials will be
21 hauled to PVT, to the construction landfill on the
22 west side of Oahu.

23 And in subsequent testimony it was
24 described as the materials would be spoiled or we
25 refer to it as spoiled in our vernacular, or hauled

1 off embanked on other projects.

2 And it's been my experience that the
3 process, it's not inconsistent, it's just where
4 you -- when along the development process you ask the
5 question.

6 So in early stage development, the
7 formation of the EIS, the development of an EIS,
8 where the design is not yet complete, it is very
9 common and responsible to say at that time that
10 excess soil materials will be hauled to a location
11 like PVT which is a construction, certified
12 construction landfill.

13 As the project develops and as design
14 becomes more complete, as you move closer to actually
15 bidding and building the project, that's when market
16 forces bear and opportunities to embank that material
17 on other projects become available to you.

18 So that's a very normal and rational and
19 responsible way to address spoil materials during the
20 course of development process.

21 Q With regard to the natural progression of a
22 development, details such as the final disposition of
23 the fill would arise after more information was
24 provided to the contractor?

25 A Yes. Typically the disposition of spoil

1 material is determined primarily through the bidding
2 process. So every civil contractor who are invited
3 to provide proposals will take a look at the project
4 that they currently have under contract. Those
5 projects may require import of material and they will
6 take that into consideration in the development of
7 their price.

8 They'll also take a look at near-term
9 future projects that they know of that may require
10 import material, take that into consideration in
11 their price.

12 And the market in Hawaii for heavy civil
13 contracting is not too large, so there's really a
14 handful of contractors and a handful of trucking
15 companies that move the majority of the mass grading
16 work, so those firms tend to know what projects are
17 happening in and around that timeframe.

18 The most efficient movement of that
19 material is really determined by the private sector
20 and disclosed through this bidding process.

21 Q You referenced to it the significant
22 incentives to avoid disposing of fill in a landfill.

23 There are other options available, such as
24 other projects and so on. Could you discuss that
25 aspect?

1 A Sure.

2 The most expensive disposing of excess soil
3 material, and we're talking here about primarily soil
4 and soil-type materials, the most expensive way to
5 dispose of that is to haul it to a landfill and then
6 have them embank it within the landfill process.

7 It's almost always more economical to take
8 that material to other projects, whether that project
9 is in that neighborhood or in the district or just
10 anywhere on Oahu, that's always more economical.

11 The reason, a project that requires
12 imported fill is likely paying for that material in
13 some way, shape or form in their project, the project
14 would be export fill, is paying for the disposition
15 of that material.

16 And the contractor -- have an opportunity
17 to make money by cashing in on the both sides of that
18 equation, charging the embankment job, and charging
19 the excavation job. So it's the most economical way
20 for the marketplace to react to a project like this.

21 Q At the conclusion of your written testimony
22 you listed four things that you hope you could make
23 clear through testimony. Would you care to go over
24 those four points?

25 A Sure.

1 The reason you cannot do detail design
2 until after a processes like the one today at the
3 LUC, there's really two reasons.

4 One, detail design is very expensive and
5 time consuming, and you wouldn't want to make that
6 investment unless and until you knew you had approval
7 from a body like this. That's one reason.

8 But the second important reason you
9 wouldn't do detail design first is because, as has
10 been described in multiple testimonies here, there
11 may be conditions placed upon the developer/owner
12 that has to be addressed in the design. And you
13 wouldn't want to have to do the design and then have
14 to redo it later.

15 So this is why, generally speaking,
16 developers don't want to do final detailed design
17 until after a process like that.

18 Another point I tried to make is that the
19 Land Use Commission in this process, and in your
20 authority to make these decisions, it is certainly
21 not the last place that's very technical detailed,
22 public safety and other considerations are taken into
23 consideration.

24 The developer and his design team will have
25 to secure permits, building permits, grading permits,

1 NPDES permits, which is national stormwater
2 distribution type permits, all of that still has to
3 be obtained subsequent to this action.

4 So health safety issues are just there.
5 Other agencies who have kuleana over those
6 responsibilities also weigh in, so there is more
7 oversight beyond just this. So that's another point
8 I wanted to make.

9 I guess another element in my testimony is
10 that it is really in the best interest of the project
11 to reuse this material as much as possible. As I
12 said, hauling to landfill is the most expensive
13 alternative in almost every case. So the project is
14 very incentivised to follow alternative disposition
15 for that material.

16 And finally, I think it's important to let
17 you know that the material we are talking about here
18 is not construction waste material. It's not lumber.
19 It's not concrete. It's not steel. It's really
20 soils and clays and silts and soil material.

21 Soil material is more of a resource than it
22 is a liability project. You need that material for
23 all kinds of reasons, to embank, to create fills on
24 other projects, to be dressed up, but sometimes you
25 need to cut slopes, you need to add material so that

1 the landscaping has something to hold onto.

2 So that material is really an asset, and as
3 such, the marketplace will react to it and address it
4 in their bids and in the way that they treat
5 construction.

6 Q Mr. Wilhelm is available for questions.

7 CHAIRPERSON SCHEUER: Thank you very much,
8 Mr. Matsubara.

9 City and County?

10 MR. PANG: City has no questions for this
11 witness.

12 CHAIRPERSON SCHEUER: Office of Planning,
13 Ms. Apuna.

14 MS. APUNA: No questions. Thank you.

15 CHAIRPERSON SCHEUER: Intervenor Hui O
16 Pikoiloa.

17 MR. YOSHIMORI: I just have a couple of
18 questions.

19 CROSS-EXAMINATION

20 BY MR. YOSHIMORI:

21 Q The first one is you had testified that
22 there is steps required for construction before
23 construction can begin, and that post LUC approval,
24 if granted, that it will require conducting detailed
25 design and grading plans and getting other permits,

1 like you mentioned NPDS, I think I got that correct.
2 And also having it reviewed, a review process by the
3 City for the grading permits.

4 In your estimation, how long do you think
5 that process would take before development can begin?

6 A I have seen permit reviews take as little
7 as a few months, and I have seen permit reviews take
8 years.

9 So a lot of it depends on the details of
10 the project, the nature of the work, the amount of
11 complexity in the work. And so it ranges a fair
12 amount.

13 Q Do you have an idea of how long this one
14 would take?

15 A The permitting process is done before
16 contractors and construction people like myself get
17 involved. So our design engineer is likely a better
18 person to answer that question.

19 Q I don't know if you can answer this one.

20 Susan Burr from AECOS had testified with
21 regards to a Clean Water Act, that she had testified
22 that this area is jurisdictional waters, and that a
23 more formal survey would be prepared for submission
24 to the U.S. Army Corps of Engineers for review and
25 jurisdictional determination, unquote.

1 And also, quote: Department of Army permit
2 for the USACE would be obtained for grading plans
3 altering the Lipalu Channel. Do you know how long
4 that process would take?

5 A That's another one of those permit
6 processes that typically occur before a contractor or
7 construction manager arrives to do their work. So
8 there's probably a better person to answer that
9 question.

10 Q Thank you for answering my questions.
11 That's all the questions.

12 CHAIRPERSON SCHEUER: Commissioners,
13 questions for the witness?

14 Commissioner Okuda.

15 COMMISSIONER OKUDA: Thank you very much,
16 Mr. Chair. And thank you Mr. Wilhelm for your
17 testimony. And thank you for your service as a
18 trustee of KSBE also.

19 Do you consider being a trustee part of
20 your wide range of experience in the construction
21 industry, correct?

22 THE WITNESS: I like to think about the
23 various hats I wear as trustee of Kamehameha and
24 Hawaii Pacific University and Hawaii Pacific Academy,
25 I like to think that I do all that work with the same

1 overall purpose, which is to try to make Hawaii a
2 better place just a little bit in the small time that
3 I have to make a difference.

4 So in that sense, I think it's all related.
5 I don't know if that answers your question. I try do
6 the best I can.

7 COMMISSIONER OKUDA: And I think everybody
8 agree that you've done more than just a little bit to
9 make Hawaii better.

10 Can I ask you this just so that I can try
11 to get some context.

12 The EIS stated, and some other reports
13 stated that little bit over 57,000 cubic yards of
14 material will be removed from the site.

15 Have you ever been involved in any of your
16 different capacities in a project where a little bit
17 over 57,000 cubic yards of material have been
18 removed?

19 THE WITNESS: I don't know the exact
20 quantity, but I had the good fortune of working on
21 some of the H-3 project specifically in the Haiku
22 side of H-3 Freeway.

23 I don't know if you are familiar with
24 Hospital Rock hano (phonetic), that's really short,
25 hanos as you go up a steep freeway.

1 In order to build those tunnels, what we
2 did is we actually moved the mountain. We built the
3 tunnels and then we put the mountain back. So we
4 included a lot of material at that time. It was much
5 under demand.

6 COMMISSIONER OKUDA: I am familiar with
7 that project. As a very much younger person, I was
8 actually attending Windward Community College at the
9 time, and I thought the work was pretty impressive.

10 Was 57,000 cubic yards of material removed
11 from the site, or was it just some of it removed
12 temporarily and then replaced after the tunnel
13 structure was built?

14 THE WITNESS: I would be lying if I knew
15 how much material was there. I can tell you most of
16 the material was moved off-site. We did embank some
17 material because it comes off that tunnel and goes
18 down to a cut situation, so we did embank some of it,
19 but we hauled some of it off.

20 COMMISSIONER OKUDA: The hospital rock
21 tunnels above Windward Community College and State
22 hospital, have you been involved in other any
23 project, whether over 57,000 cubic yards material
24 have been removed or disposed of or embanked or put
25 somewhere else?

1 THE WITNESS: Honestly, I cannot tell you
2 the quantity of material. I will give you one
3 example.

4 We moved a fair amount of material, and I
5 don't know the quantity, again. If you're familiar
6 with the Ewa plain, I had the good fortune of working
7 on the project where we built the Ewa Beach golf
8 course, the international golf course, and Hawaii
9 Prince golf course at the same time, and essentially
10 we had to move material from one project to the
11 other, because one was an export job, and the other
12 one was an import job.

13 So we did move a fair amount of material
14 from one project to another there.

15 COMMISSIONER OKUDA: Can you give an
16 estimate of how much material was moved from one site
17 to another site in that project?

18 THE WITNESS: I really can't. I know it
19 was several thousand yards, but I would be lying if I
20 said I knew the exact amount.

21 COMMISSIONER OKUDA: I know that I may be
22 asking a little bit of a crystal ball question, but
23 are you able -- and if you can't give an opinion,
24 that's fine -- but are you able to give an opinion on
25 what percentage of the 57,000 cubic yards of

1 materials will in fact go to other projects and not
2 have to be disposed of, for example, at the PVT
3 landfill? If you can't give an opinion, that's okay
4 too.

5 THE WITNESS: I think it would be unfair
6 and speculative at this point to answer that
7 question. It's just too -- it is a crystal ball
8 question. My crystal ball is not that good.

9 COMMISSIONER OKUDA: Is there any data
10 source or document or study from anyone that you're
11 aware of which compiles potential projects on Oahu
12 going into the future as far as determining how much
13 fill or materials which could come from the HMP
14 expansion site, you know, how many projects there are
15 in the pipeline right now, or conceived to be thrown
16 into the pipeline, and how much material each of
17 these project would take?

18 THE WITNESS: I wish there were, because it
19 would be an awesome resource to have available, not
20 just for this project, but for all projects if that
21 were the case.

22 There is no central clearinghouse for that
23 kind of information that I'm aware of. The good news
24 for us in Hawaii is a relatively small community of
25 builders and a relatively small community of eligible

1 haul truckers. And so the material that moves from
2 one project to the other has to be put into a legal
3 haul truck. There aren't 15 companies that do that.
4 There's maybe five or six. And because they're in
5 the business of moving material around Oahu, they
6 tend to know all the projects in advance. That's
7 their business to know that.

8 And so maybe kind of sort of the de facto
9 clearinghouse of information for contractors and
10 owners and others. They know well what projects are
11 coming in. That's their business to know that.

12 COMMISSIONER OKUDA: Because some of these
13 issues or things are in the future and none of us
14 have a crystal ball, are you able to give us an
15 opinion based on your experience and education that
16 in fact the PVT landfill will take no materials from
17 the HMP expansion project?

18 THE WITNESS: I think that's asking
19 essentially the same question again. I can't really
20 predict that. I can tell you by and large the
21 contractors who will bid on this project will try to
22 find the lowest cost alternatives. This is what
23 contractors do. It's the typical low bid scenario,
24 and so because PVT is not the lowest cost solution,
25 the contractors are going do their utmost to find

1 other ways to dispose of that material.

2 COMMISSIONER OKUDA: If it turns out there
3 are no other ways of disposing of the materials,
4 those materials may go to the PVT landfill, correct?

5 THE WITNESS: If there were no other
6 locations for the materials, it would have to find
7 its way to a landfill like PVT.

8 COMMISSIONER OKUDA: Besides the PVT
9 landfill, what other landfills on the Island of Oahu
10 could accept materials that are excavated and removed
11 from the HMP expansion site?

12 THE WITNESS: I don't know of any other
13 landfills. I do know there are occasions where
14 quarries like Kapaa Quarry, or Grace Pacific Quarry
15 in Makakilo, because they're quarrying out aggregate
16 materials, occasionally need earth fill material as a
17 way to buttress their work and refill some of their
18 quarry areas, so they have on occasions in the past
19 taken soil materials as well.

20 COMMISSIONER OKUDA: Do you have an opinion
21 on how much cubic yards of materials those types of
22 installations or quarries could take or would take
23 from the project at HMP?

24 THE WITNESS: It's really a timing question
25 you're asking, because it really depends on what they

1 need at that moment. It can vary widely. So I
2 actually do not have an opinion on that.

3 COMMISSIONER OKUDA: If the PVT landfill
4 becomes full, or for whatever reason, maybe, maybe
5 not including because of materials from the Hawaiian
6 Memorial Park expansion site, and there is no other
7 type of landfill like PVT approved for the Island of
8 Oahu, what would the effect be on local construction?

9 THE WITNESS: If there was no PVT landfill,
10 what would be the impact on Hawaii construction?

11 COMMISSIONER OKUDA: Specifically
12 construction on Oahu.

13 THE WITNESS: The PVT landfill is used for
14 a wide variety of things, including recycling and
15 other construction materials, concrete. They crush
16 aggregate materials. They repurpose metals for
17 recycling. They do a lot of things for the
18 construction industry generally, and a facility like
19 that, I think, is important for Hawaii and our
20 construction industry.

21 So I don't think they don't go away anytime
22 soon. But I think the industry needs an operation
23 like that.

24 COMMISSIONER OKUDA: Because if there
25 wasn't an operation like PVT, there is a substantial

1 risk that local construction may stop, correct?

2 THE WITNESS: I find it hard to believe
3 local construction would just stop. It would be
4 extraordinarily expensive to move materials to
5 another location or put it on a barge. Or you would
6 have to -- someone will have to try to open a new
7 landfill. I don't know.

8 I'm waxing speculative here. But I think
9 construction would be -- it would be devastating for
10 Hawaii's economy for construction to stop all
11 together. I believe as a community we got to find a
12 way to keep working.

13 COMMISSIONER OKUDA: Thank you very much,
14 Mr. Chair. And thank you, Mr. Wilhelm, for your
15 testimony, but more importantly, thank you for your
16 service to the community.

17 THE WITNESS: Thank you.

18 CHAIRPERSON SCHEUER: Thank you,
19 Commissioner Okuda.

20 Commissioner Chang.

21 COMMISSIONER CHANG: Aloha, Lance. Good to
22 see you.

23 THE WITNESS: Aloha, Dawn. How are you?

24 COMMISSIONER CHANG: Very good. Thank you
25 for being here today.

1 I just have one question to ask you. In
2 light of the line of questioning by Commissioner
3 Okuda, you said your testimony was that it's very
4 speculative to know what the future potential
5 projects, development projects could take the spoil
6 material.

7 So based upon your expertise, and in your
8 opinion, is it reasonable for the Land Use Commission
9 to include as a condition of any land use approval,
10 that Hawaiian Memorial Park exhaust all alternative
11 measures to dispose of the soil material before going
12 to PVT?

13 Is that a reasonable Land Use condition?

14 THE WITNESS: My personal opinion is I
15 think that will occur naturally, whether it's a
16 condition placed on it by LUC or not, because the
17 marketplace will tell us what is the most efficient
18 way to address that material. And the marketplace
19 will look for every alternative to utilize that
20 material before taking it to PVT. So I think
21 naturally that will occur.

22 COMMISSIONER CHANG: I suspect you're
23 correct, because of your own experience, but because
24 we have got potential -- I won't say inconsistent
25 testimony by the various expert witnesses for this

1 project, one who's at the EIS stage that says the
2 material will go to PVT. Then people in the industry
3 like yourself, who are saying, very unlikely, that
4 that material is going to go to another development
5 first, rather than relying on the market.

6 Is it reasonable to include that as a
7 condition that we want the owner, the contractor, and
8 it sounds like it's in their best interest, to
9 exhaust all other alternatives to dispose of the soil
10 material before going to PVT?

11 THE WITNESS: In terms of conditions you as
12 a Commission want to employ here, I think maybe our
13 civil engineer may be best able to answer that
14 question, because they're more in tune with the
15 timing and the requirements and the soils, et cetera.

16 I will say my general feeling here, and
17 it's not specific to this case or these issues, in
18 this case or this issue is that our --
19 (indecipherable) -- marketplace is quite efficient in
20 that it is really, in my honest personal opinion,
21 unnecessary to place such conditions on there,
22 because the marketplace will address it.

23 The owner here cannot move that material
24 without a licensed contractor. Those licensed
25 contractors can't embank material without permitted

1 projects elsewhere. So all of that will take place.
2 That's my personal opinion. I don't personally -- I
3 don't think it's necessary.

4 COMMISSIONER CHANG: Thank you so much. I
5 have no other questions, Mr. Chair.

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

8 Commissioner Cabral.

9 VICE CHAIR CABRAL: Thank you for all this
10 information. I'm a cowgirl at heart, and I just have
11 a question, because we have done it elsewhere, and I
12 don't know whether anyone on Oahu does it and maybe
13 there is laws or rules to prohibit it, which would
14 be, in my opinion, silly.

15 But when you're grazing cattle or horses,
16 you want more surface space, so we've done it where
17 we have had people that take it, and they'll take it
18 not to fill a space, but to create a buffer, a hill
19 or something, because you can take five acres and
20 create it into five flat acres, and you give it
21 enough rolling hills, you've given it bumps and rolls
22 and stuff, and now you can create more surface space
23 for grass to grow, and for your animals to graze.

24 So I don't know whether you've ever heard
25 of that or that's certainly low tech, but I have

1 friends up Waianae area that would probably be more
2 than happy to take that be soil from you.

3 Have you ever heard of that before? Is it
4 professional?

5 THE WITNESS: I got to be honest. I spend
6 most of my life making rolling hills flat. So I'm
7 not familiar with that concept.

8 VICE CHAIR CABRAL: Well, think of it now,
9 so there is a second way to go with all that filler.
10 You don't want it to go to the dump.

11 CHAIRPERSON SCHEUER: Thank you,
12 Commissioner Cabral.

13 Commissioners, is there anything further
14 for the witness? Commissioner Aczon.

15 VICE CHAIR ACZON: Aloha, Lance.

16 THE WITNESS: Aloha.

17 VICE CHAIR ACZON: You saying that before
18 this project comes to start, there are several permit
19 process and several agencies the contractor has to go
20 through before they can start this construction.

21 So maybe you can walk us through on a
22 construction process to answer some of the community
23 concerns about traffic and also the noise.

24 There was some kind of discussion about
25 seeing 100 trucks on the road coming from this

1 project at any given time of the day.

2 Kind of walk us through on how construction
3 project does this, because I know there is a
4 limitation on how many trucks or, you know, trucking
5 company has only certain amount of trucks available,
6 and maybe one truck goes to the project five to six
7 times a day, so it's not -- you're not seeing 100
8 trucks lining up on the street.

9 Secondly is concern about noise, about the
10 neighborhood, neighborhood complaints about noise.
11 As a contractor or developer, how do you address, you
12 know, issues, so that only the noise or any ongoing
13 on construction site.

14 Can you kind of walk us through on a
15 construction process, how you guys do the
16 construction to kind of answer or, you know,
17 alleviate community concerns?

18 THE WITNESS: So specific to the permit
19 requirements, you know, our civil engineer would have
20 a better answer for the specific types of permits
21 that are required and the level of detail contained
22 in those permits.

23 They often will include the requirement to
24 install measures such as silt fences, such as dust
25 barriers, such as water. How much water to spray on

1 open fills so that, you know, you mitigate dust.

2 All of those things tend to be incorporated
3 into your final design and into your permit process.

4 I would like to answer specifically your
5 question about the 100 trucks and having like a
6 constant flow of semi legal haul trucks coming out of
7 the site.

8 The control factor of the excavation
9 project like this is almost always driven by how
10 quickly the material can be embanked at the fill
11 site, not how fast you can dig it out of the fill
12 site.

13 So because whenever the material goes, it
14 takes time to embank soil material. You can't just
15 dump it and then it's fine. It has to be graded into
16 place. It has to be compacted with a soil compactor.
17 It also has to be moisture condition. And so this
18 treatment on the fill side that really dictates the
19 speed with which you can take material.

20 And because of the way -- you can almost
21 always cut faster than you can fill. The fill ends
22 up driving the schedule. So there's no way I can
23 imagine that a job can take fast material fast enough
24 that would dictate having the scenario you described
25 just like trucks rolling, even if you could get at

1 all the trucks as you described, there aren't that
2 many of them. The whole industry only has so many
3 legal haul trucks on the Island of Oahu. And this
4 project, as good as it is, is not going to get every
5 legal haul truck assigned to it by the trucking
6 company. So that's just not feasible.

7 CHAIRPERSON SCHEUER: Commissioner Aczon,
8 you are muted.

9 VICE CHAIR ACZON: Also mention of the
10 equipment on the job site running, for example, if
11 during the heavy equipment on the job site is it
12 necessarily the ten equipment running at the same
13 time all the time?

14 THE WITNESS: Again, I really have faith
15 and trust in the efficiency of the contractor. The
16 contractor will only bring enough material to do the
17 work that is necessary.

18 Having excess material, excess equipment on
19 the site doesn't make money, it's not cost effective
20 so they'll bring the equipment they need.

21 The nature of the design will determine
22 what kinds and what quantities of what equipment you
23 see. Deeper, steeper cuts require certain piece of
24 equipment. Shallow work, bigger areas require
25 different piece of equipment.

1 All of that will be determined by the
2 design, and then the contractors will interpret that
3 and then bring the least amount of equipment to run
4 the least amount of diesel possible to move the
5 material as required.

6 VICE CHAIR ACZON: One last question about
7 the noise.

8 Who regulates, if there is a complaint, who
9 regulates that?

10 THE WITNESS: Department of Health. And
11 contractors can seek noise permits if they so desire,
12 or they have to otherwise operate within the
13 regulatory limits.

14 VICE CHAIR ACZON: Is there a maximum noise
15 level on that permit.

16 THE WITNESS: There are requirements and
17 regulations and other consultants besides me who are
18 probably better situated to answer that. I'm really
19 just a dirt working guy.

20 VICE CHAIR ACZON: The dirt guy. Thank you
21 very much, Mr. Wilhelm. Thank you very much, Mr.
22 Chair. That's all I have.

23 CHAIRPERSON SCHEUER: Commissioner Wong --
24 thank you very much, Commissioner Aczon.

25 COMMISSIONER WONG: You know, I'm going to

1 say you are not just a dirt moving guy. But I'm
2 going back to your old life when you were in
3 construction. You used to do estimations?

4 THE WITNESS: Yes.

5 COMMISSIONER WONG: So most contractors who
6 look for -- most will bid to make money and not to
7 spend over. They don't want to change orders or
8 anything; is that correct?

9 THE WITNESS: That's correct.

10 COMMISSIONER WONG: So as you stated, when
11 they cut out that mountain and got all that fill,
12 they're going to try to sell it to make money too; is
13 that correct?

14 THE WITNESS: If they can find a buyer.

15 COMMISSIONER WONG: We don't know if
16 anything is going or some -- because they're going to
17 try to make money, correct?

18 THE WITNESS: That's generally what most
19 for-profit industries do.

20 COMMISSIONER WONG: So I'm just going to
21 leave it at that, that most contractors will not try
22 to dump it in a dump or disposal facility, but rather
23 make money by selling good fill?

24 THE WITNESS: In a low bid environment,
25 obviously, every contractor is trying to get to the

1 lowest reasonable price so that they can do the work,
2 so that they can win the work. So the competition in
3 the marketplace is what helps.

4 I do want to take exception to the fact you
5 said I never bought you lunch. I'm pretty sure I got
6 you lunch at some point.

7 COMMISSIONER WONG: That would be ten years
8 ago at best.

9 THE WITNESS: It is. But for the record, I
10 bought you lunch.

11 COMMISSIONER WONG: Thank you, Lance.
12 Thank you, Chair.

13 CHAIRPERSON SCHEUER: Thank you very much,
14 Commissioner Wong.

15 Commissioner Okuda.

16 COMMISSIONER OKUDA: Thank you, Mr. Chair.

17 A followup question, Mr. Wilhelm, about
18 your testimony about the fill driving the amount of
19 excavation.

20 Do you have an opinion on what the amount
21 of time or timeframe, a general timeframe that it
22 would take if none of the fill was going into the PVT
23 landfill, and the contractors were hauling it off to
24 some other location?

25 I mean, what would you think the amount of

1 time it would be, taking all factors into
2 consideration, to dispose of the 57,000-plus cubic
3 yards of material?

4 THE WITNESS: Yeah, that's -- I'm going to
5 say that's a pretty hard question to answer, because
6 you don't know -- I don't know, as I sit here today,
7 when that many material would be best suited to haul
8 off.

9 So, for example, there is going to be some
10 material that you take from a cut to a fill on-site,
11 and there's going to be some material you haul away.
12 When you do which operation is a function of the
13 design. It's a function of the efficiency of the
14 operation. It's a function of other work. So many
15 factors.

16 So I cannot really tell you how long it
17 would take because there's not enough detail in the
18 design. And to some degree, it becomes a question of
19 contractor's means and methods. And their own
20 operation would dictate some of that. So I'm sorry,
21 can't really answer that.

22 COMMISSIONER OKUDA: Maybe I can try to
23 give a little clarification.

24 The 57,000-plus cubic yards is the net that
25 has to be removed from the site because there was

1 certain amount, 470,000-plus cubic yards of
2 excavation, and then an estimate of about 413,000
3 cubic yards of fill, so we're talking about the
4 balance.

5 Would you be able to give a range, based
6 your experience, on how long you think it would take
7 to basically find and dispose of that difference in
8 materials, the 57,000-plus cubic yards of material in
9 some site other than the PVT landfill?

10 THE WITNESS: Maybe I didn't answer that
11 very well. So here's a challenge. It's not going to
12 be the case where a contractor removes all of the
13 material that was down site first, and then haul away
14 all the other material. That won't happen.

15 Neither will it be the case that the
16 contractor first hauls off all the spoils and then
17 (indecipherable) -- everything offsite. I can tell
18 you that won't happen, because that's not physically
19 possible usually.

20 So what will likely happen is that the
21 contractor may haul some material away for a period
22 of time. Say they have a certain quantity going to a
23 certain location for a two-week period. Then they're
24 going to do work on-site and no haul-off would happen
25 for a period of time. And then haul-off will happen

1 again, and then no in haul-off will happen for a
2 period of time.

3 That can last the whole duration of the
4 project. It just really depends on where the cut is,
5 how steep, how deep, the kinds of materials you're
6 encountering, et cetera. So it's just really hard at
7 this point to tell you how long it will take. It
8 requires too much speculation.

9 COMMISSIONER OKUDA: Okay. Thank you very
10 much.

11 CHAIRPERSON SCHEUER: Thank you very much,
12 Commissioner Okuda.

13 Are there further questions, Commissioners?
14 Commissioner Aczon.

15 VICE CHAIR ACZON: Just a quick followup.

16 So is it your testimony that as the
17 contractor, even if the contractor is going to send
18 excess material first to other sites than the PVT, so
19 is it your testimony that PVT is the last resort for
20 contractors to send that material?

21 THE WITNESS: I would say, because it is my
22 testimony that it's the highest cost alternative,
23 that PVT would be the likely last resort for a
24 contractor.

25 VICE CHAIR ACZON: Thank you.

1 CHAIRPERSON, SCHEUER: Thank you,
2 Commissioner Aczon.

3 Commissioners, are there further questions
4 for Mr. Wilhelm?

5 Seeing none, if I may, I have three brief
6 questions for you. Thank you for lending your
7 expertise to us today.

8 First question is, if I understand, or if
9 I'm intuiting from your testimony that the contractor
10 on-site and all the managers are going to try and
11 balance between optimally getting all the material
12 off-site, but at some point there might be a tradeoff
13 between slowing the project down, and not having a
14 place to sell the material to, and that that's how
15 this decision ultimately gets made?

16 THE WITNESS: No, I wouldn't say that. I
17 would say that the decision to haul and then stop
18 hauling, and haul and stop, it's really a function of
19 the excavation and the work.

20 So there will be times when it is optimally
21 efficient to haul materials, times where there is
22 optimally efficient to use the material onsite to go
23 to an embankment, because a site quite large and
24 moving materials around a wide area, you're going to
25 do it for optimal efficiency. You're unlikely to

1 pause because you don't have a place to put material
2 off-site. You're more likely to operate just as
3 efficiently as you can with the movement of material.

4 CHAIRPERSON SCHEUER: So help me then to
5 understand.

6 What is the point at which you -- a
7 decision would have to be made that says, we have no
8 more flexibility onsite to move material. We are
9 slowing the project down. And we don't have a place
10 to move this off-site, but paying for it. When does
11 that arise?

12 THE WITNESS: That's a real-world game time
13 decision. So you'll do that maybe a few weeks in
14 advance of an operation. Or you may choose, for
15 example, to take some excavation and go get a
16 stockpiling permit at a third location while you wait
17 for another fill site to become available, and you'll
18 price out those options, and you'll find the most
19 optimal path, and that's what you do. It's just that
20 it's often a real game time decision.

21 CHAIRPERSON SCHEUER: Following up on the
22 question of Commissioner Chang for a modification of
23 it.

24 Do you think that a condition -- there
25 is -- generally speaking, the Land Use Commission

1 asks for annual reports on compliance with
2 conditions.

3 Do you think a condition that did not
4 actually state where the landfill material should be,
5 but simply ask for reporting on where the excavating
6 material went would be a reasonable condition?

7 THE WITNESS: I think it's a reasonable
8 thing to ask for and readily available, because the
9 grading plans both for the excavation site, this site
10 here, and wherever the material is going, it also has
11 a grading plan, grading permit.

12 So there will be a record of the movement
13 of that material and where it was embanked and how
14 much and when. There will be a record of that.

15 CHAIRPERSON SCHEUER: Thank you very much
16 for your responses.

17 Is there anything further, Commissioners?
18 If not, is there any redirect, Mr. Matsubara?

19 MR. MATSUBARA: No redirect.

20 Thank you, Mr. Wilhelm.

21 CHAIRPERSON SCHEUER: Thank you, Mr.
22 Wilhelm.

23 CHAIRPERSON SCHEUER: Mr. Matsubara.

24 MR. MATSUBARA: The next witness will be
25 Robin Lim, geotechnical.

1 CHAIRPERSON SCHEUER: Is he at the same
2 location or not?

3 MR. MATSUBARA: HMP-2.

4 MS. APUNA: Chair, I was just curious in
5 how long we were going to go today, because we have
6 our witnesses, if we should have them wait or not?

7 CHAIRPERSON SCHEUER: Yes, it's not quite
8 like stockpiling materials, but there is a lot of
9 real-world decisions going on in trying to estimate
10 witness time.

11 Mr. Matsubara?

12 MR. MATSUBARA: I have two more witnesses
13 scheduled. I have Robin Lim, and after Robin Lim
14 would be Todd Beiler, acoustical engineer, based on
15 questions that arose relating to the limits of the
16 permit.

17 CHAIRPERSON SCHEUER: And then Mr. Morford?

18 MR. MATSUBARA: Mr. Morford, I thought you
19 wanted him as rebuttal, absolute end.

20 CHAIRPERSON SCHEUER: Okay. That works as
21 well. So two more. I think we have to end at around
22 4:00 o'clock today, is my understanding, so I
23 think -- I believe the City has no witnesses, if I
24 recall correctly, perhaps I --

25 MR. PANG: The City has its Acting Director

1 for Planning and Permitting. She submitted written
2 testimony and she will be available for
3 cross-examination.

4 CHAIRPERSON SCHEUER: There might be a
5 chance we get to your first witness. I'm sorry, Ms.
6 Apuna.

7 MS. APUNA: That's good. Thank you.

8 CHAIRPERSON SCHEUER: Let's see how far we
9 can go. Welcome back.

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

12 THE WITNESS: I do.

13 ROBIN LIM

14 Was recalled as a witness by and on behalf of the
15 Petitioner, was sworn to tell the truth, was examined
16 and testified as follows:

17 REDIRECT EXAMINATION

18 BY MR. MATSUBARA:

19 Q Thank you, Mr. Lim.

20 Let me go over your retention. You were
21 retained to evaluate the potential for rockfall and
22 slope stability hazards within the Petition Area,
23 were you not?

24 A Yes, I was.

25 Q And in your written testimony, marked as

1 Exhibit 34, you attached to it Exhibit 1 that
2 delineates the potential rockfall areas identified as
3 PRSA-1 and PRSA-2 in blue, PRSA-1 is in pink,
4 correct?

5 A Yes, that's correct.

6 Q We have revised that exhibit in the updated
7 exhibit we filed today, which was identified as
8 Exhibit 60, which shows the rockfall areas as well
9 the cultural preserve, to put those two areas in
10 context.

11 You're familiar with our new Exhibit 60,
12 Mr. Lim?

13 A I don't see it here, but I recall the
14 exhibit, yes.

15 Q Let me get you one. Somebody will bring
16 you one.

17 We're supposed to have a "shared screen"
18 capability on that, but we'll give you a real one.

19 A Thank you. Yes.

20 Q I would like you to look at that exhibit
21 and orient the Commissioners with the various areas
22 on the project site, and what areas have low or
23 moderate rockfall hazards and what areas are okay, if
24 you could.

25 A Yes. Can you share screens, please?

1 CHAIRPERSON SCHEUER: It's on your side.

2 THE WITNESS: All right. Obviously the
3 project site and over here is the cultural preserve
4 area (indicating). And right above that is the
5 potential rock source area for walking (indicating).

6 Q I believe the area in yellow you were
7 pointing out is the rock deposit area?

8 A That is correct, rock deposit area in
9 yellow and brown on the screen, yes.

10 And above that is the potential rock source
11 area number one, which we designated in brown or
12 pink.

13 And then the other area which is potential
14 rock source area is number two in blue on the south
15 side of the site.

16 Q Let me interrupt you a second.

17 You indicate in your written testimony on
18 page two that the area located above the cultural
19 preserve, which you identified as being in pink, may
20 pose moderate risk for potential rockfall activity;
21 is that correct?

22 A That is correct.

23 Q What led you to that opinion?

24 A That is because of the amount of rocks and
25 also the size of the boulders that we identified in

1 this rock source area above that cultural preserve.

2 Q Would you be able to tell us the
3 approximate age of the majority of the rocks in that
4 yellow area?

5 A Based on our reconnaissance that we were
6 able to identify quite a few boulders that came down
7 from the upper rock source area, and they were fairly
8 large. And it appears that the rocks that are
9 deposited in this yellow area here has been there for
10 quite awhile. Hard to give it an age, but in
11 geologic time we are talking about thousands,
12 hundreds of years to thousands of years type of
13 timeframe.

14 We did not observe anything that would be
15 considered fresh, freshly deposited, that is that we
16 can observe doing the reconnaissance in this matter.

17 Q What would be some of the characteristics
18 of the boulders that would give you an idea of how
19 long they had been there?

20 A If a boulder was freshly deposited, usually
21 you would have marks, because from the scrapes and
22 from the rolling down the hill.

23 The other thing that can -- we can tell
24 sometimes is the fresh fractures and old growth
25 around the boulders and/or on the boulders

1 themselves, which means that it's been sitting there
2 for quite awhile due to environmental conditions.

3 Q So on your reconnaissance there, you
4 determined, based on those factors, that boulders had
5 been there quite awhile?

6 A That is correct.

7 Q Now, okay page 2, you then described the
8 center portion of the cemetery expansion indicated as
9 a low to moderate potential for rockfall encroachment
10 due to the reduced number and size of existing
11 outcroppings; is that correct?

12 A That is correct.

13 The central portion of this expansion area,
14 the rock source above it is in this blue area, and
15 from what we can tell from our reconnaissance and
16 observations, the size of the rocks are smaller, and
17 generally speaking, they are fewer rock sources that
18 could fall onto the site from this blue source area
19 identified on this map.

20 Q You've also proposed in your design to have
21 a rock catchment ditch. Could you --

22 A That is correct. That's identified here in
23 this L-shaped -- (indicating)

24 Q That should further mitigate against a
25 rockfall hazard?

1 A That's correct. That effectively cuts off
2 the potential path of the rock emanating from the
3 source down toward this project site.

4 Q Now, what about the western portion of the
5 Petition Area in regard to rockfall?

6 A Right. On the western portion right next
7 to the Ocean View Garden there, I mean it's a very
8 low risk and almost negligible, because there's
9 really no rock source above it.

10 We did not identify anything above this
11 site on the western portion of the site that would
12 serve as a source of materials on rocks falling on
13 this western portion.

14 Q Page 1 of your written testimony you
15 indicate based on your evaluation of the existing
16 site conditions with respect to potential natural
17 hazard such as rockfall, slope stability, and debris
18 flow, you were asked what your opinion of suitability
19 of this site for cemetery development from a
20 geotechnical point of view would be; is that correct?

21 A That is correct.

22 Q And your response was?

23 A Definitely. I mean, it's suitable from a
24 technical point of view for development of the
25 cemetery.

1 In fact, it's suitable for any kind of
2 development, including a residential subdivision.

3 Q Thank you.

4 Mr. Lim is available for questions.

5 CHAIRPERSON SCHEUER: Thank you very much.

6 City and county?

7 Please take down your screen share.

8 MR. PANG: The city has no questions for
9 this witness. Thank you.

10 CHAIRPERSON SCHEUER: Thank you.

11 Office of Planning?

12 MS. APUNA: State has no questions. Thank
13 you.

14 CHAIRPERSON SCHEUER: Intervenors?

15 MR. YOSHIMORI: I have a couple questions.

16 RE-CROSS-EXAMINATION

17 BY MR. LIM:

18 Q First one is, I think you indicated that
19 the highest risk of rockfall is in the preservation
20 area; is that correct?

21 A Yeah, in the area that we gathered, that
22 would be the highest.

23 Q And in your written testimony I think on
24 page 3 you said that 86 percent of the simulated
25 rockfalls would pass into the preservation area.

1 Did I get that number right?

2 A That's correct, yes.

3 Q And I think in the last hearing, I guess in
4 January, I think you stated that the mitigation for
5 the preservation area rockfall was to put up signs
6 indicating and warning of rockfall hazards.

7 Was that the proposed mitigation?

8 A Yes, given the usage of that area and lack
9 of people, humans traversing the area, we felt that
10 we did not need to do much other than keeping it --
11 you know, advising people who need to get into this
12 area that there's a potential risk associated with
13 the entry, and that's it. Yes.

14 Q Thank you. Those are all the question I
15 have. Thank you.

16 CHAIRPERSON SCHEUER: Thank you, Mr.
17 Yoshimori.

18 Commissioners? Commissioner Okuda.

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

21 Mr. Lim, since the last hearing you
22 testified in, which was in January of this year, did
23 you have a chance to review the transcript of your
24 testimony?

25 THE WITNESS: Yes, I did have a chance to

1 review it.

2 COMMISSIONER OKUDA: When did you review
3 the transcript of your testimony?

4 THE WITNESS: A few days ago.

5 COMMISSIONER OKUDA: When you reviewed the
6 transcript of your testimony from the last hearing,
7 which you gave under oath, did you believe when you
8 reviewed it a few days ago that any of your testimony
9 that you gave was erroneous or inaccurate?

10 THE WITNESS: Nothing too erroneous, but
11 maybe certain things could be taken out of context,
12 and wanted a chance to clarify if there's any other
13 questions.

14 COMMISSIONER OKUDA: I appreciate that.

15 As you sit here today, do you believe that
16 any of your testimony that you gave at the last
17 hearing in January under oath was erroneous or
18 misleading in any way?

19 THE WITNESS: Other than the fact that,
20 one, I wanted to clarify the fact that whatever is
21 proposed in terms of the Petition, we're not making
22 anything worse than what it is today, and whatever
23 the proposal to include, such as the rockfall
24 catchment ditch, is really to improve the situation
25 and make it even better than what the existing

1 conditions are today. I think that's the main point.

2 COMMISSIONER OKUDA: And as you sit here
3 today, you don't feel like you have to change any of
4 your prior testimony, is that a fair statement?

5 THE WITNESS: I think that's fair.

6 COMMISSIONER OKUDA: Thank you very much,
7 Mr. Lim.

8 Thank you, Mr. Chair. No further
9 questions.

10 CHAIRPERSON SCHEUER: Thank you.

11 Commissioner Chang.

12 COMMISSIONER CHANG: Hi, Mr. Lim. Thank
13 you for coming back. I just have a few questions.

14 Based upon your testimony today, are you
15 saying the area by the cultural preserve is stable,
16 because you said you haven't seen any indication of
17 rock movement, so are you saying that the area is
18 stable?

19 THE WITNESS: We haven't seen any recent
20 rockfall events, and we haven't heard of anything
21 reported.

22 However, there is evidence in historical
23 times, I mean both geologic historical times and
24 current, that boulders have fallen from the rock
25 source area above.

1 So from that point of view, we are
2 classifying that as a low to moderate risk.

3 COMMISSIONER CHANG: And I'm looking more
4 at your FEIS. You made certain assumptions about the
5 use of the cultural preserve area. And you made
6 assumptions that it was going to be used primarily
7 for the daylight hours. And can I ask you where did
8 you get these assumptions from?

9 THE WITNESS: Maybe -- I'm not sure if I
10 made that assumption that it's only used in daylight
11 hours. I think what I was intending to say was that
12 it's limited use, meaning it's not for every day
13 usage, and it's not on a consistent basis like a
14 road, I think, was the thought process behind it.

15 If that is helpful in my clarification, I
16 would like to do that.

17 COMMISSIONER CHANG: And where did you
18 get -- what's the basis of you drawing that
19 conclusion? Did someone tell you that's how that
20 cultural preserve would be used?

21 THE WITNESS: Yes, I believe that it is
22 supposed to be a controlled environment or controlled
23 access. And from that point of view, it is limited.

24 COMMISSIONER CHANG: Controlled access.
25 It's my understanding from previous testimony, and I

1 don't know if you were listening, but the management
2 of the cultural preserve would be left to the
3 cultural preserve manager. And at this time they're
4 looking at Koolaupoko Hawaiian Civic Club.

5 If the Hawaiian civic club chooses it to be
6 a more active site, for example, they take tour --
7 not tours -- they take classes up there. They
8 conduct cultural classes up there. They plan on
9 doing more active planting. Would your conclusion
10 change as to the mitigation measures?

11 THE WITNESS: I think that question would
12 depend on how many people would need to traverse
13 there on a weekly basis or on a monthly basis.

14 If it is something that I would say less
15 than a few hundred people in a day traversing that
16 area, I would think that's still considered limited
17 usage.

18 COMMISSIONER CHANG: We also had a lot of
19 testimony that the actual agreement is to -- because
20 we haven't approved or taken action on the LUC
21 Petition -- so normally in your practice is your
22 practice to go on the more conservative, to use a
23 more conservative projection, or to use a more
24 liberal projection?

25 THE WITNESS: Well, I'm an engineer by

1 training, so people tend to say that engineers are
2 more conservative. So from that point of view, one
3 can say that we can be conservative in our
4 estimation.

5 COMMISSIONER CHANG: If the Hawaiian civic
6 club decided to make this a much, much more active
7 cultural preserve area, because there's a lot of
8 really good cultural resources there, would your
9 mitigation measure, which is only signage, be
10 different?

11 THE WITNESS: I would have to know a little
12 more about the number of uses.

13 COMMISSIONER CHANG: Several hundred
14 people.

15 THE WITNESS: Is it several hundred people
16 a day?

17 COMMISSIONER CHANG: Yes. Let's say
18 several hundred people a day. I don't know, it's too
19 speculative to know at this time what they will use
20 it for. But I tend to, when managing risk, I tend to
21 look at it in the broadest sense, rather than being
22 conservative, being extremely broad, just in case you
23 never know what could happen.

24 THE WITNESS: Correct. The way that I
25 equated this was more like a typical roadway. Like I

1 think I explained in my previous testimony about the
2 rockfall hazard rating system, which is normally used
3 in a roadway. That's based on thousands of vehicles
4 per day. And I think I did not envision the usage of
5 the cultural preserve area to be like a roadway with
6 a thousand vehicles passing through every day.

7 COMMISSIONER CHANG: And I don't know what
8 the use would be, but I'm assuming. I think it's
9 fair to say there could be young people, there could
10 be old people, there could be children. We don't
11 know. They could require a very large work day to
12 clean the heiau.

13 But I guess my only point is, at what point
14 in time would you change your mitigation measure to
15 only signage? What would be the next mitigation
16 measure above signage? Because you said this is a
17 moderately potential for dangerous rockfall activity.

18 THE WITNESS: I think you will look at the
19 areas of concern where the traversing areas might be.
20 And at some point along that site, it might be
21 appropriate to have a fence, or something of that
22 nature, up or in a more traversed areas.

23 But until the specific areas are made
24 known, it would be hard to say so at this point.

25 If we know exactly where the areas are,

1 then we can definitely come up with mitigation.

2 COMMISSIONER CHANG: Normally your
3 recommendation for mitigation when an area has been
4 identified as moderate potential for dangerous
5 rockfall activity, is that normally your mitigation
6 measures, signage?

7 THE WITNESS: It all depends on the usage.
8 It is not just a matter of having the risk. The
9 other aspect of it is what is the usage and how
10 frequently. So all of those things come into play in
11 the final decision on mitigation measures.

12 COMMISSIONER CHANG: Let me ask you one
13 final question, Mr. Lim, because you are an expert in
14 rockfall mitigation and rockfall.

15 Would it be a reasonable Land Use
16 Commission condition, given the uncertainties of the
17 proposed use, the level of activity, the type of use,
18 but the fact that it will be used, it's not going to
19 be a natural preserve, it will be used, is it a
20 reasonable condition by Land Use Commission to
21 require that there be liability insurance for anybody
22 to project, for example, the cultural preserve
23 manager?

24 Is liability insurance from rockfalls, is
25 that a reasonable condition?

1 THE WITNESS: I'm not familiar with that or
2 the liability insurance for users.

3 COMMISSIONER CHANG: Not users. I should
4 clarify. For the manager of the cultural preserve,
5 because there will be a manager like Koolaupoko
6 Hawaiian Civic Club.

7 So is it reasonable that they would get
8 liability insurance?

9 THE WITNESS: I think that's something
10 that's outside my area. I mean as a rockfall, we are
11 more interested in sources and protection, and at
12 what level it needs mitigation.

13 COMMISSIONER CHANG: Okay. Thank you.

14 I have no other questions, Mr. Chair.

15 CHAIRPERSON SCHEUER: Thank you,
16 Commissioner Chang.

17 Commissioner Wong and Commissioner Okuda.
18 My intention is to then have redirect, do that, then
19 take a break for ten minutes, and then continue
20 through to 4:00 o'clock.

21 Commissioner Wong.

22 COMMISSIONER WONG: Thank you, Chair.

23 Question, Mr. Lim.

24 Does rockfall mitigation come under any
25 permits that the contractor has to do, or the owner

1 has to do, that you know of?

2 THE WITNESS: Usually falls under the
3 grading permit.

4 COMMISSIONER WONG: So it will come up at
5 the end after everything is done after we approve or
6 disapprove this, correct?

7 THE WITNESS: That's correct. I think
8 there is another level at the point of applying for
9 the grading permit and doing the slope conditions on
10 here. There will be a study necessary in support of
11 the grading permit application.

12 COMMISSIONER WONG: Okay. So I just wanted
13 to know that there is another level that has to go
14 through besides us. That's all. Thank you.

15 CHAIRPERSON SCHEUER: Commissioner Okuda.

16 COMMISSIONER OKUDA: Thank you, Mr. Chair.

17 Mr. Lim, if there is no grading that's
18 going to take place in the cultural preserve, there
19 will be no grading permit application, correct?

20 THE WITNESS: Specifically for the preserve
21 preservation area, yes, that is correct. If you
22 don't have -- the grading permit won't be covered for
23 that area.

24 COMMISSIONER OKUDA: I can have a follow up
25 question to the line of questions that Commissioner

1 Chang was asking.

2 Is there anything physically on the ground
3 on the ridgeline above the cultural preserve that
4 would prevent or preclude the landowner from
5 constructing the same type of rockfall mitigation
6 measures that the landowner has stated in the Final
7 EIS will be constructed above the expanded cemetery
8 site?

9 THE WITNESS: I need to better understand
10 your question in terms of location. Can you repeat
11 that?

12 COMMISSIONER OKUDA: Yeah.

13 Above the expanded Hawaiian Memorial Park
14 expansion site, you had recommended rockfall
15 mitigation measures; correct?

16 THE WITNESS: Right.

17 COMMISSIONER OKUDA: And these mitigation
18 measures included trenching, fencing in general;
19 correct?

20 THE WITNESS: Correct.

21 COMMISSIONER OKUDA: Is there anything on
22 the site which would prevent the extension of such
23 mitigation measures to also be installed or
24 constructed above the cultural preserve so that the
25 cultural preserve will enjoy the same type of

1 mitigation or protection against rockfall?

2 THE WITNESS: I think the only thing I can
3 think of that might preclude it is the fact that it
4 is Conservation District and, therefore, technically
5 you cannot erect anything in there at this point in
6 time.

7 COMMISSIONER OKUDA: Well, your client is
8 asking us to change the boundary designation to
9 Urban. So my conclusion is that shouldn't be a
10 problem, so aside from that explanation, which might
11 be correct or not, is there any other reason where
12 the same type of rockfall mitigation, that is
13 intended to be constructed above the expanded
14 cemetery site, cannot be similarly constructed above
15 the cultural preserve?

16 THE WITNESS: I think things can be
17 constructed in that area to help mitigate rockfall,
18 yes. Things can be done, yes.

19 COMMISSIONER OKUDA: Thank you, Mr. Chair.
20 No further questions.

21 CHAIRPERSON SCHEUER: Thank you.

22 Anything further, Commissioners? Seeing
23 none, any redirect?

24 MR. MATSUBARA: Yes, Mr. Chair.

25 REDIRECT EXAMINATION

1 BY MR. MATSUBARA:

2 Q Mr. Lim, you've had discussions with the
3 cultural expert, Dr. Watson, in regard to the
4 cultural preserve and measures that would be
5 undertaken in regard to the use of that area?

6 A Yes, I did speak to Dr. Watson, yes.

7 Q Now, in terms of your discussion, if we
8 could review Exhibit 60 which sketches the area of
9 the rockfall area, the rock deposit area on the
10 bottom that's in yellow, and the heiau in the left
11 corner of the preserve that's in gray.

12 Was there discussion as to the extent that
13 boulders would fall or roll as opposed to hitting
14 people on the head, as one question was phrased?

15 A Right. I mean, given the size of the
16 boulders that we observed, it is unlikely that it
17 would be flying through the air and hitting somebody
18 on the head in that manner. The more probable way
19 that the boulders would be, it would be rolling on
20 the ground and down the hill, and eventually stopping
21 in this yellow area.

22 Q Did you have discussion with Dr. Watson
23 regarding the management of that cultural preserve
24 and the areas individuals would be permitted to visit
25 or go beyond, and under what conditions?

1 A Yes, my understanding is that it will be
2 fairly controlled access, and limited usage from that
3 point of view.

4 And maybe 20 people, 10, 20 people a month
5 type of usage is my understanding. But even if it
6 was a few hundred people in a month, it still would
7 be considered limited usage from my point of view.

8 Q Is it your understanding that these
9 individuals would be asked the purpose of going
10 beyond the yellow area, and in regards to any
11 preservation activities that they may want to
12 undertake?

13 A Yes. My understanding is that any
14 respective users of this area would be asked what
15 they were doing. And, again, very limited usage or
16 access into this area.

17 Q If it was for customary cultural purposes,
18 that would be permitted, but otherwise, there would
19 be some limitations as you understand it?

20 A That is correct.

21 Q Now, so the area to the left of that yellow
22 rock pile area, is that subject to a high degree of
23 rockfall?

24 A Sorry, what was that again?

25 Q The area to the left on Exhibit 60 of the

1 yellow designated on the left called "debris area",
2 it's not likely to have any hazard in that area,
3 correct?

4 A Correct. I think everything below the
5 yellow zone that is shown on this map, the risk of
6 rockfall is, landing in this area, is relatively low.

7 When I said "moderate" it was intended to
8 indicate this yellow designated area here
9 (indicating) on this map.

10 CHAIRPERSON SCHEUER: Do you have much
11 more, Mr. Matsubara?

12 MR. MATSUBARA: Just one more area I wanted
13 to touch on.

14 CHAIRPERSON SCHEUER: We have been going an
15 hour.

16 MR. MATSUBARA: No more than five minutes.

17 Q Now, in January you asked a question that
18 whether or not you are contemplating that it's
19 foreseeable that people could be going into the
20 expanded cemetery area to visit their loved ones and
21 they might be fatally injured or seriously injured by
22 doing so. You were asked that, and you were saying
23 there were no guarantees.

24 But in terms of the use of the word
25 "foreseeable", and in terms of the area the question

1 was talking about, which was described as the
2 expanded cemetery area, let me ask you these
3 questions.

4 Does the expanded cemetery area pose a high
5 risk at all?

6 A The expanded cemetery being in this white
7 area, everything in the white below the yellow, and
8 below the catchment ditch, I would characterize that
9 as low.

10 The intent of what I was just saying, the
11 moderate area that I had described was intended to
12 designate this area in yellow. That's the moderate
13 risk that we're talking about.

14 Q Now, the term used in that question was
15 "foreseeable".

16 Do you know the difference between the
17 terms "possible", "probable" and "foreseeable"? Is
18 there a difference between those terms as used?

19 A I think everything was possible, is what I
20 was intending to saying. I mean, it's foreseeable or
21 conceivable that something could happen, yes. But
22 anything is possible, but I don't think it was
23 likely. It is very highly unlikely that anyone in
24 this -- operating in the white areas below the yellow
25 areas would see rockfall as a high hazard or even a

1 moderate hazard area.

2 Q Thank you, Robin.

3 No more questions, Mr. Chair.

4 CHAIRPERSON SCHEUER: Commissioner Chang,
5 you have your hand up. We are well overdue for a
6 break. Do you have one more question?

7 COMMISSIONER CHANG: Mr. Chair, I think
8 maybe it might be more appropriate to take a break.
9 I think I'm going to have more than one question.

10 CHAIRPERSON SCHEUER: Okay. We are going
11 to take a ten-break.

12 MR. YOSHIMORI: Can I ask a question about
13 what we envision about the rest of the afternoon? Do
14 we anticipate reaching the Intervenor's witnesses
15 today?

16 CHAIRPERSON SCHEUER: That's entirely
17 unlikely at this point. At the most, depending on
18 how long the Petitioner wishes to have the acoustic
19 witness speak again, I'm hoping we would at least get
20 to one of the available for questioning by the City
21 and County.

22 MR. YOSHIMORI: Thank you.

23 CHAIRPERSON SCHEUER: Okay. Mr. Matsubara,
24 it seems that we want to have at least a couple more
25 questions of this witness.

1 So it's 2:48. We're going to take a
2 ten-minute break to 2:58 and continue on with a
3 couple more from Commissioner Chang, and then we will
4 move on.

5 MR. MATSUBARA: Thank you.

6 CHAIRPERSON SCHEUER: Thank you. We are in
7 recess.

8 (Recess taken.)

9 CHAIRPERSON SCHEUER: We have Commissioner
10 Okuda, Cabral, Aczon, Commissioner Ohigashi,
11 Commissioner Chang, Commissioner Wong and myself.

12 Let's proceed. Commissioner Chang, you
13 had -- Dawn, give me a sense of how much more you
14 have?

15 COMMISSIONER CHANG: Less than five
16 minutes.

17 CHAIRPERSON SCHEUER: Thank you.

18 COMMISSIONER CHANG: Thank you very much,
19 Mr. Lim. I just am following up on redirect by Mr.
20 Matsubara, that you spoke to the cultural expert, Ms.
21 Watson, regarding the use.

22 Part of my confusion today, and I'm
23 thinking about this as a lay person, is that, one, we
24 had testimony and objections that we don't know what
25 the use is, that a lot of this regarding the cultural

1 preserve is premature.

2 We don't know what the agreement is going
3 to look like. We don't know what the use is, so it's
4 too early to speculate.

5 In my mind, thinking as a lawyer, I kind of
6 think of the broadest scenarios.

7 So I am trying to understand, because it
8 doesn't make sense to me, the cultural preserve as
9 far as the rockfall, your opinion has been moderate
10 potential for dangerous rockfall activity.

11 And that was based upon a use of maybe five
12 to ten people. Then the cemetery expansion, five to
13 ten people, moderate potential for damages,
14 dangerous, and mitigation is silent.

15 The cemetery expansion, which has been low
16 to moderate potential, 30 to 40 people will use it.
17 And you have a series of very elaborate mitigation
18 measures.

19 I am just really trying to understand how
20 do you come up with that conclusion when one has been
21 determined, technically, based upon your models, to
22 be much more dangerous, and assuming they have the
23 same number of usage, you said for the cemetery, 30
24 to 40.

25 But based upon your conversation with Ms.

1 Watson, you chose five to ten. But, again, assuming
2 that it's going to be greater, let's say, similar to
3 the cemetery expansion, 30 to 40, help me understand
4 how do you differentiate the mitigation when the
5 exposure is greater, potential use may be the same,
6 but how do you differentiate the mitigation?

7 THE WITNESS: Let me try to -- let me share
8 screen and get back to Exhibit 60 again.

9 Do you see that?

10 CHAIRPERSON SCHEUER: Yes, we can see the
11 screen.

12 THE WITNESS: Thank you.

13 Maybe -- the cultural preserve area is all
14 of this area (indicating) all the way up to the top,
15 both represented in this gray/white area and the
16 yellow area.

17 When I indicated that the risk was
18 moderate, low to moderate, it was intended to
19 designate for this area only (indicating), meaning
20 the yellowish designated area. And everything below
21 the yellow area I would consider, based on our
22 analysis, that's the low risk.

23 So when we talked about mitigation measures
24 specifically for the cultural preserve, cultural
25 preservation area, the intent was to talk about this

1 area designated in yellow. And given the location
2 and the fact that it's currently not even approved
3 for proper access, no trails, or limited trails, and
4 the steepness in this area. That's what we talked
5 about very limited people usage of this yellow area.

6 And for that reason, we said, recommended a
7 signage was adequate for this lower areas that's in
8 -- well, all this white area that's part of the
9 expansion, and including this cultural preserve area
10 that is in white, the risk is relatively low.

11 And for that reason, we actually have no
12 hesitation about not putting anything for this area
13 in terms of mitigation measures, except for this
14 ditch, which was going to be part of the grading, and
15 so we wanted to bring down the numbers such that
16 everything inside this area would have similar risk
17 levels, whether it's 30 to 40 users a day or even in
18 the thousands of people, it would be the same risk
19 level.

20 Does that help answer your question?

21 COMMISSIONER CHANG: Not really. I
22 understand your explanation, but it does not satisfy
23 for my common sense look at this.

24 The cultural preserve area is a much
25 smaller area, so you'll have a greater concentration

1 of people in a much smaller limited area. So maybe
2 30 to 40 people will be using the cultural preserve
3 at any one time, but it's a much smaller area, versus
4 the cemetery expansion which is a much broader area,
5 and yet the risk level is much higher in the cultural
6 preserve with mere signage.

7 So I understand your explanation. It
8 doesn't satisfy me, because it doesn't make sense.

9 But I think -- and I'm not going to beat a
10 dead horse with this, because we've exhausted your
11 responses to this.

12 You know, I think that there are other
13 explanations as to differentiate the mitigation, but
14 at this time I'm going to leave it at that, because I
15 think that's your testimony. So thank you.

16 CHAIRPERSON SCHEUER: Thank you,
17 Commissioner Chang.

18 Mr. Lim, would you stop screen sharing?
19 Thank you.

20 Is there anything further, Commissioners?
21 Redirect, further redirect?

22 MR. MATSUBARA: Yes.

23 FURTHER REDIRECT EXAMINATION

24 BY MR. MATSUBARA:

25 Q Just two questions.

1 Do you use the word "dangerous" at all in
2 your written testimony, Mr. Lim?

3 A I don't recall using "dangerous" as a word
4 in my testimony.

5 Q Correct.

6 In regard to the questions Commissioner
7 Chang had in terms of the number of people who would
8 be in that small area, is your focus more on areas
9 that may pose some risk as opposed to the number of
10 people? Is it more focused on areas where the risk
11 is --

12 A That's correct. The first level is to look
13 at the area and whether there exist a certain risk.
14 Then when it comes to mitigation, the number of users
15 come into play as part of that.

16 So if the risk is low to begin with, the
17 number of users does not even have to be introduced
18 into the equation.

19 MR. MATSUBARA: Thank you.

20 No further questions, Mr. Chair.

21 CHAIRPERSON SCHEUER: Thank you, Mr. Lim.

22 Your next witness, Mr. Matsubara.

23 MR. MATSUBARA: My next witness will be
24 Todd Beiler. I was corrected the last time we were
25 here, it's not Beiler it's Beeler (phonetic).

1 THE WITNESS: It's actually the other way
2 around, it looks like Beeler, but it's Beiler.

3 MR. MATSUBARA: Good afternoon. Thank you
4 for being here.

5 The Chairman will swear you in.

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

9 THE WITNESS: Yes, I do.

10 CHAIRPERSON SCHEUER: Do you swear it's
11 going to be very brief?

12 THE WITNESS: (Indecipherable.)

13 MR. MATSUBARA: Mr. Beiler was brought back
14 because of several questions raised by the Commission
15 in regards to the noise permit. And I know
16 Commissioner Aczon and Commissioner Giovanni had
17 questions relating to that.

18 TODD BEILER

19 Was recalled as a witness by and on behalf of the
20 Petitioner, was sworn to tell the truth, was examined
21 and testified as follows:

22 REDIRECT EXAMINATION

23 BY MR. MATSUBARA:

24 Q Mr. Beiler, during the direct testimony you
25 stated that the State issued permits is typical for

1 construction activities, and the DOH permit does not
2 limit the noise level generated at the construction
3 site, rather that the permit limits the time noisy
4 construction can occur.

5 There's several concerns raised regarding
6 that statement. And so I asked you to further
7 research that. And could you tell me the results of
8 the additional research you did, and what you looked
9 at, and what we've included for the Commissioners for
10 their benefit in regard to this particular issue?

11 A Yes, you bet. Thank you.

12 My first step was to re-review Title 11
13 Chapter 46 of the Department of Health Administrative
14 Rules. Section 11-46-4, Table 1, lists the maximum
15 permissible sound levels from dBA for the daytime
16 hours which are 7:00 A.M. and 10:00 P.M. and the
17 night time hours which is 10:00 P.M. to the following
18 7:00 A.M. for each of three zoning district
19 classifications.

20 These noise limits are applicable to
21 stationary noise sources and equipment related to
22 agricultural, construction and industrial acts.

23 Subsection D states that the noise limits
24 incorporated in Table 1 can only be exceeded by
25 permit and variance issued in Section 11-46-7 for

1 permits, 11-46-8 for variance.

2 Section 11-46-7 grant the director the
3 authority to grant, deny or revoke the noise permit.
4 Subsection J describes the specific noise permit
5 restrictions for construction activities.

6 This section limits the times and hours for
7 which construction activities can exceed the maximum
8 permissible sound level, and these hours are
9 7:00 A.M. to 6:00 P.M. Monday through Friday;
10 9:00 A.M. to 6:00 P.M. on Saturday. And no permit
11 shall allow any construction activities which emit
12 noise levels in excess of the maximum permissible
13 sound level on Sundays or on holidays.

14 Q Let me just interrupt you for a second.

15 For the benefit of the Commission, I've
16 included the noise regulations that the Department of
17 Health has issued, and they're included as our
18 Exhibit 67. And the provisions Todd is citing are
19 included in that packet.

20 Rather than pulling out specific
21 provisions, I put the whole thing in so you could
22 check on your own whether there is any provision in
23 there that say otherwise.

24 What other research did you understand
25 take, Todd?

1 A I also called the Department of Health to
2 speak with Mr. James Toma regarding the construction
3 noise permit restrictions.

4 Mr. Toma confirmed that the noise permit
5 does not limit the noise levels just at times at
6 which noisy construction can occur.

7 If after receiving an approved noise
8 permit, a contractor were to operate with noisy
9 construction activity outside of the noise permit
10 hours, the director may suspend or revoke the noise
11 permit which could effectively shut the project down.

12 During my conversation, Mr. Toma noted that
13 for some construction activity, there are further
14 restrictions on the hours of operation.

15 Construction activity, such as pile
16 driving, hydraulic rams, jackhammers and similar
17 activities are further limited to only 9:00 A.M. to
18 5:30 Monday through Friday only, and that those
19 activities are not allowed on Saturdays, Sundays or
20 holidays.

21 These additional time restrictions can be
22 found in the guide for filing community noise permit
23 application for construction activities, a guide
24 published by the Department of Health.

25 The noise section supervisor will include

1 these restrictions when applicable to special
2 restrictions and conditions section on the noise
3 permit.

4 Q Do you have recommendations that the
5 project can incorporate in an effort to help
6 alleviate neighbor's noise concerns?

7 A Yes, I do.

8 As a regular condition of the noise permit,
9 the contractor is required to notify the surrounding
10 areas when high impact noises such as the hydraulic
11 rams and rock breakers are used.

12 However, in addition to this application, I
13 also recommend that the contractor provide two
14 additional steps.

15 Step one, I recommend that the contractor
16 be required to conduct regular public outreach
17 meetings during the earthwork construction phase to
18 inform the local community about the process of the
19 earthwork. A meeting interval of once per quarter or
20 every three months is recommended.

21 At the second step, I also recommend
22 establishing a hotline, a phone number that's
23 dedicated for noise complaints. The phone number
24 will allow the community a spot to voice any noise
25 concerns.

1 The contractor should do what they can to
2 limit the noise impact in an effort to address the
3 noise complaints.

4 While these steps may not reduce the noise
5 levels, they can help improve the flow of
6 information, communication between the contractor and
7 the local community.

8 Q Have you discussed these recommendations
9 with the Petitioner?

10 A Yes, I have.

11 Q And their response to you was?

12 A HMP has confirmed to me that they're in
13 agreement with these recommendations.

14 Q There was another question relating to the
15 effect of vibrations from construction activity.

16 Did you also have a chance to research the
17 issue relating to vibrations from construction
18 activity?

19 A Yes.

20 Q In terms of your resume you also indicate
21 an expertise not only in sound measurement but also
22 vibrations.

23 A That's correct.

24 Q Your resume that was attached to your
25 written testimony.

1 So I just like to expanded Mr. Beiler's
2 expertise to include noise vibrations also, if that's
3 permissible by the Commission.

4 CHAIRPERSON SCHEUER: Are there any
5 objections to Mr. Beiler also being qualified as
6 having expertise in vibrations?

7 Is that correct?

8 THE WITNESS: That's correct.

9 CHAIRPERSON SCHEUER: Any objections?

10 MR. PANG: City has no objection.

11 MS. APUNA: State has no objection.

12 MR. YOSHIMORI: Intervenor has no
13 objection.

14 CHAIRPERSON SCHEUER: Mr. Beiler has good
15 vibrations.

16 THE WITNESS: Thank you.

17 CHAIRPERSON SCHEUER: Mr. Matsubara, are
18 you done?

19 MR. MATSUBARA: No. Just qualifying that
20 expertise.

21 Q Could you care to discuss the affect of
22 vibrations from the construction activities on
23 neighbors?

24 A Yes. I believe the concern is for -- there
25 was a concern raised during my direct testimony

1 related to potential damage or disturbances to
2 existing gravesites due to groundborne vibration
3 caused by construction activities.

4 The Ocean View Garden is the closest area
5 to the planned earthwork construction, and the
6 nearest worst case distances are 50 feet from the
7 nearest fill construction activities to the nearest
8 existing gravesites, and 165 feet from the nearest
9 cut or excavation construction activities to the
10 nearest existing gravesite.

11 Using the federal transit administration's
12 guidelines for construction vibrations impact, these
13 differences easily provide a safe buffer between the
14 construction activities and the existing gravesites,
15 therefore, any damage or disturbance caused by
16 construction vibration to the existing gravesites is
17 not expected.

18 Q Thank you.

19 Todd, you also included as Exhibit 68 the
20 copy of the Department of Health's Application for
21 Community Noise Permit.

22 A Yes.

23 Q And that application reflects all the
24 information that the contractor needs to provide in
25 order to qualify for a noise permit?

1 A That's correct.

2 Q And in this particular case you're
3 recommending that a noise permit be obtained?

4 A Yes.

5 Q Thank you.

6 Mr. Beiler is available for questions.

7 CHAIRPERSON SCHEUER: Ben?

8 MR. MATSUBARA: Yes.

9 CHAIRPERSON SCHEUER: You mispronounced it
10 again.

11 MR. MATSUBARA: Mr. Beiler, I'm sorry. I'm
12 tired.

13 CHAIRPERSON SCHEUER: Mr. Beiler, City has
14 no questions. Thank you very much.

15 State?

16 MS. APUNA: No questions.

17 CHAIRPERSON SCHEUER: Mr. Yoshimori?

18 MR. YOSHIMORI: I would like to apologize
19 to Mr. Beiler, I was calling him the wrong name as
20 well. We have no questions.

21 THE WITNESS: For years, Grant, so don't
22 worry about it.

23 CHAIRPERSON SCHEUER: Commissioners, are
24 there further questions for Mr. Beiler? I see none.
25 Thank you very much, Mr. Beiler.

1 THE WITNESS: Okay. All right. Thank you.

2 CHAIRPERSON SCHEUER: We have approximately
3 40 minutes.

4 Mr. Matsubara, you're done now with your
5 testifiers, correct?

6 MR. MATSUBARA: Correct.

7 CHAIRPERSON SCHEUER: We can actually begin
8 with the availability of the City 's presentation.

9 MR. PANG: The City has one witness. Just
10 two minutes so we can move the camera.

11 CHAIRPERSON SCHEUER: Okay.

12 MR. PANG: The City calls Kathy Sokugawa,
13 Acting Director Department of Planning and
14 Permitting.

15 CHAIRPERSON SCHEUER: Aloha, Ms. Sokugawa.

16 THE WITNESS: Good afternoon.

17 CHAIRPERSON SCHEUER: Do you swear or
18 affirm any testimony you give is the truth?

19 THE WITNESS: I do.

20 CHAIRPERSON SCHEUER: Thank you very much.

21 KATHY SOKUGAWA

22 Was called as a witness by and on behalf of the City
23 and County of Honolulu, was sworn to tell the truth,
24 was examined and testified as follows:

25 DIRECT EXAMINATION

1 BY MR. PANG:

2 Q Ms. Sokugawa, can you state your many
3 positions with the City and County of Honolulu?

4 A I'm the Acting Director for Department of
5 Planning and Permitting.

6 Q How long have you been in that position?

7 A Beginning of 2017.

8 Q Prior to that what was your position with
9 the City?

10 A I was the Planning Division Head in the
11 Department of Planning and Permitting.

12 Q For how many years?

13 A A long, long time. Since its inception,
14 1998, and even before then.

15 Q My understanding is that we submitted
16 written testimony with respect to this matter. Do
17 you recall that?

18 A Yes.

19 Q And we have one exhibit, and the exhibit is
20 the Koolaupoko Sustainable Communities Plan.

21 A I do have a copy.

22 MR. PANG: So we submitted written
23 testimony so the Acting Director is available for
24 cross-examination by any party, Mr. Chair.

25 CHAIRPERSON SCHEUER: Thank you very much,

1 Mr. Pang. We will start with Petitioner.

2 MR. MATSUBARA: Petitioner has no
3 questions. Thank you for attending, Kathy.

4 CHAIRPERSON SCHEUER: Office of Planning.

5 MS. APUNA: No questions.

6 CHAIRPERSON SCHEUER: Hui O Pikoiloa,
7 Intervenor?

8 CROSS-EXAMINATION

9 BY MR. YOSHIMORI:

10 Q Hello.

11 You had testified that the City has
12 concerns regarding the loss of forest as a result of
13 the cemetery expansion saying that it was contrary to
14 the City's effort to offset the effects of carbon
15 production.

16 So the City is recommending a condition of
17 approval that, quote, the loss of mature trees shall
18 be replaced on a one-for-one basis at a minimum,
19 unquote. And that it must, quote, have approximately
20 similar size canopy coverage within a reasonable
21 period of time, unquote.

22 Do you think it would be easier to maintain
23 the existing conservation preservation designation
24 rather than coming up with the additional 32-plus
25 acres to replace that acreage?

1 A Which particular 32 acres?

2 Q The area for the proposed cemetery
3 expansion.

4 A I don't think that would be practical,
5 because my understanding is the cemetery would not be
6 allowed in the Conservation District. The use is not
7 permitted.

8 Q I guess my question is instead of requiring
9 the Petitioner to obtain and develop 32 acres, which
10 currently don't have forest, to add forest there,
11 would it be a good use to keep the land zoned as
12 Conservation so that that wouldn't have to be done?
13 The land is already there serving that 32 acres of
14 protection on the forest.

15 A I'm not sure how would they get to their
16 requested project expansion without the boundary
17 amendment? I'm not understanding your question, I
18 guess, being considered as a condition of approval
19 not a substitution for the boundary amendment.

20 Q I guess what I'm saying is if we deny -- if
21 the Commission denies the District Boundary
22 Amendment, then this condition does not need to be
23 put into place and those -- that existing forest will
24 continue to serve to offset carbon production.

25 A I don't know that you can make that

1 conclusion, because there would be no permit, or
2 there would be no enforcement other than whatever
3 DLNR requirements are for the Conservation District.
4 I don't know that they're not allowed to cut down
5 trees. And, again, I don't know that process that
6 DLNR would use for that.

7 Q I think the existing State rules, and I
8 might have this wrong, is under Conservation land
9 you're not allowed to cut any tree down with the
10 diameter of the stump being over six-inches. You
11 need a permit for that.

12 So by keeping it in Conservation land, that
13 area would need to remain as forested?

14 A I guess our position is that we support the
15 cemetery use. This is being proposed as a
16 recommendation of condition attached to a cemetery
17 use.

18 Other than that we would have no say on
19 what happens on Conservation District land.

20 Q On page 3-19 of the Koolaupoko Sustainable
21 Communities Plan it states that, quote:

22 Where located in the State Conservation
23 District or in a preservation area designated by this
24 plan, above-grade structures shall be limited to
25 maintain the open space character of the cemetery.

1 During our site visit we saw two gazeboes,
2 the larger one is clearly visible from Pohai Nani and
3 our neighborhood can see it. It's illuminated at
4 night.

5 When asked by Mr. Pang, Mr. Ezer had
6 testified that there could be gazeboes built in the
7 expansion area similar to what we saw on our site
8 visit.

9 Are those gazeboes consistent with the
10 language in that section of the KSCP guidelines?

11 A The Koolaupoko SCP does have a condition
12 about limitations of above-grade structures to
13 markers of modest size and necessary support
14 structures. So I would say a fair conclusion would
15 be a gazebo is not in keeping with that provision.

16 Q The KSCP also states that, quote:

17 Any proposed expansion by Hawaiian Memorial
18 Park must include 150-foot buffer from residential
19 homes, 2000-foot buffer from the Pohai Nani Senior
20 Living Community, unquote.

21 Ms. Dina Wong was the Acting Planning
22 Division Chief in 2018. And she wrote a response to
23 the DEIS stating, the 2000-foot buffer guideline was
24 established to address concerns of the Pohai Nani
25 community with respect to the proximity of burials to

1 their residents. The proposed cultural preserve,
2 where traditional Hawaiian burials are being sought,
3 is only 1,400 feet from the Pohai Nani Tower.

4 Is the proposed project inconsistent with
5 the KSCP with regard to that statement?

6 A We would say not. We must remember that
7 the Koolaupoko Sustainable Communities Plan is a
8 plan. It's not a regulation. It specifically says
9 that it's not a regulation by our lawyers.

10 So it cannot be so project specific. So we
11 treat this language as a guideline. And there is
12 clearly an intent to distance the cemetery use from
13 Pohai Nani Community, as it was discussed at zone
14 committee of the City Council adoption process of the
15 plan, an exhibit was shown showing an example of how
16 that 2000-foot buffer was proposed. And it was, we
17 believe, that the current proposal is consistent with
18 what the intent of the language is.

19 Again, we are treating the language not in
20 a regulatory language, but as a policy plan document
21 guideline.

22 Q Mr. Ezer had testified that there was that
23 150-foot buffer is being honored with regards to the
24 residential community.

25 So it sounds like it's being enforced

1 there, but you're saying it's not going to be
2 enforced for Pohai Nani?

3 A I didn't say that. I said we're using that
4 language as a guideline. And a guideline is not the
5 same as a regulation. The fact that it is in the
6 150-foot, that's good.

7 The fact that it's close to essentially the
8 same as, but not identical, yes, I will agree with
9 that. To the 2000 feet, that's a guideline. That's
10 how guidelines work.

11 Q Thank you.

12 Intervenor's Exhibit 7 is a letter from
13 Council Member Pine to the LUC stating that, quote:

14 The Council's intent was to set the buffer
15 at 2000 feet from the Pohai Nani property line, and
16 100 feet from the residential property line, unquote.

17 So the development is inconsistent with
18 Council Member Pine's statement about Council's
19 intent. Does that sound right?

20 A I think you've characterized her letter
21 correctly. I'm not saying that I agree with it.
22 But, yes, you've characterized her letter correctly.

23 Q State Representative Scott Matayoshi
24 submitted written testimony in opposition to the
25 expansion, and in it he stated, quote:

1 A civil engineer from the City and County
2 of Honolulu Department of Facilities and Maintenance
3 noted the runoff coefficient used by the Petitioner's
4 engineer is unrealistic, unquote.

5 Were these concerns from the Department of
6 Facilities and Maintenance evaluated as part of DPP's
7 position?

8 A Again, I think it's similar to what other
9 issues were raised this afternoon and this morning
10 from the Land Use Commission of other witnesses,
11 testifiers, but, you know, that information is
12 interesting.

13 It's not a formal position of DFM. There
14 is, in my understanding, nothing on letterhead that
15 supports the position. I don't know what the facts
16 are regarding why there is such a position.

17 And moreover, as discussed in other
18 situations before the Land Use Commission, it's
19 premature to note what we will or will not use as
20 approvable under the grading permit, and this will
21 come under the grading permitting process which is,
22 you know, further downstream in the entitlement
23 process.

24 Q Those are all the questions I have. Thank
25 you.

1 CHAIRPERSON SCHEUER: Thank you very much,
2 Mr. Yoshimori.

3 Commissioners? Commissioner Okuda.

4 COMMISSIONER OKUDA: Thank you very much,
5 Mr. Chair.

6 Thank you, Ms. Sokugawa.

7 At what time -- well, you've heard the
8 testimony -- or have you heard the testimony that has
9 been going back and forth about potential rockfall
10 hazards with respect to the subject property?

11 THE WITNESS: I have pretty much, yes.

12 COMMISSIONER OKUDA: When was the first
13 time the City and County of Honolulu became aware
14 that there were these concerns about rockfall
15 hazards?

16 A I can't speak for the entire City.
17 Presumably, we as a department would have noticed all
18 the environmental issues that are expressed in the
19 EIS. So to the extent that they were discussed in
20 the EIS, we would have known about that.

21 COMMISSIONER OKUDA: Let me ask this.

22 Did your department have an actual
23 discussion about the scope or the amount of risk
24 posed by the reports in the EIS with respect to
25 rockfall hazard?

1 THE WITNESS: You know, it sounds like a
2 cop out, but we have 280 staff members. I can't tell
3 if any of them had a conversation. I did not.

4 COMMISSIONER OKUDA: To what extent does
5 the testimony and the statements in the EIS about
6 rockfall hazard, how much of that does that raise a
7 concern for you as the Acting Director?

8 THE WITNESS: If we had felt it was a
9 significant issue, we would have commented on that in
10 our comments on the Draft EIS.

11 If it's something that we feel is going to
12 be mitigated in the entitlement or ministerial permit
13 stream further down in time and permits, then we
14 would address it at that appropriate time.

15 COMMISSIONER OKUDA: So is that in fact the
16 position of your department that either -- and
17 correct me if I am misstating your testimony -- it's
18 not significant to be addressed at this point in time
19 or it would be addressed at some other time?

20 THE WITNESS: Roughly. But understanding
21 that if that -- and this grade is severely steep, as
22 I read the topography lines on that map that was
23 presented. I don't recall them saying they're going
24 to touch it at all.

25 So if it doesn't get touched, it doesn't

1 show up on a grading plan, we are not going to have
2 any jurisdiction, if you will, any kind of issues
3 relating to rockfall mitigation unless it comes in
4 for a permit. Then we will definitely look at that,
5 and we will require the necessary additional studies
6 to make sure that public health and safety are
7 assured.

8 COMMISSIONER OKUDA: But there is no
9 grading proposed for the cultural preserve area,
10 correct?

11 THE WITNESS: That is my understanding.

12 COMMISSIONER OKUDA: So, therefore, no
13 grading permits would be submitted to the City and
14 County of Honolulu with respect to the cultural
15 preserve area, correct?

16 THE WITNESS: That would be my expectation,
17 but you would have to verify that with the developer.

18 COMMISSIONER OKUDA: Okay.

19 Is there any other part -- strike that.

20 Is there anything that you believe which
21 indicates that it would not be appropriate to keep
22 this parcel designated as Conservation?

23 THE WITNESS: I think you should. You
24 know, that's partly the issue with the developer. I
25 don't know all the extenuating circumstances, or his

1 own, you know, project goals to require that be
2 included in the Boundary Amendment request.

3 COMMISSIONER OKUDA: Well, I'm asking you
4 as the Acting Director, do you know of any evidence
5 which indicates it would be inappropriate, not
6 appropriate, to keep this parcel of property
7 designated Conservation?

8 THE WITNESS: Again, I have not really
9 studied that rockfall area, but it does, based on the
10 steepness, the characteristics of that property, and
11 the fact that the Applicant is not proposing any use
12 for it, it does call to mind why they would want to
13 go to Urban District, but I have to defer to the
14 developer because there are other criteria that he's
15 working with that I'm not aware of.

16 COMMISSIONER OKUDA: Okay. On those issues
17 you would defer to the developer, is that correct?

18 THE WITNESS: Correct.

19 COMMISSIONER OKUDA: Now, if the Land Use
20 Commission --

21 THE WITNESS: I'm sorry, and the Land Use
22 Commission. I would defer to the Land Use Commission
23 to decide whether it agrees with the developer's
24 request or not.

25 COMMISSIONER OKUDA: And my next question,

1 you can consult with counsel, because this might
2 require a legal response, but I just wanted to ask
3 this question to get the City's position on it.

4 If the Land Use Commission were to approve
5 this Petition with conditions, isn't it true that the
6 Land Use Commission loses the ability to enforce the
7 conditions when the developer or the landowner first
8 commences substantial use of the property?

9 In other words, once that happens, even if
10 we have a whole series of conditions, the Land Use
11 Commission will not be able to enforce those
12 conditions, for example, through a reversion back to
13 the original designation, that designation being
14 Conservation?

15 THE WITNESS: You're right. I would defer
16 to our attorneys, but there have been most notably
17 the Ko Olina boat ramp issue that was called into
18 question well after construction had started.

19 COMMISSIONER OKUDA: Does the City disagree
20 with the statement that once the landowner
21 substantially commences use of the property in
22 accordance with its representations, that the Land
23 Use Commission loses the ability to enforce its
24 conditions?

25 MR. PANG: If you understand the question.

1 THE WITNESS: I think my understanding,
2 this is from a planner's perspective not a lawyer's
3 perspective, the Land Use Commission has the ability
4 to call into question compliance with your conditions
5 at any time, and most notably that's why you normally
6 ask for annual reports to monitor.

7 COMMISSIONER OKUDA: If in fact the Land
8 Use Commission must rely on the City and County of
9 Honolulu to enforce its conditions, is the City and
10 County of Honolulu willing to take steps to enforce
11 conditions which the Land Use Commission may impose
12 or attach on any approval of a boundary amendment?

13 THE WITNESS: If those conditions -- and
14 I'm speaking just for Department of Planning and
15 Permitting -- if those conditions are aligned with
16 our planning review processes, our permit.

17 So for example, you want them, you know, to
18 have a tree planting requirement and it has to be
19 approved at the time of building permit, we can
20 enforce those things.

21 But if it has to do with something
22 technical beyond our expertise, we, you know, we will
23 have to make a comment to you that we're able to
24 address and enforce those kinds of conditions --

25 (Speaking over each other).

1 -- testifying at Land Use Commission in
2 other petitions where draft conditions were offered
3 and I took the position that our department will not
4 enforce because we cannot.

5 COMMISSIONER OKUDA: And that's a fair
6 statement. I just want to know whether or not
7 conditions would be enforced or not enforced.

8 Can I ask this final question or series of
9 questions?

10 You know, you've heard the testimony and
11 read the EIS which document the conditions and
12 situations regarding this property.

13 And, again, I'm not saying this, you know,
14 indicates my belief or, you know, any inclination of
15 voting in favor or an against, but there are a number
16 of issues that have been raised regarding this
17 property, like potential rockfall hazard, the amount
18 of grading and filling, the existence of an
19 endangered species, things like that.

20 Is there no other parcel of property on the
21 Island of Oahu where a cemetery could be developed
22 without having to face the types of issues that we
23 now face regarding this parcel of property?

24 Is there absolutely no other parcel of
25 property on the Island of Oahu where a cemetery could

1 be developed, of course, with the proper
2 entitlements, but without having to do and deal with
3 all these significant issues that we are now having
4 to deal with?

5 THE WITNESS: You know, we have not done
6 such a study. So we have not looked to see if there
7 are alternative sites for a cemetery.

8 Over the years there have been various
9 parties coming to us thinking that they might be
10 proposing a cemetery or expansion of one or a new
11 one, but none of them, to my recollection, have
12 actually gone to the level of entitlement that this
13 project has.

14 As we were just talking earlier, this is a
15 very small island, and it gets smaller as the years
16 go by, so land is very limited. So it's going to get
17 not easier but harder to find new lots for cemetery
18 use.

19 Let me leave it at that. It's not
20 something that other people are clamoring and there's
21 a very competitive business to expand cemeteries.

22 COMMISSIONER OKUDA: Let me ask this final
23 question now.

24 Is it your understanding that if I own a
25 parcel of property that had historic or cultural

1 sites, I'm the owner, and let's say my property had a
2 heiau, other historic and cultural sites. People
3 might view me as an immoral person, but frankly
4 speaking, given your understanding of planning law,
5 there really is no requirement for me to take any
6 measure to affirmatively preserve those items like a
7 heiau on my property, correct?

8 THE WITNESS: Well, again, you might be
9 asking a lawyer question, but the practical way that
10 we enforce regulations, of course, is Chapter 6(e)
11 which starts off that everybody is obligated to
12 report and halt any work that might affect some
13 discovered archaeological resource.

14 And we use that very seriously, and through
15 even the construction stage, we're looking out for
16 that.

17 Many times there are permits that are
18 attached even more specific that say you have to have
19 an archaeological team on-site every time you have
20 any construction on the job.

21 So those kinds of things we take very
22 seriously, but at the same time, we will defer to
23 SHPD, and if SHPD says yes, we will.

24 I mean, you all know cases where historic
25 sites have been demolished. They got a demolition

1 permit from us, SHPD let it go.

2 Again, Chapter 6(e) says exactly what, you
3 know, what you can do if you wanted to monitor -- if
4 the State wants to preserve a historic resource, then
5 they have all the means to pursue it.

6 COMMISSIONER OKUDA: Do you know of any
7 instance where the government has successfully
8 required an owner to avoid, denying neglect of
9 historical cultural sites on his or her property?

10 In other words, I'm not intentionally
11 modifying or taking down anything, I'm not
12 bulldozing, I'm just going to leave the stuff to
13 basically be covered by jungle, and for lack of a
14 better word, rot away. I mean, I basically could do
15 that, isn't that correct?

16 THE WITNESS: And I have had conversations
17 in the past about it. That is a weak spot in the
18 State law, because it does not mandate maintenance.

19 So the topic of denying neglect is a
20 possibility.

21 COMMISSIONER OKUDA: So finally, even
22 though that might be immoral on my part, the only way
23 you could really compel me to maybe do the right
24 thing, and I put that in quotes, is if I came in
25 looking for a permit or some kind of land use change,

1 and then you can basically do like a quid pro quo
2 tradeoff. I mean that's what we are really talking
3 about, isn't that true?

4 THE WITNESS: That sounds harsh. I don't
5 know if I would use those words. I think it is to
6 the benefit of the community that without this --
7 (indecipherable) -- by the developer, you know, that
8 long neglected -- and I don't know how many people
9 even knew about it, you know -- it's now being taken
10 care of, even before this Boundary Amendment decision
11 is made. So the community has already, and to some
12 extent, won.

13 COMMISSIONER OKUDA: Let me ask this final,
14 final question then.

15 When you say the asset was being taken care
16 of, can you point to showing that things were being
17 taken care of?

18 THE WITNESS: I believe -- and you should
19 verify this -- but at least at some point in time the
20 developer had hired organizations to help take care,
21 interpret, almost begin to manage the resource.

22 COMMISSIONER OKUDA: Thank you very much.

23 Thank you, Chair.

24 CHAIRPERSON SCHEUER: I have a question
25 from Commissioner Ohigashi.

1 I would like to remind the Commissioners
2 I'm going to lose a Commissioner at least one at
3 4:00 o'clock promptly, so I'm going have to be
4 mindful of that time. Hopefully we can finish with
5 the cross of the City's witness.

6 COMMISSIONER OHIGASHI: I just wanted to
7 ask you about your submittal, your testimony.

8 On page 6 of it, number two, it seems to
9 indicate that you're requiring them to record
10 governance and conservation easement and the related
11 declaration for the cultural preserve; is that right?

12 THE WITNESS: Yes.

13 COMMISSIONER OHIGASHI: The next paragraph
14 below that, it says a copy of the recorded
15 conservation easement and declaration of
16 restricted covenants shall be submitted to the City
17 and County of Honolulu, Department of Planning and
18 Permitting prior to the issuance of any grading
19 permit and any other permit which involves ground
20 disturbance.

21 So they must, even if the grading occurs on
22 another place, they must file this first; is that
23 right?

24 THE WITNESS: Oh, I'm so sorry if you
25 thought it was a blanket covering every grading

1 permit. It's just for the project site.

2 COMMISSIONER OHIGASHI: Project site,
3 entire project site.

4 So they don't have to file a grading plan
5 for the cultural preserve, but if they file before
6 they can grade any other portion of the site, they
7 have to file this conservation easement and
8 declaration of restricted covenants?

9 THE WITNESS: That is our intent to help
10 you with enforcement to make sure the easement is
11 filed at the appropriate time.

12 COMMISSIONER OHIGASHI: So that reassures
13 me, because it could have been read as only if they
14 had to grade that particular site. So I just wanted
15 to make sure what those protections are.

16 The second thing I wanted to ask you, is
17 there any other requirement that the City and County
18 would require for this easement to occur? In other
19 words, do you have your own internal regulation
20 requiring you to subdivide, because, you know -- or
21 comply with the subdivision ordinance or anything
22 like that that would delay this conservation?

23 THE WITNESS: Well, I don't know that they
24 need a subdivision order. I'm not sure I understand
25 your question, but we all know that they need a

1 grading permit. So we want that in place before any
2 further entitlement, as it were, is granted to the
3 project and then it becomes too late.

4 COMMISSIONER OHIGASHI: I'm just concerned,
5 because I brought this up with prior, but it's my
6 recollection -- I'm an old guy, and it happened a
7 long time ago, that certain types of leases with the
8 County of Maui asking for certain time may require a
9 subdivision.

10 And given that this grant of easement is in
11 perpetuity, the question is whether or not that type
12 of transfer of property rights to a trust would
13 require a subdivision of this property?

14 I'm just bringing that up. I just want to
15 make sure that that doesn't delay any type of --

16 THE WITNESS: To my mind, subdivision
17 action automatically is not required just because you
18 create this conservation easement over a portion of
19 the land. It's just another layer of restrictions on
20 the property. They can choose to subdivide, but off
21 the top, in and of itself, it doesn't trigger a
22 subdivision requirement.

23 COMMISSIONER OHIGASHI: Okay. That's the
24 position of the County?

25 THE WITNESS: Yes, so far. But I haven't

1 seen the easement so -- and it said, and it shall be
2 created in its own legal lot of record. Well, okay,
3 then that triggers a subdivision action. It might be
4 something that might be coming up with the actual
5 language of the easement.

6 COMMISSIONER OHIGASHI: All right. Thank
7 you. Thank you, that's all I have.

8 CHAIRPERSON SCHEUER: Thank you,
9 Commissioner Ohigashi.

10 Commissioners? Anybody want to use the
11 last five minutes of the day? Any questions for Ms.
12 Sokugawa? I see none.

13 Is there any redirect, Mr. Pang?

14 MR. PANG: No redirect, Mr. Chair.

15 CHAIRPERSON SCHEUER: With that said, I
16 just want to say to all the parties and the
17 Commissioners as well as the attendees, the many
18 witnesses who have been patiently waiting their turn
19 for a number of days now, I feel very good personally
20 that we are slow and methodical in our deliberations.

21 Of all the many things the LUC does, the
22 ones of greatest consequence and lasting impacts are
23 district boundary amendments. So I appreciate your
24 patience, and I appreciate the diligence, the role of
25 the parties, the Intervenor, as well as the

1 Commissioners in making sure we thoroughly understand
2 this evidentiary record in this case.

3 With that said, we will recess for the day
4 on this matter and continue the hearing for A17-804
5 to be scheduled in late July. We will reconvene
6 proceedings tomorrow on the Hawaii Islands portion of
7 this hearing via ZOOM meeting at 9:00 A.M., using the
8 same meeting link.

9 If there is nothing further, I will declare
10 this recess. Is there anything further,
11 Commissioners? Mr. Orodener?

12 EXECUTIVE OFFICER: No, Mr. Chair. Thank
13 you.

14 CHAIRPERSON SCHEUER: Thank you very much,
15 everyone. This meeting is recessed.

16 MR. MATSUBARA: Thank you, Commissioners.

17 (The proceedings recessed at 3:52 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 June 24, 2020, at 9:00 a.m., the
6 proceedings contained herein was taken down by me in
7 machine shorthand and was thereafter reduced to
8 typewriting under my supervision; that the foregoing
9 represents, to the best of my ability, a true and
10 correct copy of the proceedings had in the foregoing
11 matter.

12 I further certify that I am not of counsel for
13 any of the parties hereto, nor in any way interested
14 in the outcome of the cause named in this caption.

15 Dated this 24th day of June, 2020, in Honolulu,
16 Hawaii.

17
18
19 /s/ Jean Marie McManus
20 JEAN MARIE McMANUS, CSR #156
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