

LAND USE COMMISSION
STATE OF HAWAI'I

Hearing held on July 22, 2020
Commencing at 9:00 a.m.

Held via ZOOM by Interactive Conference Technology

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I. Call to Order

II. Adoption of Minutes

III. Tentative Meeting Schedule

IV. CONTINUED HEARING AND ACTION
A17-804 Hawaiian Memorial Life Plan, Ltd.
(O'ahu)

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. DISCUSSION AND ACTION (If Necessary)
LUC continued operations during the COVID-19
Health Crisis

VI. RECESS

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 DAWN CHANG (Oahu)
DAN GIOVANNI (Kauai)

6
7 STAFF:

JULIE CHINA, ESQ.
8 Deputy Attorney General
RODNEY FUNAKOSHI, Planning Program Administrator
9 LORENE MAKI, Planner
State of Hawaii, Office of Planning
10
DUANE PANG, ESQ.
11 Deputy Corporation Counsel
Department of Planning and Permitting
12 City and County of Honolulu
13 BENJAMIN MATSUBARA, ESQ.
CURTIS TABATA, ESQ.
14 Attorneys for Petitioner
15 GRANT YOSHIMORI, Pro Se
RICH McCREEDY, Pro Se
16 For Intervenor Hui O Pikoiloa

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1 CHAIRPERSON SCHEUER: Aloha mai
2 kakou. This is the July 22nd, 2020 Land Use
3 Commission meeting, and it is being held using
4 interactive conference technology, linking
5 videoconference participants and other interested
6 individuals of the public via ZOOM internet
7 conferencing program to comply with State and County
8 official operational directives during the current
9 pandemic health crisis.

10 Members of the public are viewing the
11 meeting via the ZOOM webinar platform.

12 For all meeting participants, I would like
13 to stress to everyone the importance of speaking
14 slowly, clearly and directly into your microphone,
15 and that before speaking, that you please state your
16 name and identify yourself for the record.

17 Also please be aware that all meeting
18 participants are being recorded on the digital record
19 of this ZOOM meeting, and your continued
20 participation in this meeting is your implied consent
21 to be part of the public record of this event. If
22 you do not wish to be part of the public record,
23 please exit this meeting now.

24 The ZOOM conference technology allows the
25 parties and each participating Commissioner

1 individual remote access to the meeting proceedings
2 via their personal digital devices.

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

10 My name is Jonathan Likeke Scheuer, and I
11 am the LUC Chair. Commissioners Aczon, Chang, Okuda
12 and Wong, the LUC Executive Officer Daniel Orodener,
13 LUC Chief Planner, Scott Derrickson, the Chief Clerk,
14 Riley Hakoda, the LUC's Deputy Attorney General Julie
15 China, and the Court Reporter, Jean McManus are on
16 Oahu.

17 Commissioner Cabral is on the Big Island,
18 Commissioner Ohigashi is on Maui, and Commissioner
19 Giovanni is on Kauai. There are your currently eight
20 seated Commissioners.

21 The first order of business is the adoption
22 of the June 24-25, 2020 minutes. Are there any
23 corrections or comments on them. If not, is there a
24 Motion to Adopt the minutes for June 24-25, 2020
25 meeting?

1 VICE CHAIR CABRAL: This is Nancy. I make
2 a Motion to Adopt both sets of minutes.

3 CHAIRPERSON SCHEUER: We are going to do
4 them one by one for clarity of procedure.

5 VICE CHAIR CABRAL: 24th.

6 CHAIRPERSON SCHEUER: The 24th and 25th,
7 you mean. The motion is made by Commissioner Cabral.

8 Is there a second?

9 COMMISSIONER WONG: Second.

10 CHAIRPERSON SCHEUER: The motion is made by
11 Commissioner Cabral and seconded by Commissioner
12 Wong.

13 Any discussion? Seeing none, Mr.
14 Orodenker, please do a roll call vote of the
15 Commission.

16 EXECUTIVE OFFICER: Thank you, Mr. Chair.
17 Commissioner Cabral?

18 VICE CHAIR CABRAL: Yes.

19 EXECUTIVE OFFICER: Commissioner Wong?

20 COMMISSIONER WONG: Yes.

21 EXECUTIVE OFFICER: Commissioner Okuda?

22 COMMISSIONER OKUDA: Yes.

23 EXECUTIVE OFFICER: Commissioner Aczon?

24 VICE CHAIR ACZON: Present.

25 EXECUTIVE OFFICER: Is that a vote in favor

1 of the minutes, Commissioner Aczon?

2 VICE CHAIR ACZON: Aye.

3 EXECUTIVE OFFICER: Commissioner Chang?

4 COMMISSIONER CHANG: Yes.

5 EXECUTIVE OFFICER: Commissioner Giovanni?

6 COMMISSIONER GIOVANNI: Abstain.

7 EXECUTIVE OFFICER: Commissioner Ohigashi?

8 COMMISSIONER OHIGASHI: Aye.

9 EXECUTIVE OFFICER: Chair Scheuer?

10 CHAIRPERSON SCHEUER: Aye.

11 EXECUTIVE OFFICER: The minutes are adopted
12 unanimately.

13 CHAIRPERSON SCHEUER: With one abstention.

14 EXECUTIVE OFFICER: One abstention, sorry.

15 CHAIRPERSON SCHEUER: Thank you.

16 We will now take up a matter of approving
17 July 8th and 9th, 2020 minutes. Is there discussion
18 or corrections on the minutes? If not, I'll take a
19 Motion to Adopt.

20 VICE CHAIR CABRAL: I'll move to adopt.

21 CHAIRPERSON SCHEUER: Moved by Commissioner
22 Cabral. Is there a second?

23 COMMISSIONER OHIGASHI: Second.

24 CHAIRPERSON SCHEUER: Seconded by
25 Commissioner Ohigashi.

1 CHAIRPERSON SCHEUER: Is there any
2 discussion on the motion? If not, Mr. Orodenker.

3 EXECUTIVE OFFICER: Thank you, Mr. Chair.
4 Commissioner Cabral?

5 VICE CHAIR CABRAL: Yes.

6 EXECUTIVE OFFICER: Commissioner Ohigashi?

7 COMMISSIONER OHIGASHI: Yes.

8 EXECUTIVE OFFICER: Commissioner Giovanni?

9 COMMISSIONER GIOVANNI: Aye.

10 EXECUTIVE OFFICER: Commissioner Chang?

11 COMMISSIONER CHANG: Yes.

12 EXECUTIVE OFFICER: Commissioner Wong?

13 COMMISSIONER WONG: Aye.

14 EXECUTIVE OFFICER: Chair Scheuer?

15 CHAIRPERSON SCHEUER: Aye.

16 EXECUTIVE OFFICER: Mr. Chair, the motion
17 is adopted unanimously.

18 CHAIRPERSON SCHEUER: Thank you very much.

19 And now, Mr. Orodenker, our next agenda
20 item is updating the meeting schedule. Will you walk
21 us through that?

22 EXECUTIVE OFFICER: Thank you, Mr. Chair.

23 We will again be meeting by ZOOM to hear
24 the U of N Bencorp matter and to complete DR20-69 and
25 DR20-70 on the Big Island via ZOOM, and we also have

1 time scheduled for matters that are not completed
2 with the A17-804 Hawaiian Memorial Park.

3 On August 12th, we are scheduled to
4 continue proceedings on the Central Maui Landfill
5 matter and adopt the order.

6 There is also, if that meeting is held via
7 ZOOM, also time for Hawaiian Memorial Park matters if
8 necessary.

9 August 13th is open, unless Hawaiian
10 Memorial Park matter is to be completed.

11 August 26th we are currently scheduled to
12 be live on Maui for the Hanohano motion, and on
13 August 27th, we are scheduled to be live on Kauai --
14 I mean Maui for the Kihei High School matter. Those
15 meetings may change to ZOOM meetings depending.

16 In September we are scheduled to be on Maui
17 before the C. Brewer bifurcation on September 9th,
18 September 10th continuation of C. Brewer bifurcation
19 on Maui on the matter Hanohano Motion to Amend.

20 On September 23rd we have set aside for any
21 matters on Hawaiian Memorial Park issue. On
22 September 24th, we will be on Oahu for Halekua
23 Development motions and on October 7th and 8th we
24 currently have open with changes as a result of
25 failure HB2035,

1 Our calendar is open until October 22nd
2 when we will be on the Big Island and Hilo for Newton
3 Family matter and Hawaii Islands Land Trust Motion to
4 Amend.

5 November 4th we will be on Oahu for Halekua
6 Development, November 5th is open. November 18th, we
7 will be on Maui for the Windward Hotel matter, and
8 then November 19th is open.

9 December 2nd we will be on Maui for the
10 Lanai matter. On December 3rd we will be hearing the
11 Barry Trust matter.

12 On December 16th we will we have set aside
13 for Big Island for the Church matter, and
14 December 17th the Barry Trust matter Adoption of
15 Order.

16 That's through the end of the calendar
17 year.

18 CHAIRPERSON SCHEUER: Thank you, Mr.
19 Orodanker.

20 Commissioners, are there any questions for
21 Dan? Seeing none.

22 Our next agenda item is our Continued
23 Hearing and Action Meeting on Docket A17-804 Hawaiian
24 Memorial Life Plan, Ltd., to consider a Petition to
25 Amend the Conservation Land Use District Boundary

1 into the Urban Land Use District for approximately
2 53.449 acres of land in Kaneohe, Island of Oahu,
3 State of Hawaii, TMK (1)4-5-003: Portion of Lot 1.

4 Will the parties for Docket A17-804 please
5 identify themselves for the record and you may need
6 to unmute yourselves.

7 MR. MATSUBARA: Good morning, Chair Scheuer
8 and members of the Commission. My name is Ben
9 Matsubara, and along with Curtis Tabata we represent
10 the Petitioner Hawaiian Memorial Life Plan.

11 MR. PANG: Good morning, Mr. Chair, Deputy
12 Corporation Counsel on behalf of the City and County
13 of Honolulu.

14 CHAIRPERSON SCHEUER: Thank you, Mr. Pang.

15 MS. APUNA: Good morning, Chair, Deputy
16 Attorney General Dawn Apuna on behalf of State Office
17 of Planning. Here with me is Rodney Funakoshi and
18 Lorene Maki.

19 CHAIRPERSON SCHEUER: Thank you.

20 MR. YOSHIMORI: Good morning, everyone.
21 Grant Yoshimori, with me is Rich McCreedy,
22 Intervenors pro se.

23 CHAIRPERSON SCHEUER: Thank you, Mr.
24 Yoshimori.

25 Let me now update the record.

1 On June 24th, 2020, the Commission met
2 using interactive conferencing technology for an
3 Action Meeting on Docket No. A17-804 Hawaiian
4 Memorial Life Plan, Ltd (O'ahu) to Consider Petition
5 to Amend the Conservation Land Use District Boundary
6 into the Urban Land Use District. Petitioner and
7 County concluded their respective presentations on
8 this docket at that meeting.

9 From June 24th through today the Commission
10 has received public comments via email and written
11 correspondence on this matter which have been made
12 part of the record.

13 On July 14th, 2020, the Commission mailed
14 the July 22nd-23rd Notice of Agenda to parties and
15 Statewide, Oahu and Hawaii regular and email mailing
16 lists.

17 Let me run over our procedures for today.

18 First, I will recognize written public
19 testimony that has been submitted in this matter,
20 identifying the person or organization who submitted
21 the testimony.

22 Second, and I want to make a comment about
23 oral testimony. After all public testimony had been
24 heard on June 8, 2020, I made it clear to all parties
25 and members of the public that because we were

1 entering the formal quasi-judicial portion of these
2 proceedings, that public testimony had been closed in
3 order to move forward with the evidentiary portion of
4 the docket.

5 Because of that, there will be no further
6 oral public testimony in this docket on this matter.

7 In our attempts to go frankly above and
8 beyond what some other State and County boards and
9 commissions have been doing, we have been allowing
10 public testimony and the registration to provide
11 testimony available via ZOOM.

12 In those attempts, it might have appeared
13 to some people as they registered to attend this
14 meeting, that they had the option to give testimony
15 on this matter today. People had the option to
16 submit written testimony to the Commission, but there
17 will be no oral testimony received on this matter
18 from the general public today.

19 However, when we schedule this matter for
20 decision-making, we will allow further public
21 testimony on that day for this matter.

22 Sorry for any confusion that this may have
23 caused any members of the public as you registered to
24 attend this meeting, but had not been familiar with
25 our proceedings.

1 Finally, after the acknowledgement of any
2 written testimony, the Petitioner, the State Office
3 of Planning and then the Intervenor Hui O Pikoiloa
4 will make their presentation.

5 From time to time I will be calling for
6 recesses. In addition, I will note for the parties
7 that we will lose one of our Commissioners at 3:00
8 o'clock, so our proceedings today will end at
9 3:00 P.M. The same of our proceeding for tomorrow.

10 Any questions on our proceedings today from
11 the parties, starting with Petitioner?

12 MR. MATSUBARA: No questions.

13 CHAIRPERSON SCHEUER: County?

14 MR. PANG: No questions from the City.

15 MS. APUNA: No questions from the State.

16 MR. YOSHIMORI: No questions.

17 CHAIRPERSON SCHEUER: Thank you.

18 Mr. Hakoda, do you have a list of the
19 individuals and organizations who have provided
20 written testimony since the last hearing until today?

21 MR. HAKODA: There was such a flurry of
22 last minute submittals to register for the meeting,
23 I've been unable to keep up with everyone's
24 contribution. I will be posting on the website for
25 public review. I don't have a report for you.

1 CHAIRPERSON SCHEUER: Thank you.

2 So all the parties and the Commissioners
3 are advised that as the website is updated, all
4 written testimony received by the Commission will be
5 posted to the website and will be considered part of
6 the record.

7 Any questions on that? Thank you very
8 much, Mr. Hakoda, for all the help you and staff have
9 been working on during these difficult times.

10 With that, Ms. Apuna, are you ready to
11 proceed?

12 MS. APUNA: Yes, Chair. Thank you.

13 Office Of Planning will call our first
14 witness, Cynthia King.

15 Chair, I apologize. I'm going to have to
16 switch gears. Can we have Rodney Funakoshi go first?

17 CHAIRPERSON SCHEUER: Sure. Cynthia, I'm
18 sorry. I let you into the meeting, and I'm removing
19 you now, kicking you out of the meeting. Please log
20 back on.

21 Mr. Funakoshi, is that who you said?

22 MS. APUNA: Yes. He's here with me. I'll
23 just turn the computer towards him when he starts to
24 speak.

25 CHAIRPERSON SCHEUER: Great. I haven't

1 actually seen Mr. Funakoshi since lunch. Does he
2 look the same?

3 You don't have COVID bushy hair, stick out
4 for haircuts.

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

7 THE WITNESS: Yes. Rodney Funakoshi.

8 CHAIRPERSON SCHEUER: Please proceed, Ms.
9 Apuna.

10 RODNEY FUNAKOSHI

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

14 DIRECT EXAMINATION

15 BY MS. APUNA:

16 Q Could you please provide us some background
17 as far as your education and professional experience?

18 A I have a Masters in Urban and Regional
19 Planning from University of Hawaii, 30-plus years of
20 professional planning experience, state and as
21 private planning consultant. And I've been Planning
22 Program Administrator by the State Office of Planning
23 Land Use Division for the past nine years.

24 MS. APUNA: Chair, OP requests Mr.
25 Funakoshi be qualified as an expert in land use

1 planning.

2 CHAIRPERSON SCHEUER: Any objections from
3 the parties?

4 MR. MATSUBARA: No objections.

5 CHAIRPERSON SCHEUER: County?

6 MR. PANG: No objections.

7 CHAIRPERSON SCHEUER: Intervenor?

8 MR. YOSHIMORI: Intervenor has no
9 objections.

10 CHAIRPERSON SCHEUER: Commissioners? Okay,
11 so admitted.

12 MS. APUNA: Thank you, Chair.

13 Q Mr. Funakoshi, can you please summarize
14 your testimony?

15 A Thank you, and good morning, Chair, and
16 Commissioners.

17 The Office of Planning recommends approval
18 of Hawaiian Memorial Life Plan's request to
19 reclassify approximately 53 acres from the State
20 Conservation District to the Urban District subject
21 to conditions.

22 Regarding area of State concern, Blackline
23 Hawaiian Damselfly is an endangered invertebrate
24 species located within the Petition Area. We are
25 concerned that the habitat for endangered Hawaiian

1 Damsel fly be properly managed and maintained.

2 A witness from the Department of Land and
3 Natural Resources will elaborate on this issue.

4 Regarding archeological and historical
5 resources. The State Historic Preservation Division
6 in April 8, 2019, approved the archaeological
7 inventory survey.

8 Petitioner must submit a data recovery
9 plan, preservation plan, and archeological monitoring
10 plan prior to permitted processing.

11 Regarding cultural resources, OP
12 acknowledges the establishment of 14.5 acre cultural
13 preserve within the Petition Area. OP also
14 acknowledges a conservation easement proposed by the
15 Petitioner on 156 acre portion of the property which
16 would remain within the Conservation District.

17 Regarding transportation, we have received
18 an updated Department of Transportation letter of
19 February 12th that rescinds the previous
20 recommendation for the construction of a traffic
21 signal development as no longer being necessary since
22 the contribution is determined to be negligible by
23 the State DOT.

24 Department of Health Wastewater Branch
25 commented that the project should not have any

1 impacts on individual wastewater systems.

2 Regarding applicable standards, OP finds
3 that the property meets the standards set forth in
4 Hawaii Administrative Rules for determining State
5 District Boundaries, and that the project is adjacent
6 to existing Urban development.

7 Basic services are adequate for the
8 proposed cemetery expansion in the general area.

9 OP recommends approval of the Petition Area
10 subject to the Petitioner's commitment to avoid,
11 minimize or mitigate project impacts as represented
12 herein and in this proceeding, and the imposition of
13 following the standard conditions of the Commission.

14 OP recommends 11 conditions which I will
15 summarize here.

16 1) Stormwater Management and Drainage.

17 Petitioner shall implement applicable best
18 management practices to minimize infiltration and
19 runoff from construction and vehicle operations,
20 reduce or eliminate potential for erosion and
21 groundwater pollution, and formulate dust control
22 measures to be implemented during and after the
23 development process in accordance with Department of
24 Health guidelines and City ordinances and rules.

25 2) Air quality monitoring. Petitioner

1 shall participate in an air quality monitoring
2 program as required by State Department of Health.

3 Condition 3) has been deleted from previous
4 indication from Department of Transportation.

5 Condition 4), establish gathering and
6 access rights. That Petitioner shall preserve and
7 establish standard and access rights of native
8 Hawaiians who have customarily and traditionally used
9 Petition Area to exercise subsistence, cultural and
10 religious practice or for access to other areas.

11 5) Previously unidentified burials and
12 archaeological historic sites. That should any be
13 encountered, all work shall cease, the State Historic
14 Preservation Division contacted, and construction
15 activity halted until appropriate mitigation measures
16 are approved by the State Historic Preservation
17 Division.

18 6) That the Petitioner shall establish the
19 cultural preserve in conjunction with an appropriate
20 native Hawaiian group.

21 7) Endangered species. There are 13
22 conditions to properly manage and maintain the
23 habitat for the endangered Hawaiian damselfly.

24 8) To avoid potential impacts of the
25 Hawaiian hoary bat, limitations of clearing of dense

1 vegetation shall be imposed.

2 9) Conservation Easement. That Petitioner
3 shall establish conservation easement and file this
4 at the Bureau of Conveyance for the 156.5 acre
5 portion of the parcel.

6 10) Development timetable. Petitioner
7 shall provide Commission with a development timetable
8 prior to obtaining grading permits from the City.

9 11) Compliance with representations. That
10 the Petition Area shall be developed in substantial
11 compliance with the representations made to the
12 Commission.

13 12) Infrastructure deadline. That
14 Petitioner shall complete construction of the
15 proposed backbone infrastructure which consists of
16 the primary roadways and access points, internal
17 roadways, on- and off-site water and electrical
18 system improvements and drainage and other utility
19 system improvements within ten years of the date of
20 the Decision and Order for the Petition.

21 That summarizes our testimony and the
22 recommended conditions from the Office of Planning.

23 MS. APUNA: Mr. Funakoshi is now available
24 for cross-examination.

25 CHAIRPERSON SCHEUER: Thank you. Starting

1 with the Petitioner, Mr. Matsubara.

2 MR. MATSUBARA: Yes, Chair Scheuer, the
3 Petitioner has no questions of Mr. Funakoshi.

4 CHAIRPERSON SCHEUER: Thank you. County?

5 MR. PANG: City has no questions for this
6 witness. Thank you.

7 CHAIRPERSON SCHEUER: Intervenor, Mr.
8 Yoshimori.

9 MR. YOSHIMORI: Thank you.

10 CROSS-EXAMINATION

11 BY MR. YOSHIMORI:

12 Q Mr. Funakoshi, I have just a few questions.

13 In OP's testimony regarding the Hawaiian
14 damselfly, which states that
15 Petitioner (indecipherable) the mitigations including
16 herringbone drains, well monitoring gauges,
17 supplemental waterlines to the habitat, and small
18 stakes near the rivers and also doing continued
19 inspections.

20 Is that correct?

21 A Yes, we have listed 13 conditions.

22 Q In the letter from the Wildlife Services to
23 the Office of Planning, it's OP Exhibit 6, the Fish
24 and Wildlife recommended, quote, coordination with
25 the partners for Fish and Wildlife Program in order

1 to establish a habitat restoration and conservation
2 program for the damselfly habitat, unquote.

3 But in OP's testimony it states, quote, in
4 a verbal discussion with the State Department of Land
5 and Natural Resources Division of Forestry and
6 Wildlife they indicated that a habitat restoration
7 and conservation with the U.S. FWS would only be
8 necessary if the proposed mitigation measures as
9 detailed below are not sufficient to maintain and
10 manage the habitat.

11 Was the Fish and Wildlife brought into make
12 that determination?

13 A No. We consulted with Department of Land
14 and Natural Resources. The condition does provide
15 additional mitigation measures may be imposed in
16 consultation with the Fish and Wildlife Service.

17 Q But that's only if the DLNR determines that
18 it's necessary for the Fish and Wildlife Service?

19 A I'm not exactly sure who would determine
20 that, it's probably -- yeah, I'm not sure exactly who
21 would determine that. I would like to defer
22 questions on mitigation to our DLNR witness Ms. King,
23 who is following my testimony here.

24 Q Thank you.

25 On page three of OP's witness testimony, or

1 written testimony, it also states that the Fish and
2 Wildlife letter, quote, U.S. Fish and Wildlife
3 Service also indicated that they had strong concerns
4 regarding impacts to the endangered Hawaiian
5 damselfly habitat; is that correct?

6 A Yes.

7 Q In the Fish and Wildlife letter they state,
8 quote:

9 We retain concerns that the extent and
10 depth of the slope grading, trenching and filling
11 upslope of the endangered damselfly habitat at this
12 site has the potential to alter the local hydrology,
13 potentially reducing or eliminating the outflow from
14 the small spring on which of the damselfly depend,
15 unquote.

16 Do you recall that?

17 A Yes.

18 Q The Fish and Wildlife letter, it was a
19 response to OP's request for comments on the Final
20 EIS. And that EIS also included all of the
21 discussion of the herringbone, supplemental water
22 line and the well monitoring. Is that correct?

23 A I believe so, yes.

24 Q I've spoken to the Fish and Wildlife Deputy
25 Supervisor Koob and Dan Polhemus, and they both say

1 that they haven't reviewed the mitigation with the
2 State.

3 Has OP discussed the damselfly mitigation
4 with the US Fish and Wildlife Service?

5 A No, I don't believe so.

6 Q And regarding the cultural preserve, OP's
7 testimony says, quote, the Petitioner shall work with
8 the community and the Koolaupoko Hawaiian Civic Club
9 in order to establish a preservation and working plan
10 for the cultural preserve in perpetuity, unquote.

11 Do you envision the preservation and
12 working plan being completed and presented to the LUC
13 prior to the closure of the LUC proceedings for this
14 District Boundary Amendment?

15 A I'm not aware of a specific timetable for
16 the posting on this specific. I would imagine it
17 would take awhile.

18 Q So you're saying probably be after the LUC
19 has surrendered a decision?

20 A I would think so.

21 Q Thank you. Those are all the questions I
22 have.

23 CHAIRPERSON SCHEUER: Thank you, Mr.
24 Yoshimori.

25 Commissioners, questions for the witness,

1 Commissioner?

2 COMMISSIONER WONG: Thank you, Chair.

3 Thank you, Mr. Funakoshi.

4 One of the questions I have was dealing
5 with the rockfall mitigation issues. Can you speak
6 about that issue or not?

7 THE WITNESS: Not as an expert, but I am
8 aware of the testimony presented by Mr. Lim, I
9 believe.

10 COMMISSIONER WONG: So you have enough past
11 experiences, if I may use that, do you believe that
12 the mitigation that they suggested would be enough
13 for the area?

14 THE WITNESS: Yeah, I believe so. Mr. Lim
15 is one of the best in the business, with extensive
16 experience. So if his recommendations has tested
17 out, I would support and believe what he has said.

18 COMMISSIONER WONG: Thank you.

19 The next question I have is regarding your
20 past history in development of projects. So as a
21 developer or former developer, as you know,
22 construction is very fluid, or development of a
23 facility is very fluid.

24 So Mr. Lance Wilhelm came up and talked
25 about timetables and dealing with other development

1 and construction phase.

2 Do you believe his testimony was on par?

3 THE WITNESS: Yes. He's one of the --
4 yeah, he's one of the most prominent long-standing
5 history with that. He has impeccable construction
6 development credentials. Yeah, I would certainly
7 believe what he said.

8 COMMISSIONER WONG: That's all. Thank you,
9 Chair. Thank you, Mr. Funakoshi.

10 CHAIRPERSON SCHEUER: Thank you,
11 Commissioner Wong.

12 Commissioners, any other questions for Mr.
13 Funakoshi? Are there no more questions for Mr.
14 Funakoshi? Thank you.

15 Commissioner Okuda?

16 COMMISSIONER OKUDA: Thank you, Mr. Chair.
17 Thank you, Mr. Funakoshi, for your testimony.

18 Can I ask you this. The statute,
19 specifically HRS Section 205-2(e), I believe that's
20 small (e) close paren, states the type of land or
21 property which shall be within the Conservation
22 District, correct?

23 THE WITNESS: I believe -- I don't have the
24 statute in front of me, but you're probably right.

25 COMMISSIONER OKUDA: Let me just read the

1 first few words of 205-2(e) states:

2 Conservation District shall include areas
3 necessary for protecting watersheds, water sources,
4 and the statute continues on.

5 I only wanted to read the initial part
6 which uses the word "shall" s-h-a-l-l.

7 Do you recall that that's what the
8 beginning part of that statute says, that the items
9 that are listed in that part of the statute follows
10 the word "shall", that Conservation District shall
11 include those types of properties?

12 THE WITNESS: Yes.

13 COMMISSIONER OKUDA: And the word "shall"
14 means it's mandatory, correct?

15 THE WITNESS: Yes. I should note that
16 those were establishment of the boundary, and we
17 are -- here we're talking about a boundary amendment
18 as opposed to establishment of the boundary.

19 COMMISSIONER OKUDA: Okay, but 205-2(e)
20 does provide guidance as far as what should be
21 considered in making that decision; correct?

22 THE WITNESS: Yes.

23 COMMISSIONER OKUDA: I understand the
24 recommendations of the Office of Planning which I
25 believe in many -- or maybe in most cases are very

1 persuasive, but let me ask you this, because we rely
2 on the Office of Planning, or at least I do, as being
3 more neutral as far as guardian of the public
4 interest. Can I ask you this?

5 Is there evidence in the record which
6 indicates reasons why the property should remain
7 Conservation and not redistricted or amended into the
8 Urban District? Are there reasons in the record
9 which support keeping this parcel of property in the
10 Conservation District?

11 THE WITNESS: I look at it specifically for
12 that in reviewing more for appropriateness for
13 amending the district boundary, but presumably does
14 it serve watershed types of natural resource values
15 that, you know, it's logical that this area would
16 have been or is designated Conservation, certainly
17 for a number of reasons, for any number of reasons.

18 COMMISSIONER OKUDA: Based on your
19 experience, and the fact that you have been qualified
20 as an expert, can you state or tell us any other
21 reasons that are reflected in the record why this
22 parcel of property should remain Conservation?

23 THE WITNESS: Yeah. Again, we did not look
24 at it specifically for retention in the Conservation
25 District, but certainly watershed and, you know,

1 those kinds of values would, you know, make it
2 amenable to remaining in Conservation District or
3 reclassified into other districts if they meet those
4 requirements.

5 COMMISSIONER OKUDA: In the Office of
6 Planning making its determination, or leading up to
7 its recommendation, did the Office of Planning
8 consider whether or not it would be appropriate to
9 keep the property within the Conservation District?

10 THE WITNESS: Well, that wouldn't be a
11 recommendation for denial, and so we did not come to
12 that conclusion. So we think that appropriate
13 mitigation measures, Petitioner has, you know, gone
14 out of his way, in our opinion, to make concessions
15 in the community and to impose mitigation measures
16 that should help affect any potential impacts from
17 the development.

18 COMMISSIONER OKUDA: I'm not asking about
19 whether or not the Petitioner has gone out of his way
20 or not, my question goes to the decision-making
21 process that has led to the Office of Planning's
22 recommendation, because for us to consider the weight
23 we should give the Office of Planning's
24 recommendation, you agree that we should consider the
25 thoroughness of the process that you engaged in to

1 reach that decision or recommendation?

2 THE WITNESS: Yes, absolutely.

3 You know, we have reviewed the EIS from its
4 inception, Preparation Notice to Draft and Final EIS,
5 and gone through all the testimony and consulted with
6 State and Federal agencies on the proposal.

7 We have also -- yeah, so I think we have
8 considered well the merits of the reclassification
9 proposal and have recommended accordingly, you know,
10 trying to ensure adequate protection of natural
11 resource values, potential development --

12 COMMISSIONER OKUDA: I understand you
13 considered the merits of the project, but in coming
14 to your recommendation, did you consider the demerits
15 of the project?

16 THE WITNESS: Yeah, that goes along with
17 considering the merits. So, yes, merits and demerits
18 of the project were considered.

19 COMMISSIONER OKUDA: Can you please tell me
20 what are some of the demerits of the project that the
21 Office of Planning considered before making its
22 recommendation? What were some of the demerits of
23 the project?

24 THE WITNESS: Yeah, I've pretty much gone
25 through those. To again summarize, the potential

1 impact would be to endangered species on the site.
2 It would be to the potential impacts, the cultural
3 practices being on the site, there are the potential
4 development impact from stormwater runoff, and
5 grading that need to be addressed, and including
6 rockfall, that needs to be addressed and have been
7 vetted by the Petitioner in elimination measures as
8 potential traffic impact that someone
9 (indecipherable) with the State Department of
10 Transportation on, and whether water resources or air
11 quality or some other types of environmental impact
12 that the state has jurisdiction over, we believe we
13 have already considered those in making our
14 recommendations.

15 COMMISSIONER OKUDA: Now, isn't it true
16 that an owner of property which is designated
17 Conservation has no legal or obligation to maintain
18 cultural resources on that property?

19 To be more specific, if I owned the parcel
20 of property and there was a heiau located on the
21 property, I could simply let the heiau rot away by
22 allowing bushes, trees, all sorts of things to grow
23 as long as I don't affirmatively do things to damage
24 or destroy the property.

25 In other words, benign neglect is --

1 frankly, it might be immoral, but it's okay under the
2 law as you understand it, correct?

3 THE WITNESS: I believe so, yes.

4 COMMISSIONER OKUDA: So would it be fair to
5 say that what the community is being presented here
6 is a tradeoff? I mean, being really very frank about
7 it, I'm not saying -- well, maybe I am saying it's
8 like a quid pro quo. It's a promise to do certain
9 things by the Petitioner, which is not otherwise
10 required of the Petitioner, in exchange for the
11 community giving up certain things.

12 That's what we're really weighing, isn't
13 that correct?

14 THE WITNESS: It is one of the community
15 benefits that is being offered by the Petitioner that
16 we support.

17 COMMISSIONER OKUDA: So in other words,
18 it's a weighing decision, is the community getting
19 its money's worth in exchange for what it's giving
20 up, being very frank about it? That's what we're
21 really talking about here. Would agree as a
22 professional planner?

23 THE WITNESS: No, I don't look at it
24 necessarily in that light. It's more from the
25 standpoint of what the Petitioner is willing to do to

1 mitigate the potential impacts, and certainly one of
2 the ones that would be involved, and Petitioner has
3 done a very good job in (indecipherable) of this area
4 plan for preservation of sites in the area, and very
5 commendable and supported as part of the
6 developmental approval.

7 COMMISSIONER OKUDA: What specific promise
8 has the Petitioner made as shown in the record of
9 specific actions which would be taken, for example,
10 to preserve the heiau?

11 When I say specific actions, I don't mean
12 simply, oh, I promise I'm going to take care of the
13 heiau. In other words, I'm asking where in the
14 record is there evidence of specific actions which
15 will be taken to preserve the heiau by the
16 Petitioner?

17 THE WITNESS: I don't want to speak for the
18 Petitioner, I'm not, but just the provision and
19 allowance where unrestricted access I think is really
20 commendable. And I think, you know, they're
21 promising to both maintain and preserve that in the
22 future, incorporate the cultural preserve within the
23 conservation easement.

24 I think all of that, and willingness to
25 work with both the Hawaiian civic club and the

1 community are all commendable and goes to show their
2 willingness to (indecipherable).

3 COMMISSIONER OKUDA: Mr. Funakoshi, because
4 I kind of believe the devil is in the details, so I'm
5 just asking about details.

6 Isn't it true that under Hawaii law,
7 whether it's the PASH decision or the general
8 provision of the Hawaii Constitution, that cultural
9 practitioners cannot be denied access to the heiau,
10 whether or not there's a boundary change here?

11 THE WITNESS: Yes, I would say so.

12 COMMISSIONER OKUDA: So, in other words, a
13 promise by the Petitioner or anyone else to assure
14 that cultural practitioners would have access to the
15 heiau, really that's not giving cultural
16 practitioners anything additional or anything in
17 addition to what the law already guarantees those
18 cultural practitioners, correct?

19 THE WITNESS: That's true. Although they
20 are making improvements and improving the access that
21 does make it a lot easier for cultural practitioners
22 to use that site.

23 COMMISSIONER OKUDA: Now, in coming to the
24 recommendation that the Office of Planning came to,
25 did the Office of Planning take into consideration

1 whether or not the Koolaupoko Hawaiian Civic Club or
2 whichever civic club or community organization would
3 be given management rights or control rights over the
4 cultural preserve, whether that organization would
5 also be provided the resources to carry out such
6 management functions or preservation functions?

7 THE WITNESS: No, we did not get into that
8 detail, no.

9 COMMISSIONER OKUDA: Would that be a
10 concern that the Office of Planning would have that
11 an entity or organization may be given the power or
12 the right to exercise control or preservation but not
13 be given the funds or the resources to actually carry
14 out that preservation or control function, would that
15 be a concern?

16 THE WITNESS: Not overly, because these are
17 pretty much volunteer organizations that, you know,
18 basically staffed by volunteers. And there's some
19 maintenance that possibly -- but it's not normal that
20 you would necessarily allocate or require Petitioner
21 to provide resources for that, for ongoing
22 maintenance. Something that I guess would be nice,
23 but I don't see how we would require --

24 COMMISSIONER OKUDA: I'm not saying that
25 the Land Use Commission necessarily has or should

1 exercise that type of function, I'm just trying to
2 find out whether or not the Office of Planning
3 considered certain factors in coming to its
4 recommendation so that at least I personally can take
5 into account whether or not this is a good deal or
6 not a good deal for the community?

7 THE WITNESS: The important thing is really
8 the identification and initial consultation with who
9 would be a management organization or caretaker for
10 the cultural preserve. I think that in itself is the
11 biggest step in ensuring long-term preservation.

12 COMMISSIONER OKUDA: Now, you testified
13 about your evaluation of Lim's expertise, and you,
14 and Lim's testimony -- let me ask you this.

15 Did you hear his testimony about
16 foreseeable dangers arising from rockfall? I don't
17 want to go over it because his testimony is what it
18 stated in the transcript. You heard his testimony,
19 correct?

20 THE WITNESS: Yes.

21 COMMISSIONER OKUDA: Did you have any
22 reason to doubt or criticize any of Lim's testimony
23 about foreseeability or matters with respect to
24 rockfall dangers?

25 THE WITNESS: No, because simply because

1 they are -- they need to be very careful in what they
2 say and how they manage knowing the potential impacts
3 from rockfalls throughout the island, so they are
4 very careful, and in my opinion, they know whereof
5 they speak. And I would certainly believe and
6 endorse their recommendation.

7 COMMISSIONER OKUDA: And, again, Lim's
8 testimony is Lim's testimony as reflected in the
9 transcript. But do you agree that what this
10 development does is actually bring the public into a
11 zone of danger even though the zone of danger or the
12 level of dangerousness might be attempted to mitigate
13 it, but what's going on here really is development
14 brings the public into a zone of danger, foreseeable
15 zone of danger.

16 THE WITNESS: That could occur with or
17 without development, but any development potentially
18 that is upslope of another development has that
19 potential for rockfall or landslides or those kinds
20 of impacts. It's always a matter of degree and how
21 you address it. And to the extent that things are
22 foreseeable to do what you can to mitigate is really
23 the best course of action.

24 COMMISSIONER OKUDA: Is it the Office of
25 Planning's position, based on its recommendation,

1 that no one will be foreseeably placed at the risk of
2 serious bodily injury or death because of this
3 development?

4 THE WITNESS: No, I'm not willing to say
5 that.

6 COMMISSIONER OKUDA: Is there anything in
7 the record right now that indicates that given the
8 fact that the property has been in Conservation
9 District, that that fact has encouraged people to be
10 brought into a zone of danger from rockfall?

11 THE WITNESS: I don't understand. Can you
12 repeat the question?

13 COMMISSIONER, OKUDA: Yeah that's a bad
14 question. Let me withdraw that.

15 One of the things the Hawaii Constitution
16 states is that when we look to develop Hawaii's
17 resources, we need to look at the issue of
18 self-sufficiency and sustainability, correct?

19 THE WITNESS: I believe so.

20 COMMISSIONER OKUDA: Now, very early in
21 this proceeding, I had asked the president of
22 Hawaiian Memorial Park -- and let me back up a bit.

23 You do agree that Hawaiian Memorial Park is
24 actually a wholly-owned subsidiary of Service
25 Corporation International, SCI, correct?

1 THE WITNESS: Right, that's what they said.

2 COMMISSIONER OKUDA: And, in fact, I
3 believe they included some SEC filings showing the
4 financial stability or financial resources of SCI,
5 that's part of the record.

6 Do you recall seeing that?

7 THE WITNESS: We did not review that
8 specifically, but I do recall reference to that
9 corporation, yes.

10 COMMISSIONER OKUDA: I think it might have
11 been 10Q, I don't think it was a 10K form, but in any
12 event, do you dispute or do you agree with the
13 statement that Service Corporation International, the
14 owner of Hawaiian Memorial Park, is the world's
15 largest cemetery, mortgage, funerary company?

16 CHAIRPERSON SCHEUER: Mr. Okuda,
17 respectfully, in the interest of time --

18 COMMISSIONER OKUDA: Let me just ask the
19 question.

20 CHAIRPERSON SCHEUER: (Indecipherable) the
21 core of your question.

22 THE WITNESS: I'm not aware. I'm not sure
23 that that's correct or incorrect, but yeah, I don't
24 acknowledge it.

25 COMMISSIONER OKUDA: In coming to the

1 recommendation of the Office of Planning, did the
2 Office of Planning consider or take into account the
3 net profit that this development would remove from
4 the community and be transferred to Service
5 Corporation International?

6 In other words, how much money would be
7 taken out in dollars from the community by this
8 development in exchange for whatever the demerits
9 were that the Office of Planning considered would be
10 part of this project?

11 THE WITNESS: No, that was not one of our
12 considerations.

13 COMMISSIONER OKUDA: Okay. Thank you, Mr.
14 Chair. No further questions.

15 CHAIRPERSON SCHEUER: Thank you very much,
16 Mr. Okuda.

17 Commissioners, are there any further
18 questions for Mr. Funakoshi?

19 Commissioner Aczon followed by Commissioner
20 Giovanni.

21 VICE CHAIR ACZON: Good morning, Mr.
22 Funakoshi. Thank you for coming today without the
23 subpoena.

24 So I guess during the discussion and
25 questioning you mention about the merits and the

1 demerits of the project. And as part of those
2 demerits, the Office of Planning still proposed to
3 approve the project, is it because the merits
4 outweigh the demerits, or is it because you're
5 satisfied with the proposed mitigations that Office
6 of Planning is proposing?

7 Just kind of wondering how you, in spite of
8 those demerits, how it came up with proposing to
9 approve the project.

10 THE WITNESS: Yes, we primarily look at the
11 appropriateness of the reclassification. And then
12 how mitigation is proposed and relative to State
13 areas of concern is what it amounts to.

14 So, you know, not so much that we look at
15 the merits or demerits of the project, but more
16 whether it's an appropriate reclassification to the
17 Urban District. Whether the development adequately
18 and substantially mitigates whatever foreseeable
19 impacts, and on that basis, you know, with
20 appropriate conditions and with consultation from our
21 other State and Federal agencies to make that
22 decision.

23 And so, you know, we have done that, and
24 that's what our recommendation reflects.

25 VICE CHAIR ACZON: So, again, so you're

1 confident that, you know, with those proposed
2 mitigations by your office, will satisfy any issues
3 about the demerits that you mention earlier?

4 THE WITNESS: Yes.

5 VICE CHAIR ACZON: Thank you, Mr. Chair,
6 that's all. Thank you, Mr. Funakoshi.

7 CHAIRPERSON SCHEUER: Thank you very much,
8 Commissioner Aczon.

9 Commissioner Giovanni?

10 COMMISSIONER GIOVANNI: Thank you, Chair.
11 Thank you, Mr. Funakoshi, for your testimony today.

12 Are you familiar with the Petitioner's
13 grading plan and the consequence of the large volume
14 of material that will be removed from the site?

15 THE WITNESS: Yes, I was here for testimony
16 on that issue.

17 COMMISSIONER GIOVANNI: What is your
18 understanding of the Petitioner's commitment
19 regarding the fate of the materials that will be
20 removed from the site, the land volume?

21 THE WITNESS: Yeah, that I'm not sure
22 how -- I would have to take their engineers and Ms.
23 Wilhelm's testimony relative to the reuse or follow
24 how that is absorbed in other areas, but I wouldn't
25 doubt what they're saying. I think it's possible

1 that good fill material is always in demand and
2 especially in these days where a lot of developments
3 are in the lower lying areas where potential sea
4 level rise impacts will be elevated, so involve a lot
5 of developments I think would welcome good fill.

6 COMMISSIONER GIOVANNI: With that
7 perspective, do you think it would be reasonable for
8 the Petitioner to make a firm commitment for reuse of
9 that material as fill as opposed to disposal of it in
10 a landfill?

11 THE WITNESS: As a condition, I'm not sure
12 that I'm best qualified, but maybe. I'm not sure,
13 I'm not sure I would be prepared to respond to that,
14 anything that's plausible scenario for reuse of the
15 fill.

16 COMMISSIONER GIOVANNI: Would you, from
17 your perspective, would you state that it would be
18 not only plausible, but a favorable alternative to
19 use it as fill as opposed to landfill?

20 THE WITNESS: Yes. There are always, I
21 think what you been -- (indecipherable) potentially
22 is the need to stockpile that fill if all of it is
23 not available for immediate use, so sometimes that
24 can pose a separate issue, but in general, you know,
25 I would support reuse of the material.

1 COMMISSIONER GIOVANNI: Would you support
2 it as a favored alternative to landfill or just as an
3 alternative?

4 THE WITNESS: I would say as an alternative
5 I would -- yeah, I'm not sure as a requirement
6 opposed to offer from the Petitioner to make that
7 kind of commitment probably be preferable, but, yeah,
8 I'm not sure.

9 COMMISSIONER GIOVANNI: Thank you, no
10 further questions, Chair.

11 CHAIRPERSON SCHEUER: Thank you,
12 Commissioner Giovanni.

13 Commissioners, are there further questions
14 for Mr. Funakoshi? If not, I have a couple, and I
15 think we can take a break after that.

16 Any questions, Commissioners?

17 Mr. Funakoshi, I want to go back to some of
18 your responses to your cross from Commissioner Okuda,
19 because I think respectfully you might have spoken a
20 little bit outside area of expertise.

21 And this -- (frozen screen) has to do with
22 whether or not Petitioner would fund maintenance of
23 actual cultural preserve or conservation easement.

24 You're qualified as a land use
25 professional, an expert, but are you familiar with

1 land trusts at all?

2 THE WITNESS: Not in any depth, no.

3 CHAIRPERSON SCHEUER: Are you aware of the
4 accreditation procedures for land trusts offered by
5 the Land Trust Alliance in the United States?

6 THE WITNESS: No.

7 CHAIRPERSON SCHEUER: So you're not aware
8 that for an accredited land trust, they're not
9 allowed to accept a conservation easement unless they
10 have sufficient funds to properly steward that
11 easement in terms of the conditions of that easement,
12 correct?

13 THE WITNESS: Okay, I'm not sure, okay.

14 CHAIRPERSON SCHEUER: So accredited land
15 trust, and there is accredited land trust and
16 nonaccredited land trust.

17 Accredited land trust will not maintain
18 their accreditation -- (indecipherable) unless either
19 through their own fundraising or through donation of
20 grantor they have sufficient funds to maintain
21 whatever values (frozen screen).

22 That's exactly what was done, or is being
23 done in the case of a conservation easement being
24 issued in relationship to Waikapu Country Town.

25 THE WITNESS: I see, thank you for that

1 education. I'm not aware of that.

2 CHAIRPERSON SCHEUER: I can't speak to what
3 standards or practices that Koolaupoko Hawaiian Civic
4 Club might have over cultural preserve. I want to
5 make sure really your testimony was there is no cases
6 where the developer is asked to steward this. And I
7 don't think that's accurate or within your area of
8 expertise.

9 THE WITNESS: Okay, I stand corrected.
10 Thank you.

11 CHAIRPERSON SCHEUER: Anything further,
12 Commissioners?

13 If not, it is 10:04 A.M., I would like to
14 call a ten-minute recess until 10:14 A.M., and we
15 will proceed.

16 Is there going to be any redirect, Ms.
17 Apuna, for Mr. Funakoshi?

18 MS. APUNA: No.

19 CHAIRPERSON SCHEUER: We will proceed at
20 long last with the State's entomologist, is that
21 correct?

22 MS. APUNA: Yes.

23 CHAIRPERSON SCHEUER: Recess until 10:14.

24 (Recess taken.)

25 CHAIRPERSON SCHEUER: 10:16, I'm going to

1 admit Ms. King to the LUC staff. I note Mr. Nate
2 Yuen has his hand raised as attendee. Is it possible
3 to contact him, see what his concern is?

4 Ms. King, you've been promoted to panelist.
5 When you come in, enable your audio and video,
6 please.

7 MS. APUNA: Chair, Cynthia just called,
8 said she couldn't get back in because she was
9 previously taken out, but she's trying to log back in
10 and hopefully we can put her back.

11 CHAIRPERSON SCHEUER: Okay. We need the
12 old, please standby, we are having technical
13 difficulties, they used to have on television.

14 I did note -- thank you, Commissioner
15 Ohigashi, for that -- I did not actually do anything
16 to Ms. King's thing when I promoted her to be able to
17 speak, but when I tried to say that, to remove her
18 when you asked for her earlier and then said you were
19 going with Mr. Funakoshi, it did indicate if I had
20 disabled her audio that she wouldn't be able to move
21 back into the meeting, so I did nothing. So I don't
22 know if she is going to have to re-register or
23 provide a code or something else, but we will stand
24 by.

25 COMMISSIONER WONG: Chair, this is good

1 practice because we're learning every day about ZOOM
2 and in case some other things happen at least for the
3 future, it helps us.

4 CHAIRPERSON SCHEUER: Yeah.

5 MS. APUNA: Chair, she got a message that
6 she is unable to rejoin this meeting because she was
7 previously removed by the host.

8 CHAIRPERSON SCHEUER: They're working on
9 it.

10 MR. HAKODA: Chair, we're having difficulty
11 making communication, but we would like to suggest
12 perhaps if she uses a different email address to
13 access the meeting, she might be admitted. Can she
14 try that, please?

15 CHAIRPERSON SCHEUER: Okay. We're working
16 on it. I'm going to blame Ms. Apuna for calling her
17 first.

18 MS. APUNA: I apologize for that.

19 CHAIRPERSON SCHEUER: If we're going to
20 lose somebody, I would have been fine with it being
21 Mr. Funakoshi rather than be Ms. King.

22 COMMISSIONER WONG: Chair, does OP have any
23 other witness?

24 MS. APUNA: Cynthia is our last witness.

25 MR. DERRICKSON: Can you give me Cynthia's

1 email address and I'll send her a link. Could you
2 email it to my state address, please?

3 COMMISSIONER WONG: Chair, you want to take
4 another five-minute break, a recess?

5 CHAIRPERSON SCHEUER: Sure, let's go
6 officially off the record while we try and do this.
7 We will reconvene at 10:28 -- wait, yeah, 10:23, we
8 will reconvene at 10:28.

9 (Recess taken.)

10 CHAIRPERSON SCHEUER: I'm going to restart
11 the meeting officially at 10:31. Thank you for your
12 persistence and everyone's patience. I think we're
13 doing okay since starting virtual meetings in early
14 May, this is the worst problem we have had so far.

15 I'm going to swear you in.

16 Do you swear or affirm that the testimony
17 you're about to give is, the truth?

18 THE WITNESS: Yes, it is. I do.

19 CHAIRPERSON SCHEUER: Please proceed Ms.
20 Apuna.

21 CYNTHIA KING

22 Was called as a witness by and on behalf of the State
23 Office of Planning, was sworn to tell the truth, was
24 examined and testified as follows:

25 DIRECT EXAMINATION

1 BY MS. APUNA:

2 Q Good morning, Cynthia. Can you please
3 describe your education and professional background?

4 A Sure. I received my BS in Environmental
5 Science, Policy and Management from the University of
6 California Berkeley in 2001 and my Masters in
7 Entomology from the University of Hawaii at Manoa in
8 2008.

9 I am the entomologist for the Department of
10 Land and Natural Resources, Division of Forestry and
11 Wildlife, and have been in this position since 2009.

12 I stated, and I currently manage the Hawaii
13 invertebrate program, which is the first program in
14 the state to focus on the conservation and management
15 of native invertebrates with a specific emphasis on
16 rare, threatened and endangered species.

17 CHAIRPERSON SCHEUER: Can you slow down
18 slightly?

19 THE WITNESS: Yes.

20 The work I do is funded by and conducted in
21 close coordination with the U.S. Fish and Wildlife
22 Service and University of Hawaii at Manoa.

23 MS. APUNA: Thank you.

24 Chair, OP requests Ms. King be qualified as
25 an expert in entomology.

1 CHAIRPERSON SCHEUER: Any objections from
2 the Petitioner?

3 MR. MATSUBARA: Petitioner has no
4 objections.

5 CHAIRPERSON SCHEUER: County?

6 MR. PANG: City has no objections.

7 CHAIRPERSON SCHEUER: Thank you.

8 MR. YOSHIMORI: Intervenors have no
9 objection.

10 CHAIRPERSON SCHEUER: Commissioners?

11 Ms. King is admitted as an expert in
12 entomology. Please continue.

13 MS. APUNA: Thank you, Chair.

14 Q Please summarize your testimony.

15 A Sure.

16 I am familiar with this Petition because
17 the DEIS was circulated to DLNR for review in 2018,
18 and myself and other staff compiled comments for our
19 Division. I was aware of the presence of the
20 *Megalagrion nigrohamatum nigrolineatum* at the site
21 prior to the formal conservation process, as I was
22 responsible for issuing a native invertebrate
23 research and collecting permits from Dr. Montgomery
24 when he was initiating the survey for invertebrates
25 in 2007, and I also did (indecipherable).

1 CHAIRPERSON SCHEUER: Slightly slower,
2 slightly slower.

3 THE WITNESS: I did have some contact with
4 community members who reached out to me because they
5 were concerned about the damselfly species at the
6 site.

7 The Blackline damselfly *Megalagrion*
8 *nigrohamatum nigrolineatum* is a subspecies which is
9 endemic to Oahu. Historically the species was found
10 in both the Waianae and the Koolau mountain ranges.
11 And most recent literature indicates that this
12 species is extant in 17 populations across the
13 island.

14 As a result of the decline in 2012, it was
15 listed as an endangered species under the Endangered
16 Species Act of 1973.

17 The preferred breeding habitat for the
18 species include pools and slow-moving sections of
19 montane perennial streams, and they're generally
20 found in higher elevations.

21 At this site the damselfly inhabits the
22 seep habitat, which is associated with the previously
23 dug well where natural discharge of groundwater flow
24 through permeable soils. The DEIS acknowledges that
25 extensive earthwork, including the installation of

1 retaining walls and movement of fill could
2 potentially compress the soils in the area upslope of
3 the seep and well, and alter water flow to the seep.

4 The reduction of water flow, increased
5 turbidity or increased temperatures in the surface
6 water flowing from the seep is a significant concern
7 because the immature stages of the species are
8 aquatic and rely on a continuous supply of clean,
9 cool water.

10 It's also possible that runoff from the
11 landscaped area could negatively impact the area if
12 landscaping staff adopt management other than what is
13 referenced in the DEIS.

14 However, at present it is stated that no
15 fertilizers or pesticides are used to maintain the
16 area, only glyphosate, which is not documented to
17 impact invertebrates.

18 Also we know from experience that other
19 native damselfly species appear to persist even in
20 proximity to highly landscaped urban areas,
21 which seems counterintuitive, but we have examples of
22 some of our other endangered species existing in
23 ponds and golf courses, for example, on the Island of
24 Lanai, and also on the grounds of Tripler Army
25 Medical Hospital.

1 I reviewed the avoidance and minimization
2 measures, as proposed in the DEIS specific to the
3 damselfly, and found them to be sound
4 recommendations. One of the most important measures,
5 the most important is the installation of a temporary
6 and then permanent waterline to provide water to the
7 seep in the event that flow to the seep is adversely
8 impacted.

9 Though, I have to defer on hydrology to our
10 Commission on Water Resources Management who have
11 reviewed the DEIS for that component.

12 So it was initially proposed as an
13 avoidance and minimization strategy to implement the
14 installation of a temporary and then permanent
15 waterline, and I do think that is a very necessary
16 measure, should the expansion move forward.

17 What we don't want is to have any delay in
18 restoring the water to the habitat in the event
19 surface flows are reduced significantly or in the
20 event of any unexpected contamination. So any
21 prolonged reduction in flow could result directly in
22 take of the species.

23 But a temporary and a permanent waterline
24 would enable resource managers to respond quickly
25 concerning data or trends observed.

1 Additional mitigation measures such as
2 fencing the area from pigs will prevent ongoing
3 degradation of the habitat. And providing safe areas
4 for damselflies naiads to emergence population, also
5 has the potential to increase emergence success in
6 overall abundance of the species, reducing predation
7 from invasive ants.

8 The primary threat to, not just
9 damselflies, but most rare invertebrates species in
10 Hawaii is the impact of invasive species, whether
11 that is competition, direct predation, habitat
12 destruction and habitat alteration.

13 Left alone, it's common for rare
14 invertebrates to blink out at field sites where
15 ongoing management or monitoring isn't being
16 conducted, and we don't have eyes on the site to
17 understand what new threats might be present.

18 So in my opinion, the avoidance and
19 minimization measures proposed for the site would
20 increase the likelihood that this population would be
21 preserved in perpetuity.

22 If take were anticipated, DLNR would
23 request Petitioner to apply for an Incidental Take
24 Licence under the State Endangered Species Law, which
25 is 195D of HRS. This process works in tandem with

1 the Federal Incidental Take Permit process under the
2 Endangered Species Act. Take of this endangered
3 damselfly at the site is prohibited under 195D HRS,
4 unless that take occurs as the result of an otherwise
5 unlawful activity, which is permitted with Incidental
6 Take Permit License and an approved accompanying
7 Habitat Conservation Plan.

8 However, DOFAW's position in the letter we
9 submitted was if the Petitioner follows all the
10 avoidance measures described in the letter, take
11 should be avoided and Incidental Take Permit License
12 would not be needed.

13 Given the intense monitoring that is
14 proposed, and that would be ongoing at the site, I
15 believe it will be very apparent if the proposed
16 measures were not being implemented properly, or if
17 those measures were failing in some way to prevent
18 impacts to the habitat. If that occurs, the
19 Petitioner would be liable for take under the
20 Endangered Species Act -- under our State law and
21 Federal law.

22 There is a recent precedent where take of
23 listed invertebrates occurred on the Island of Oahu
24 and the civil penalty was \$25,000 per invertebrate
25 killed.

1 So I believe that the landowner is aware of
2 this and would be very motivated to make sure that
3 all of the minimization efforts were implemented as
4 they should be.

5 And that said, with having outlines of the
6 whole process for landowners to participate in
7 getting a Take License approved, our preference
8 always is to avoid take, our first preference is
9 always to avoid take of the species entirely, because
10 essentially in approving an Incidental Take Permit
11 License we are saying you can kill all these things
12 potentially, then mitigate in some other way, whether
13 on the property, in different location, whether on
14 different property given financial resources, and so
15 typically the preference of our agency is to not
16 result in any direct mortality to the species where
17 possible.

18 So that's the summary of my testimony for
19 now. I have a feeling there will probably be
20 questions, and I can touch on some of the components
21 if needed.

22 MS. APUNA: Ms. King is available for
23 questions.

24 CHAIRPERSON SCHEUER: Thank you. We will
25 start off with the Petitioner.

1 MR. MATSUBARA: Petitioner has no
2 questions.

3 CHAIRPERSON SCHEUER: Thank you.
4 City and County of Honolulu?

5 MR. PANG: The City has no questions.

6 CHAIRPERSON SCHEUER: Intervenors, Hui O
7 Pikoiloa, Mr. Yoshimori.

8 CROSS-EXAMINATION

9 BY MR. YOSHIMORI:

10 Q Nice to finally meet you or see you
11 virtually in this case. I have a couple of
12 questions.

13 First one, Mr. Funakoshi had deferred this
14 question to you. I had spoken to both Fish and
15 Wildlife Deputy-in-Field Supervisor Koob, and also
16 Dan Polhemus and they both say they haven't reviewed
17 the Blackline Damselyfly mitigations proposed by
18 DOFAW.

19 So has DOFAW reviewed the damselyfly
20 protection mitigations with Fish and Wildlife
21 Service?

22 A Not in the most recent draft. So we did
23 have a consultation with Fish and Wildlife when we
24 first -- both agencies were initially drafting
25 letters in the response to the DEIS. But following

1 that, we did not have a consultation meeting, and
2 partially that's important because I think both
3 agencies have separate and very important roles to
4 play. And so it's good to make sure both agencies
5 have their perspectives.

6 Q So that consultation happened prior to the
7 Final EIS, there was a response to respond to the
8 Draft EIS, a letter was produced by Fish and Wildlife
9 Service to DOFAW, so that consultation happened prior
10 to that response from the Fish and Wildlife Service;
11 is that correct?

12 A I believe that's the case. But I would
13 have to double check the date to be absolutely sure.

14 Q And if supplemental waterline is provided
15 under your current conditions, would that be
16 preferable to allowing that development to have that
17 supplemental waterline put in?

18 A I'm sorry, could you repeat the question?
19 I think I didn't quite understand it.

20 Q Given the current conditions, say we left
21 the area undeveloped and a supplemental waterline was
22 put in to provide water to the damselfly habitat,
23 would that be preferable than allowing the
24 development to proceed during the uphill upgrading of
25 the hillside, instead of doing that, is it preferable

1 to just put in the supplemental waterline under
2 current conditions rather than doing the development
3 in order to get that supplemental waterline?

4 A I think that's an interesting question. I
5 think if you weren't doing any upslope development,
6 hypothetically you wouldn't need to put in a
7 waterline. Having a guaranteed source of water, even
8 during prolong droughts, for example, could be a
9 benefit to the species, say if full development
10 didn't go forward, so I think it would be a net
11 benefit in either case. Did that answer your
12 question?

13 Q It did, thank you.

14 Those are all the questions I have. Thank
15 you.

16 CHAIRPERSON SCHEUER: Thank you, Mr.
17 Yoshimori.

18 Commissioners, use the raise-hand function,
19 it helps. Starting with Commissioner Okuda.

20 COMMISSIONER OKUDA: Thank you very much,
21 Mr. Chair.

22 Ms. King, do you have an opinion as far as
23 what is the future probability of the situation of
24 the damselfly population if everything was left as-is
25 and there was no development? And let me be more

1 specific.

2 You testified about populations, I believe
3 you used the term "blinking out".

4 Do you have an opinion about whether or not
5 this population faces that type of probable risk if
6 there is no development, that it might blink out?

7 THE WITNESS: I do think that's always the
8 case with our invertebrate populations and other
9 native species -- well, I shouldn't just say
10 invertebrates, but when I say species here, I'm going
11 to be just referring to invertebrates or insects.

12 I do think that's the case. I was able to
13 visit the site in June for the first time and
14 proximity to residential area with, you know, just
15 sort of the general Urban interface always has more
16 of a potential for pest, new pests, different pests,
17 different ant species, different predators or -- it's
18 just a possible means by which other invasive
19 predators or other species could come in and cause
20 adverse effects at the site.

21 I'm not saying that it's going to happen,
22 but that's one of the first things sort of that I
23 notice approximately to current development and
24 managed areas.

25 So I think that is always a possibility. I

1 think that they persisted there for a long time and I
2 think that that habitat is very safe from their
3 primary predator, which is the mosquito fish, which
4 are typically enter the habitat through surface water
5 flows, from lower elevations montane stream reaches,
6 and so what's very nice about that spot is it doesn't
7 have surface flow water connection or connectivity to
8 lower reaches where the fish would come in unless
9 someone put them in there intentionally for some
10 reason. So it just seems low likelihood.

11 In general, the site has been maintained
12 for awhile, its always just really hard to predict
13 how long --

14 COMMISSIONER OKUDA: If you can't offer an
15 opinion, that's fine, but would you be able to
16 provide an opinion about what you think these habitat
17 would be, if at all, regarding the damselfly 50 years
18 from now, if this development did not proceed? Or is
19 that too speculative?

20 THE WITNESS: I think it's speculative, but
21 I don't think it's farfetched to say that the
22 population could succumb to some invasive species,
23 just something we see every day whether little fire
24 ants coming over from the Big Island or the
25 introduction of something unintentional into an area.

1 So I think just because of the current
2 trajectory of the declines across the state of so
3 many of our native damselflies, it's not farfetched
4 to say that that population, you know, if not
5 monitored, and if active management isn't ongoing, it
6 could succumb to some sort of impact of invasive
7 species.

8 COMMISSIONER OKUDA: This is my final
9 question, similar to my quid pro quo question I had
10 asked Mr. Funakoshi, and especially since I know
11 nothing about invasive endangered species or the
12 requirements of that.

13 You had mentioned \$25,000 per invertebrate
14 fine. But let me ask you this similar type of
15 question I asked Mr. Funakoshi.

16 If I own this parcel of property and it's
17 designated Conservation, if I just exercise what I
18 describe as benign neglect, not active neglect, just
19 benign neglect, I just let the property just stay the
20 way it is. I don't do anything with it, and the
21 damselfly population disappears, even though if I
22 actively could have done something, I could have
23 preserved it.

24 By benign neglect, wouldn't you agree it
25 might be immoral, but it doesn't lead to any type of

1 legal liability or liability from your agency. Would
2 that be a fair statement?

3 THE WITNESS: That's a fair statement and
4 that's something we have seen on other private
5 landholdings on both Oahu and neighbor islands, and
6 it's an unfortunate consequence.

7 COMMISSIONER OKUDA: But benign neglect, as
8 much as it's something that we might say it shouldn't
9 be something a landowner should do, it's my right
10 that I could benign neglect the damselfly population.
11 Let me --

12 THE WITNESS: Yes. You are not obligated
13 to manage for an endangered species just because it's
14 on your property. In most cases -- I don't want to
15 overstate -- many private landowners aren't in a
16 position to do that. They're not allowed to interact
17 with species unless permitted, are not allowed to
18 move them or even traverse a habitat that's occupied
19 by them.

20 So it's almost a requirement that those
21 areas often have a benign neglect, especially when
22 it's private homeowners or smaller. It's different
23 when it's a larger private landowner, like on many --
24 like Kamehameha Schools or Nature Conservancy, the
25 bigger known landowners that have more ability to

1 engage in management or work with partners on their
2 lands. But I would say it's often out of both sort
3 of the realm of awareness as well as legally what
4 most private individuals could do. They're mostly
5 obligated not to do anything, and that will result in
6 benign neglect.

7 COMMISSIONER OKUDA: So, in other words, to
8 be blunt, if one of the goals or objectives is to
9 have active management and active protection of the
10 damselfly, the quid pro quo might have to be agree to
11 this Boundary Amendment Petition, correct?

12 THE WITNESS: I don't think that it has to
13 be. I think it can be, and I think it is something
14 that is more likely to result in it in this case. I
15 shouldn't say that. Scratch that. That's an
16 opinion. I don't know that that's true.

17 But I think in other cases -- yeah, it's
18 hard to say.

19 COMMISSIONER OKUDA: Thank you very much.
20 Thank you, Chair. No further questions.

21 CHAIRPERSON SCHEUER: Thank you,
22 Commissioner Okuda.

23 Commissioner Chang.

24 COMMISSIONER CHANG: Thank you, Chair, and
25 good morning, Ms. King. Thank you so much for your

1 testimony.

2 I think I would like to ask you your
3 opinion, a question in a different way than from
4 Commissioner Okuda.

5 Is it your opinion -- based upon what I'm
6 hearing, is it your opinion that the avoidance and
7 minimization mitigation measures proposed by the
8 Petitioner provides the species the best chance of
9 success of survival by the ongoing monitoring, the
10 placement of the temporary and permanent waterline,
11 that those measures provide keeping other invasive --
12 they provide the species the best chance of
13 surviving?

14 THE WITNESS: I do think that it provides a
15 species a very solid chance of persisting, and a
16 resource manager being able to intervene in some way
17 if we see a new impact to the site whether that be,
18 you know, a change in water flow or a new organism
19 introduced there.

20 COMMISSIONER CHANG: Based upon the
21 information that you now have, you have baseline, you
22 have an indication -- have been counting the number
23 of species that are there, the conditions? So
24 through the monitoring you'll be able to determine
25 whether there's been -- whether the landowner is not

1 complying with the conditions to determine whether
2 there's a take, would you say that's fair statement?

3 THE WITNESS: I would say that it is the
4 proposed minimization, yeah, if those measures are
5 formalized, then, yes, that provides a really
6 excellent mechanism of monitoring and data
7 collection.

8 I should clarify, we don't have baseline at
9 the site. Doing one site or even two site visits
10 isn't sufficient. That's why we did propose one year
11 pre-monitoring to establish baselines. Actually I
12 should clarify.

13 I don't have it in front of me, six months
14 to one year would be what I remember. Because with
15 invertebrate populations, they can fluctuate so much
16 at any given interval, immature in the water, for
17 example, than adults, because temperature, rainfall,
18 and all that stuff, if we have that baseline then
19 data then monitoring continues beyond the life of the
20 project, then that would be a really excellent source
21 to make adoptive management decisions.

22 COMMISSIONER CHANG: And with respect to
23 jurisdiction, trying to understand there is this U.S.
24 Fish and Wildlife letter that's out there that it is
25 indicated that there is (indecipherable) --

1 understood your testimony was when the initial EIS
2 came out, U.S. Fish and Wildlife and DLNR engaged in
3 consultation and you reviewed the proposed EIS, is
4 that correct, the draft?

5 THE WITNESS: We did.

6 COMMISSIONER CHANG: And at that time, were
7 there issues that both U.S. Fish and Wildlife and
8 DLNR had with respect to endangered species?

9 THE WITNESS: Yes, I think biologist from
10 both agencies -- I don't want to speak on their
11 behalf. I think summarizing is okay. I think we
12 both have concerns about the potential impact to
13 hydrology, myself not being an expert in that area, I
14 can really only speak to damselflies, and I have to
15 defer to our folks within the Commission on Water
16 Resource Management who sort of give their feedback
17 on that component.

18 Whereas I think biologists at Wildlife
19 Service, they don't have the accompanying Water
20 Resources Division specifically to have aquatic
21 program, full name I can't remember. Anyway, those
22 staff are the folks that weighed in on it, so I think
23 that, yeah, we both represented the concerns that we
24 had at that time, and then how it got sort of
25 formalized in the letters, you know.

1 COMMISSIONER CHANG: Did you --
2 (indecipherable) State Commission on Water Resource
3 Management.

4 THE WITNESS: The division of ours that it
5 got -- yeah, those components that related to the
6 grading and the water flow, yeah, that's what -- so
7 we acknowledged in our DOFAW letter that that seemed
8 like a concern to us, but we couldn't speak to the
9 significance really, like what those impacts would
10 be.

11 So we could just say we're concerned.
12 We're hearing from other folks who we consider
13 experts that there shouldn't be significant flow
14 impact, but in the event that there are, that's why
15 we want these other avoidance minimization measures
16 in place. Because if should there be impact, then
17 that's taken care of -- and for better or worse, we
18 do have a population of endangered damselfly at
19 Tripler Army Medical Center, that is --
20 (indecipherable) an area fed by a hose, so we know
21 that wildlife is noted, that tool does exist and it
22 works.

23 COMMISSIONER CHANG: I'm not going to ask
24 you to speak on behalf of the Fish and Wildlife, but
25 based upon now the EIS and avoidance minimization

1 measures, you're comfortable that your concerns seem
2 to be similarly shared by the Fish and Wildlife, but
3 only speaking on your behalf, you're comfortable with
4 avoidance and minimization measures that they have
5 adequately addressed the concerns that you have?

6 THE WITNESS: I am comfortable with that,
7 yes.

8 COMMISSIONER CHANG: I have no further
9 questions. Thank you so much, Ms. King. Your
10 testimony was extremely helpful. Glad we were able
11 to get you on.

12 THE WITNESS: Yeah, sorry for the
13 difficulties.

14 CHAIRPERSON SCHEUER: Thank you,
15 Commissioner Chang.

16 Commissioners, further questions for Ms.
17 King? If not -- Commissioner Aczon, please.

18 VICE CHAIR ACZON: Thank you, Mr. Chair.
19 Just one clarification, Ms. King.

20 Just want to clarify. If an endangered
21 species like the damselfly is found on a private
22 property, just want to be clear in my mind, who is
23 responsible to protect and preserve that said
24 endangered species? Is it the landowner or some kind
25 of agency?

1 THE WITNESS: Well, that's a great
2 question. So the species are protected under our
3 wildlife rules if they're endangered 195D, also have
4 Chapter 124 for species that are native and
5 indigenous, but not necessarily endangered. So there
6 are public trust resources that are governed by those
7 laws.

8 And if there is known or documented take,
9 then it doesn't matter what land it's on, there's
10 documented intention sort of knowing take. It
11 doesn't matter what land it's on. If there is
12 ability to conduct enforcement or have administrative
13 action on that to Board of Land and Natural Resources
14 or Division of Conservation Resource Enforcement, but
15 there's not a responsibility, for example, if those
16 species are on private lands for there to be active
17 management of them by DLNR or by the private
18 landowner.

19 It's certainly encouraged and we try to
20 partner wherever possible, that's why the partners
21 from U.S. Fish and Wildlife and Wildlife Conservation
22 Program, that was mentioned earlier, could be an
23 ideal pairing for this site. It's a site that would
24 fall under private land component, and they can
25 qualify for funds to do sort of applied enhancement

1 restoration at site through that program.

2 So that's my long-winded way of saying
3 there are ways to try to enhance this partnership and
4 encourage that, but it is not required by law, that's
5 my understanding.

6 VICE CHAIR ACZON: Just to be specific.
7 What is the extent of responsibility by the
8 landowner? What is required of the landowner about
9 this endangered species? You mentioned before that,
10 you know, it is discouraged for (indecipherable).

11 I just got to understand what extent -- if
12 I'm the landowner, what am I supposed to do? Do I do
13 something? Just kind of clear in my mind what is the
14 landowner's --

15 THE WITNESS: Their responsibility is not
16 to impose intentional take, intentional harm, harass,
17 pursue, certainly harvest or anything of those
18 organisms found on that land. So for some private
19 landowners that does mean just leaving that area
20 entirely and not doing any work or management or
21 interfering in any way.

22 And as the term that's been used by the
23 other Commissioners, is as a result -- sometimes
24 results in benign neglect, and therefore extrication
25 of the species. Other times other species can

1 persist just fine, so that lack of management is not
2 an issue.

3 Just depends on the species we're looking
4 at. Sorry, I think went off topic of your question.

5 VICE CHAIR ACZON: So I would assume that
6 there is a big penalty or financial liability by the
7 landowner if the landowner would, you know, damage or
8 something to or neglect the endangered species?

9 THE WITNESS: There would be potential
10 consequences for any landowner who took an action
11 that resulted in the take of the species whether they
12 intended for the action to intend to take or not
13 whether they let their dog run in the area that had
14 nene but they didn't realize it happened and resulted
15 in the loss of nene on their property.

16 That could be actionable, but a landowner
17 with nene on their property, for example, that didn't
18 fence them in, and therefore, those nene would have
19 gotten eaten by feral cats, my understanding is that
20 is not the responsibility of the landowner to have to
21 do habitat level management actions that are
22 significant for the species. That's not a burden
23 that is put on them.

24 That's my understanding, and I'm happy to
25 get back with you with specifics after this to make

1 sure I'm correct.

2 VICE CHAIR ACZON: So by doing the
3 development, kind of transfers some responsibility to
4 the landowner?

5 THE WITNESS: I'm sorry, could you repeat
6 that?

7 VICE CHAIR ACZON: So in doing this
8 development, kind of somehow transfers some
9 responsibility to the landowner to make sure it's
10 protected and preserved?

11 THE WITNESS: Yeah, I don't know that it is
12 transferring responsibility, I think --

13 VICE CHAIR ACZON: Some responsibility.

14 THE WITNESS: It's essentially if -- my
15 understanding is that the land would go into
16 conservation easement, which would protect the land
17 and habitat and sort of access in perpetuity for
18 management purposes.

19 So I don't think it absolves the landowner
20 in any way, for example, if they continue to take
21 actions on their property that resulted in take, they
22 would be cited for that, and penalized for that.

23 But I don't think it changes the burden of
24 responsibility in that it's still tied to their
25 private land.

1 VICE CHAIR ACZON: Understand.

2 THE WITNESS: But I would defer to
3 Dr. Watson on that.

4 VICE CHAIR ACZON: Thank you very much, Ms.
5 King. Thank you very much, Mr. Chair.

6 CHAIRPERSON SCHEUER: Thank you,
7 Commissioner Aczon.

8 Anything further, Commissioners?

9 Ms. King, I have a brief question for you
10 or set of questions. I note that the majority of the
11 mitigation plan for protecting this damselfly deals
12 with both physical infrastructure and actions and
13 monitoring, but there's no community engagement or
14 enrollment part to this mitigation plan.

15 THE WITNESS: Not that I recall seeing.

16 CHAIRPERSON SCHEUER: Do you think it's
17 important that the neighboring community would at
18 least be aware, if not somehow enrolled in the
19 protection of this species?

20 THE WITNESS: That's a good question. I
21 think that it is important to have education outreach
22 awareness always about our species and the importance
23 of conservation. There are limitations to having
24 direct community involvement with management of
25 federally endangered species, though. And so I know

1 from other examples of others working with other
2 species approximate to other communities, you know,
3 there are some limitations on that even in the best
4 intentioned information folks that maybe come from
5 biology background, they would be very hard to get
6 approval from U.S. Fish and Wildlife Service to do
7 even monitoring of the species sometimes.

8 The program that involved community, that
9 relied on community involvement at the most, I think,
10 a lot of times related to things like waterbirds and
11 monk seals where you don't have to get very close to
12 a species to be able to get some really good data and
13 share those data invertebrates a little bit different
14 because you have to almost be right on top of them a
15 lot of times to do that work efficiently. And so
16 it's a little bit harder to incorporate untrained
17 participants.

18 And so we limit that in a lot of the
19 applied management that we do for rare snails on the
20 island and other rare species. Not to say we
21 wouldn't love to figure out a way to involve people
22 more so, and I think with the civic group that -- or
23 any civic group that you could take responsibility
24 for the site, if the conservation and the species
25 information could be integrated into sort of the

1 information that's provided to volunteers.

2 I think that will be really valuable, and I
3 think maybe there's other ways to consider how folks
4 could get involved with the damselfly, but I think it
5 would take a lot of -- yeah, it would take a lot more
6 planning, which I don't know it would move forward
7 unless this project was moving forward.

8 CHAIRPERSON SCHEUER: So certainly not
9 necessarily species counts or monitoring or going in,
10 but if I understood your testimony correctly, one of
11 the things, that being species introduction of
12 mosquito fish, so you don't want -- say, the
13 neighbors happened to be concerned about mosquito, I
14 remember seeing some standing water over there --

15 THE WITNESS: Absolutely that sort of
16 outreach is valuable.

17 CHAIRPERSON SCHEUER: The Land Use
18 Commission has the opportunity, if we approve the
19 project, to put conditions on it. Certainly the
20 documents so far have spelled out against the
21 herringbone drainage, the pig fencing, monitoring,
22 additional water supply as a condition.

23 Would you be able to articulate, even on a
24 rough level, any community engagement portion of the
25 conservation efforts that would be promoting

1 conservation?

2 THE WITNESS: You know, I think on the fly
3 I wouldn't be comfortable trying to put something
4 forward. Definitely not an area of expertise for me.
5 We have folks that put a lot of thought into
6 education outreach and communication, and how they're
7 really important and really important to do right.
8 So I do think it's an important component, but I
9 don't think I could articulate something right now
10 that would be valuable to you.

11 CHAIRPERSON SCHEUER: Just to restate, you
12 do feel it's important, perhaps essential component
13 to the conservation not just have the operational
14 (indecipherable).

15 THE WITNESS: Certainly potentially
16 inviting a lot of community members to the site that
17 wouldn't normally be there, then there is going to be
18 that potential risk that they could have
19 unintentionally impact on the species if they aren't
20 aware.

21 So, yeah, I think it would be really
22 integral and valuable to potentially have it spelled
23 out if that were the case.

24 CHAIRPERSON SCHEUER: Thank you very much.
25 I have nothing further.

1 Anything further, Commissioners? If
2 there's not, do you have any redirect, Ms. Apuna?

3 MS. APUNA: No redirect.

4 CHAIRPERSON SCHEUER: Thank you very much,
5 Ms. King. I will now remove you from the meeting and
6 hopefully not permanently if we need to call you
7 back.

8 THE WITNESS: Thank you.

9 CHAIRPERSON SCHEUER: Ms. King has become
10 an attendee, and Ms. Apuna do you have anything
11 further right now?

12 MS. APUNA: No. That concludes OP's
13 presentation.

14 CHAIRPERSON SCHEUER: Are there any further
15 questions from the Commission for OP at this time?
16 If not, we can move on to the Intervenor.

17 At least to begin, Mr. Yoshimori, can you
18 give me an overview of what you're hoping to do with
19 the remainder of our time together today, including a
20 lunch break?

21 MR. YOSHIMORI: We have five of our six
22 witnesses available for testimony. One of them was
23 called away to help with HPD in his area of
24 expertise, so I'm hoping we will complete all of them
25 by today.

1 I think we might be able to get through our
2 first testifier before lunch, maybe two.

3 CHAIRPERSON SCHEUER: Who's your next
4 testifier?

5 MR. YOSHIMORI: Mr. Winston Welch of the
6 Outdoor Circle.

7 CHAIRPERSON SCHEUER: I'm going to let Mr.
8 Welch in. I want to take a five-minute rest room
9 break, recess, then we will reconvene at 11:18 with
10 Mr. Winston Welch.

11 (Recess taken.)

12 CHAIRPERSON SCHEUER: Thank for the quick
13 break. It's 11:19 A.M. We are back on the record.

14 Mr. Yoshimori, call the first witness, Mr.
15 Welch. I'm going to swear you in.

16 Do you swear or affirm the testimony you
17 are about to give is the truth?

18 THE WITNESS: I do.

19 CHAIRPERSON SCHEUER: Please proceed with
20 your direct examination.

21 WINSTON WELCH

22 Was called as a witness by and on behalf of the
23 Intervenor, was sworn to tell the truth, was examined
24 and testified as follows:

25 DIRECT EXAMINATION

1 MR. YOSHIMORI: For the record, Mr.
2 Welch's resume is Intervenor's Exhibit No. 4.

3 BY MR. YOSHIMORI:

4 Q So thank you for testifying today, Mr.
5 Welch.

6 Can you state your name and address for the
7 record?

8 A Winston Welch, address 1314 South King
9 Street, No. 306, Honolulu, Hawaii 96814.

10 Q Can you please state your current role with
11 the Outdoor Circle?

12 A I'm the Executive Director for the Outdoor
13 Circle. It's a position I've held for
14 five-and-a-half years. I oversee the organization,
15 the statewide organization in its many branches
16 throughout the islands, which is volunteer lead and
17 managed board. One of my positions is to represent
18 the position of Outdoor Circle.

19 MR. YOSHIMORI: I would like to submit Mr.
20 Welch as the representative of the Outdoor Circle.

21 CHAIRPERSON SCHEUER: Is it a request for
22 qualification of an expert or just --

23 MR. YOSHIMORI: Request to qualify him as
24 an expert representative of the Outdoor Circle.

25 CHAIRPERSON SCHEUER: Any objections?

1 MR. TABATA: No objections.

2 MR. PANG: Is there specific categories
3 that Outdoor Circle has in terms of positions,
4 because I'm just trying to find out what area of
5 expertise.

6 CHAIRPERSON SCHEUER: I understand that the
7 request by Mr. Yoshimori is to be an expert about the
8 Outdoor Circle as an organization, its history and
9 its mission.

10 MR. PANG: I don't have objection if he's
11 testifying as a representative of the Outdoor Circle.

12 MS. APUNA: No objection from OP.

13 CHAIRPERSON SCHEUER: Commissioners? Okay,
14 go ahead.

15 MR. YOSHIMORI: Thank you.

16 Q Mr. Welch, can you describe the main
17 objectives of the Outdoor Circle?

18 A Our main objectives are working to keep
19 Hawaii clean, green and beautiful by preserving,
20 protecting and advocating for and enhancing our
21 environment, its natural and scenic views through our
22 branches throughout all of the islands with five
23 branches on Oahu.

24 This includes protecting and planting
25 trees, protecting the visual environment, and

1 advocating for stewardship of the land in its natural
2 environment, protecting open space, ensure that
3 greenscapes and treescapes are preserved and
4 enhanced. To fight visual blight of our islands and
5 to promote the work of our branches for their own
6 initiatives and their own (indecipherable).

7 Q What is the position of the Outdoor Circle
8 on the Petitioner's proposed cemetery expansion?

9 A In general, the Outdoor Circle policies
10 oppose variances, exemptions or land use changes that
11 would result in reduction of open spaces and lands
12 designated Preservation, Conservation or Prime
13 Agriculture.

14 We have concerns that any variance or
15 change of the boundary will set precedence as well,
16 and we have some significant concerns about this
17 proposed boundary change of the Conservation to
18 Urban. We have some specific points if you would
19 like me to go into those now.

20 Q Can you, please?

21 A I would refer to you as Commissioner Okuda
22 was mentioning the Hawaii Revised Statutes Chapter
23 205-1 what a Conservation District is and what it
24 includes. And I think it may bear some repeating,
25 but I'll skip to my points here, which was -- first

1 this land was purchased with the understanding that
2 it was Conservation land, and nearby other property
3 owners certainly based decisions for their purchases
4 with this designation with incumbent properties and
5 restrictions, but our concerns include the following.

6 One is what the importance of maintaining
7 the forested land and trees in its natural
8 environment. Cemetery turf and complete forest as we
9 have now are not equal open spaces. For example, the
10 FEIS notes no significant impact for
11 (indecipherable) -- faunal species, but removing
12 their entire habitat would seem completely
13 detrimental by any measure.

14 We heard that birds or bats could no longer
15 be expected to rest or nest in the cemetery versus
16 (indecipherable).

17 In addition, this proposal destroys the
18 natural scenic beauty and mature trees with their
19 canopy coverage and naturally landscaped with trees
20 providing the ecosystem service benefits that they
21 do, including local cooling effects from the forest.

22 We heard in testimony that this was an open
23 greenspace and that it will remain in open
24 greenspace, and I use that in air quotes, after the
25 project will be complete, but this is not open

1 greenspace in the same sense as what is being
2 proposed, it's a heavily treed Conservation land
3 right now. That's different than turf.

4 We heard in testimony that these trees will
5 be replaced, but where will these trees be removed to
6 and with what species and how many years, decades
7 would be -- (indecipherable) the same benefits accrue
8 and it certainly wouldn't be accruing on the same
9 property.

10 We heard here also as far as visual planes,
11 I would like to read from the FEIS.

12 The project would not significantly impact
13 the visual vividness, unity or -- of identified use.

14 Now, as an aside these were from a lot of
15 different areas. Although the project would alter
16 the appearance of the Petition Area resulting from
17 grading and landscaping improvements, significant
18 visual impacts are not anticipated because the
19 Petition Area is one of many elements collectively
20 establishing the visual quality of the visible
21 landscape.

22 The overall impression of the Petition Area
23 would remain as open space. Therefore, changes to
24 the visual character of one aspect of these views
25 would not impact the overall visual quality of the

1 views.

2 This is -- it's obvious that the visual
3 impact will be dramatically altered. We would
4 disagree with this. It's significant to destroying
5 100-foot high mountain and all of the tall trees
6 currently on it will permanently and detrimentally
7 impact visual quality of the landscape depending on
8 the viewer's perspective. It may not be for certain
9 views, but I was just driving down H-3 and looked at
10 the proposed land, just happened to catch my eye.
11 And indeed the project would unalterably change the
12 look of the current mountain forest today.

13 CHAIRPERSON SCHEUER: If I may, Mr.
14 Yoshimori. I want to -- I think you're doing an
15 incredible job as pro se Intervenor, and I want to
16 defer to this, but Mr. Welch's testimony is mostly
17 seemingly right now about the EIS, which actually has
18 been accepted.

19 We have already been through that process
20 of the proceeding, so can you give me a little
21 direction on where we are trying to go with this
22 particular witness who's being heard during the
23 expert witness portion of this proceedings?

24 MR. YOSHIMORI: I think we're asking for
25 the Outdoor Circle's position on all of these

1 different aspects related to the development. I
2 think Mr. Welch has maybe three more points to go,
3 and I would ask for indulgence.

4 THE WITNESS: Thank you.

5 We also have concerns about potential
6 groundwater and runoff to neighboring properties and
7 into Kaneohe Bay. Recent super storms and water
8 study models are throwing off planning and flooding
9 plans completely, Kauai, Hilo, or East Oahu just a
10 couple years ago.

11 As we heard in testimony, sediment during
12 development (indecipherable) -- storm levels were not
13 able to be handled or captured in retention basins.

14 We had two witnesses who presented very
15 different peak flow scenarios, from 100 to 1000 cubic
16 feet a second. Even if the difference is explained
17 by a smaller footprint standard as one of the
18 witnesses testified, it's difficult to ascertain what
19 may actually occur.

20 We're talking about a complete terraforming
21 of the remaining land with over 470,000 cubic yards
22 of mountains removed, repositioned, large, tall
23 retaining walls, and detention basins completely
24 destroying the natural area in question.

25 As Commissioner Okuda had even pointed out,

1 whether this material is trucked to the PVC landfill
2 or used in another building site or somehow held
3 somewhere else, the movement of 50,000-plus cubic
4 yards of dirt on city streets will undoubtedly have
5 impact on traffic.

6 I estimate, based on 10 to 18 cubic yards
7 per dump truck, that's between 2700 and 5,000 one-way
8 trips, so double up for round trips that's hitting
9 surface roads.

10 We just heard from the entomologist
11 repeating that the Fish and Wildlife Service said
12 there would be an immediate detrimental effect and
13 potential for long-term survival of the damselfly.

14 Obviously, The Petitioner is looking at
15 some very strong ways to protect that, but regarding
16 stewardship of the property owned by SMC (sic) and
17 the Kawa'ewa'e Heiau Complex current cultural
18 practitioners are allowed access to the heiau on the
19 property. There's nothing that would prevent HMP or
20 SMC (sic) from turning over this property to a
21 cultural partner in perpetuity, or simply allow for
22 current access as right now, or for that matter, they
23 could put proposed land not under consideration for
24 the project into a conservation easement with a trust
25 for public lands or Hawaii Islands Land Trust.

1 They could improve access to the heiau.
2 They could give areas in the current cemetery space
3 for Native Hawaiian traditional burials as well.

4 So despite the various questions brought up
5 surrounding specific concerns for the cultural
6 preserve, who would control it, how native burial
7 plots would be allocated, resolution of disputes
8 concerning different groups or members, funding of
9 the land trust as brought up by the Chair today,
10 liability concerns and access.

11 These could all be resolved by appropriate
12 negotiations resulting in this being put into a land
13 trust today by SMC, (sic) rather than connected to
14 any proposed expansion of the cemetery, this could be
15 a benefit.

16 Similarly, as Dr. Montgomery testified, as
17 a good steward of the land, HMP might further
18 currently work to protect and enhance the damselfly
19 habitat by fencing the area from pigs, which may also
20 deter neighbors from throwing rubbish.

21 They might also, if they're installing the
22 waterline is appropriate as we heard today from the
23 immediate prior testifier, but disconnect that action
24 from the proposed action of Conservation Boundary
25 change request.

1 What we recommend is -- we wondered in the
2 FEIS, why alternative lands, adoption seven, which
3 may exist on the island, which may not be as
4 controversial, or such sensitive areas were not
5 considered for alternatives for expansion.

6 We understand that some people will choose
7 burial -- we wondered if HMP would consider in its
8 undeveloped land it currently has, or unsold or
9 perhaps repurchased plots, if they could resize them
10 to allow for increased burial density in lots or urns
11 to be placed.

12 We heard before in other testimony that up
13 to 20 urns could be placed in each private plot in
14 cemeteries, and HMP could also create vaulted walls
15 for urns, like Punchbowl (indecipherable), for the
16 increasing number of people who choose to be
17 cremated, and finally, HMP might want to increase and
18 promote other so-called green burial options, like
19 the scattering (indecipherable) open garden or other
20 emerging -- we do understand that HMP and SCI -- I'm
21 sorry, I've been saying SCM -- have a fiduciary
22 responsibility to their shareholders to make a
23 profit. They're legally required to do that.

24 But we do not believe that the Land Use
25 Commission should change the boundary district from

1 its current status as Conservation land. And because
2 we think that the cemetery should be able to continue
3 to provide the services that they do, and it will not
4 inhibit their ability to create a profit for their
5 shareholders under the current existing boundary.

6 In summary, transferring the community
7 benefits of this current green treespace in the
8 Conservation District to one of Urban classification
9 for additional cemetery space is not in the best
10 interest of the community. This land should stay in
11 Conservation District status, undeveloped for
12 perpetuity for the reasons above which we do oppose
13 any boundary amendment change.

14 And I appreciate your indulgence in letting
15 me offer this testimony before the Land Use
16 Commission. We realize this is sensitive for many
17 people. We appreciate the work that the Land Use
18 Commission, the dedicated work that you all do, and
19 for all the experts that have come before you.

20 CHAIRPERSON SCHEUER: You're muted, Mr.
21 Yoshimori.

22 MR. YOSHIMORI: Thank you, Mr. Welch, for
23 volunteering your time and testimony today.

24 Mr. Welch is available to answer questions.

25 CHAIRPERSON SCHEUER: We will start off

1 with Petitioner.

2 CROSS-EXAMINATION

3 BY MR. TABATA:

4 Q Mr. Welch, could you give us your
5 educational background starting with college, please?

6 A Yes. Yes, I went to University of New
7 Mexico. Got a Bachelors in economics and American
8 studies; and I got my Master's degree at what is now
9 Thunderbird Graduate School of International
10 Management which is -- they call it a unit of Arizona
11 State University.

12 Q Did you take any courses or minor in
13 environmental conservation?

14 A No, I did not. I'm not presenting myself
15 as a conservation or a specialist in entomology or
16 water flow or anything like that.

17 Q Could you -- thank you.

18 Can you give us some of your professional
19 background, please?

20 A I have run -- I'm a certified association
21 executive, which is arguably more valuable than an
22 MBA these days. My primary work at the Outdoor
23 Circle is in running the organization and
24 representing its position and that of its many
25 branches.

1 So I testify often before city council, or
2 neighborhood boards, that sort of thing. I've worked
3 with DLNR or City offices, departments, on a regular
4 basis, develop the exact issues like this, whether it
5 involves issue or issues or tree issues, open space
6 issues on a daily basis.

7 That's the majority of my work, I would
8 say.

9 Q Thank you.

10 What position did you hold, what job did
11 you have before you became executive director of the
12 Outdoor Circle five-and-a-half years ago?

13 A I was the executive director for probably
14 eight years or something for an organization called
15 the World History Association, which was operated out
16 of University of Hawaii. It was a collection -- it
17 is a collection of professors and teachers of the
18 field of world history.

19 Q Thank you.

20 Prior to that position?

21 A Prior to that position, I ran -- as far as
22 this line of work, the Hawaii Film Festival for a
23 number of years, and worked in other jobs that are
24 not exactly related to this, real estate license, but
25 that was in an alternate universe where I sold "time

1 share" which is not exactly related to this at all.

2 Q Thank you.

3 You made some comments about our EIS. Just
4 wondering, were you able to submit written comments
5 for the Draft EIS?

6 A Did I submit written comments to the Draft
7 EIS? It's been so long ago. I remember testifying
8 before this Commission at the golf course when it was
9 held over there. Honestly, I don't remember if I
10 submitted written testimony to this, but I believe I
11 did. Maybe, Grant, you remember if I submitted
12 something?

13 MR. YOSHIMORI: I don't -- I don't recall,
14 I'm sorry.

15 Q (By Mr. Tabata): Thank you.

16 Mr. Welch, is part of the mission of the
17 Outdoor Circle to promote conservation of Hawaii's
18 environment? Would that be fair to say?

19 A I think that would be fair to say, yes.

20 Q For the purposes of promoting conservation,
21 are you familiar with what is called conservation
22 easement?

23 A Yes.

24 Q And what is your -- how did you gain that
25 familiarity?

1 A I think I would hold an idea that most --
2 you're average Joe would hold. I'm not an attorney
3 either, and don't pretend to be one, but it would be
4 something that conservation easement, I would say,
5 goes with the covenant restrictions of the property.
6 So if it is sold, that it runs with the land.

7 Q Thank you.

8 Do you have an understanding of -- can you
9 give us your definition of the purpose of
10 Conservation?

11 A I think it would be to protect the original
12 intent of the current property owner that that
13 intention, the legally codified, or the in
14 perpetuity, no matter who the property is transferred
15 to or sold to.

16 Q Perpetuity to do what?

17 A To follow the restrictions of the easement.

18 Q What kind of restrictions have you seen or
19 are you aware of?

20 A Perhaps there would be a restriction of
21 conservation easement that you're unable to build on
22 a certain piece of property, it's turned over to a
23 trust, for example, that does not allow development
24 to protect the view plain or to protect the water
25 shed or sensitive environment.

1 And so while it may be technically or
2 legally able to be built upon under current law, if
3 that is part of the conservation easement, that that
4 becomes the new understanding or rule that's passed
5 down that doesn't end unless it's released by a judge
6 in the future.

7 Q Thank you.

8 Do you know if the Outdoor Circle is a
9 party to any conservation easement?

10 A That's a good question. You know, the
11 organization is 108 years old. I've been here for
12 five. I'm not aware of any responsibilities that I
13 have to look over any conservation easements, and I
14 think we would not become involved in that.

15 I think if someone asked us to do that, we
16 would turn to Hawaii Islands Land Trust or the Trust
17 of Public Land, the organization.

18 Q Do you have an opinion or belief that
19 conservation easements are an effective tool to
20 protect Hawaii's environment?

21 A I think they're one part of a way to
22 protect something. First we have basic land use
23 ordinances, and certainly it's an additional -- it's
24 part of the tool box to protect something. So I
25 would say, yes, that they could, should, are valuable

1 tools to protect land.

2 Q Thank you. I have no more questions.

3 Thank you.

4 CHAIRPERSON SCHEUER: Thank you very much,

5 Mr. Tabata.

6 County.

7 CROSS-EXAMINATION

8 BY MR. PANG:

9 Q Thank you, Mr. Welch. My name is Duane
10 Pang. I just want to go over the decision-making
11 procedures for the Outdoor Circle with respect to
12 this particular project, because this presented --
13 was this presented to the board of directors?

14 A I believe that it was. We did -- when a
15 branch may ask us to take up a certain issue that is
16 important for it, so one of our windward branches,
17 both of them brought this to us and allowed us to --
18 asked us to make this a state level issue.

19 But it is also completely in-line with our
20 policies that are on our home page of the website.

21 Q With respect to the points that you
22 testified to, were all of those points approved by
23 the board of directors?

24 A No. I'm authorized to speak on behalf of
25 them, and hopefully not misrepresent any concerns or

1 positions of the Outdoor Circle.

2 Q So the testimony that you presented today
3 was not presented to the board of directors before
4 you testified?

5 A No. And generally my testimony is never --
6 I am assumed to be for the Outdoor Circle. I have
7 never submitted my testimony in advance or for
8 approval by the board.

9 Q So you're not sure whether the board
10 supports the testimony that you submitted today?

11 A I think you could say it's fair to say that
12 I represent the position of the Outdoor Circle in
13 this matter, and that every testimony that I have --
14 because I do a lot -- is not gone over by the board.
15 I am entrusted with representing the position of the
16 Outdoor Circle and that this testimony would be
17 consistent with the board's wishes.

18 If you're asking do I submit my written
19 testimony to the board for approval or any -- the
20 answer is, no, I don't. But the board has complete
21 availability to watch me on TV, to read testimony
22 that I give. There's ample time for them to come
23 back and give any comments. I have not had any --
24 that I assume that, because there's never been any
25 objection to how I represent the Outdoor Circle, that

1 I am representing the Outdoor Circle in its official
2 position.

3 Q In Intervenor's Exhibit 4 it says
4 organizational status, the ED -- I'm assuming that's
5 you -- is responsible for continuing to pursuing the
6 aims and goals of the organization as defined by the
7 board of directors.

8 A Yes. So this testimony would be consistent
9 with that work.

10 Q But it was never presented to the board; is
11 that your testimony?

12 CHAIRPERSON SCHEUER: I think he's answered
13 the question two times.

14 MR. PANG: I have nothing further. Thank
15 you.

16 CHAIRPERSON SCHEUER: Office of Planning?

17 MS. APUNA: No questions.

18 CHAIRPERSON SCHEUER: Commissioners?

19 Commissioner Ohigashi, you had your hand raised
20 earlier. I don't know if that was intentional.

21 Commissioner Ohigashi?

22 COMMISSIONER OHIGASHI: I thought I wanted
23 to ask a question, but I'm thinking still yet.

24 CHAIRPERSON SCHEUER: Commissioner Okuda,
25 followed by Commissioner Chang, followed by

1 Commissioner Giovanni.

2 COMMISSIONER OKUDA: Thank you very much,
3 Mr. Chair. Thank you, Mr. Welch, for your testimony.

4 I apologize. I was going to cite to a
5 specific exhibit but I can't find it. The exhibit
6 was a Memorandum of Understanding between Hawaiian
7 Memorial Park and the Koolaupoko Hawaiian Civic Club.

8 In preparation for your testimony, did you
9 see or review that Memorandum of Understanding?

10 THE WITNESS: I have not.

11 COMMISSIONER OKUDA: Do you know the
12 history and the length of time the Koolaupoko
13 Hawaiian Civic Club has been involved in cultural
14 matters on the Windward side?

15 THE WITNESS: I could not give you a
16 specific amount of time, but I would say quite
17 awhile.

18 COMMISSIONER OKUDA: In formulating the
19 Outdoor Circle's position, whether the position of
20 your board of directors or you personally, did the
21 Outdoor Circle consult with or talk to anyone who was
22 a member of the Koolaupoko Hawaiian Civic Club.

23 THE WITNESS: Not to my knowledge.

24 COMMISSIONER OKUDA: As far as which
25 organization would be in a better position to give

1 testimony about the preservation of cultural sites in
2 this, or on this subject property, who would have, in
3 your mind, better knowledge about what might be
4 culturally appropriate regarding the site, the
5 Koolaupoko Hawaiian Civic Club or the Outdoor Circle?

6 THE WITNESS: I wouldn't presume to say
7 that the Outdoor Circle has anything, any standing on
8 how it should involve cultural matters or the actual
9 management of this site with respect to traditional
10 Hawaiian practices.

11 And I thought you had some excellent
12 witnesses before on how that might happen. I think
13 there were a number of very good questions brought up
14 as far as how that might be executed. But in those
15 cases I would defer to the Koolaupoko or other civic
16 clubs. And I realize that they may not be always in
17 lock step with each other as well.

18 COMMISSIONER OKUDA: Well, one of the
19 things we have to do in a quasi-judicial format is
20 basically weigh or determine the weight of evidence
21 or how much weight we give testimony or evidence
22 presented by various witnesses.

23 Who should we give weight to as far as how
24 cultural sites or cultural resources should be
25 managed on this specific site? Should we give more

1 weight to the views of the Koolaupoko Hawaiian Civic
2 Club, or should we give more weight to the Outdoor
3 Circle?

4 THE WITNESS: I would defer to whatever
5 traditional caretakers have to say about this issue
6 about how they would want it managed and how they
7 view appropriate ability to manage this area, what's
8 important for them. Our -- yes.

9 COMMISSIONER OKUDA: So in other words, and
10 I'm just saying, if this were the case, not saying it
11 actually is, but if the Koolaupoko Hawaiian Civic
12 Club has taken a position that the benefits that are
13 being presented with respect to cultural resources on
14 the property would be more enhanced by allowing the
15 development of cemetery with conditions to proceed
16 forward, the Outdoor Circle would defer to the
17 Koolaupoko Hawaiian Civic Club; is that your
18 testimony?

19 THE WITNESS: I would say that not exactly,
20 I would say that, as I just said, I believe that
21 cemetery could very well make these same improvements
22 and give all of the things that they're offering to
23 the civic club separate and apart of any boundary
24 amendment changes, so it do does not need to be
25 connected.

1 They could give that right now. They could
2 improve access. They could fund it, as a good
3 steward, as a good neighbor. So I would say they're
4 not mutually exclusive.

5 And what you're trying to get at here about
6 the balancing of -- I don't know if it's either/or.
7 I think it may be both and we can protect the
8 Conservation District, and have a more robust and
9 protected and funded and managed cultural preserve.

10 COMMISSIONER OKUDA: Do you disagree with
11 the way was I interpreting some of the testimony from
12 the witnesses of the Office of Planning that frankly
13 there is no affirmative duty by an owner of
14 Conservation designated property to affirmatively
15 protect cultural or environmental resources on the
16 property?

17 In other words, it might be immoral, but I
18 could just benignly neglect resources or the species
19 on the property as long as there is no active take or
20 active deconstruction of heiau or other resources,
21 did you agree that that's a fair statement?

22 THE WITNESS: Based on your questioning,
23 and the answers from the witnesses, I would agree
24 that is a fair understanding of what I understand as
25 well. I would agree.

1 COMMISSIONER OKUDA: So let me ask you this,
2 my final question.

3 So why isn't a tradeoff here worth it to
4 get protection of a conservation easement, cultural
5 resources, an endangered species, why isn't that
6 tradeoff worth what Hawaiian Memorial Park is asking
7 for? Why wouldn't that tradeoff not be in the
8 community's interest?

9 THE WITNESS: Well, does it need to be a
10 tradeoff? Would be my response. Do we have to
11 destroy a mountain and move massive amounts of dirt
12 and uproot an entire ecosystem so that we can have a
13 cultural preserve and the damselfly habitat
14 protected?

15 Why doesn't the property owner currently
16 stipulate and do that as a good steward and community
17 leader while also protecting the land? I don't think
18 it's necessarily something that it's not an
19 either/or.

20 COMMISSIONER OKUDA: Mr. Welch, that was my
21 question. I heard your answer.

22 Thank you, Mr. Chair. I have no further
23 questions.

24 CHAIRPERSON SCHEUER: Thank you,
25 Commissioner Okuda.

1 Commissioner Chang, then Commissioner
2 Giovanni, then Commissioner Ohigashi.

3 COMMISSIONER CHANG: Thank you, Mr. Chair.
4 Thank you, Mr. Welch. I just have a couple of
5 questions.

6 So based upon the questioning from the
7 City, so if -- is this a business practice of the
8 Outdoor Circle not to submit official letters on
9 their letterhead reflecting their position, but
10 rather to have you testify?

11 THE WITNESS: I do both. And so my --
12 honestly, my memory is not what it used to be. I may
13 have submitted something for this. I do, like you
14 all, an incredible amount of work. And for this one
15 I do remember testifying at the golf course, but I
16 regularly submit written testimony on various topics
17 before boards or commissions, committees or Outdoor
18 Circle board to private entities, developers, and so
19 forth. And I also provide oral testimony. It
20 depends on my schedule, my ability, sometimes it's a
21 time issue as well.

22 COMMISSIONER CHANG: So if we went through
23 the record in this case, would we find your testimony
24 on Outdoor Circle letterhead if you submitted one?

25 THE WITNESS: If I submitted it, it would

1 be on Outdoor Circle letterhead.

2 COMMISSIONER CHANG: Have you ever been to
3 the cultural site?

4 THE WITNESS: I haven't because I wanted to
5 respect that it is on private land. And I have
6 driven through the cemetery, and I have seen the
7 photos from the testimony that's been presented to
8 you but -- I also would like to respect the private
9 property, and also that I don't have any particular
10 business there.

11 COMMISSIONER CHANG: Do you know whether
12 the landowner or the Koolaupoko Hawaiian Civic Club
13 -- do you know whether the Koolaupoko Hawaiian Civic
14 Club actually does access the site, and takes care of
15 the sites with the landowner? Do you know whether
16 that's true or not?

17 THE WITNESS: Do I know whether -- could
18 you say it again?

19 COMMISSIONER CHANG: You don't have to do
20 this petition, the landowner could actually enter
21 into agreement with the Koolaupoko Hawaiian Civic
22 Club to steward the land.

23 So do you know whether the Koolaupoko
24 Hawaiian Civic Club actually accesses the site right
25 now?

1 THE WITNESS: If they -- what's the last --

2 COMMISSIONER CHANG: Do you know whether
3 they access it?

4 THE WITNESS: If I ask for it, is that what
5 you're saying?

6 COMMISSIONER CHANG: I'm asking you do you
7 know whether they access the site with an
8 understanding from the landowner?

9 THE WITNESS: No, I'm unaware of any
10 discussions at all between Koolaupoko Civic Club and
11 the cemetery except for the testimony provided here.

12 COMMISSIONER CHANG: So your statement
13 about they don't need the boundary amendment, they
14 actually could do this right now, you're saying that
15 as a matter of generalities. You don't know whether
16 they're currently engaged in some kind of --

17 THE WITNESS: Correct.

18 COMMISSIONER CHANG: And the last question
19 I have for you. It was a very interesting statement
20 you made at the beginning, which was: Certainly the
21 cemetery, they knew that this was Conservation land.
22 And then you said, certainly the residential owners
23 made their decision knowing that they purchased the
24 land because these were Conservation land.

25 How do you know that?

1 THE WITNESS: Well, most -- I would say --
2 let me say, most certainly. If I am buying a piece
3 of property, and I'm buying it on what appears to be
4 Conservation land, I would ask my realtor, what is
5 this back here? And the realtor would say that's
6 Conservation land. And I would assume the
7 Conservation land is not going to become a cemetery.

8 COMMISSIONER CHANG: I guess I'm not asking
9 what you would do, because you made a statement
10 certainly the residential owners based their decision
11 because they were purchasing their house on
12 Conservation land.

13 So I'm asking you how do you personally
14 know that?

15 THE WITNESS: It's a valid point. I don't
16 know, I haven't surveyed every property owner, but I
17 would assume that that would have been a factor in
18 the purchase of their property, just like it's a
19 factor you would maybe want to be near the school or
20 shopping mall, whatever. People buy properties based
21 on certain characteristics of the neighborhood.

22 So I assume it would be there, but I have
23 no certainty in knowing that. Thank you for
24 correcting that.

25 COMMISSIONER CHANG: Could it be an

1 assumption that they bought property because there
2 was a cemetery there and not a development?

3 THE WITNESS: That they bought it because
4 there was a cemetery?

5 COMMISSIONER CHANG: Right.

6 THE WITNESS: Well, that this property is
7 in question there is not a cemetery, there is that --
8 I'm not understanding the question.

9 COMMISSIONER CHANG: The cemetery is around
10 this property. It's not too far away from the
11 property.

12 THE WITNESS: Yes. So for some of the
13 houses they abut exactly against the cemetery and
14 those folks knew when they bought the property that a
15 cemetery was there. So that factors into their
16 decision. They're okay with it or they're not.

17 COMMISSIONER CHANG: So do you think they
18 might have bought property because there was a
19 cemetery?

20 THE WITNESS: Some might have if there was
21 a cemetery right there.

22 COMMISSIONER CHANG: Thank you very much
23 for your answers.

24 CHAIRPERSON SCHEUER: Thank you,
25 Commissioner Chang.

1 Commissioner Giovanni.

2 COMMISSIONER GIOVANNI: Thank you, Chair.
3 Thanks for your testimony, Mr. Welch.

4 Does the Outdoor Circle have a stated
5 policy on climate change for greenhouse gas issues?

6 THE WITNESS: As a policy, let me just read
7 that to you. A greenhouse gas emission -- I can say
8 probably not anything specific, but as far as climate
9 change, we do have a policy that we -- I would refer
10 to our website under policy position, and the
11 statements below that.

12 But I would say that we talk about carbon
13 footprint and the need to limit damaging effects of
14 climate change. We talk about neutrality challenge,
15 the need for canopy coverage to absorb rainfall and
16 runoff.

17 So I would say that probably somewhere in
18 there, without looking specifically, that we would
19 tie trees to climate change.

20 COMMISSIONER GIOVANNI: Is it fair to say
21 that it's affirmative that the Outdoor Circle does
22 have a published or accessible policy on climate
23 change?

24 THE WITNESS: Yes, that is.

25 COMMISSIONER GIOVANNI: So we heard

1 testimony from Petitioner expert witnesses, I believe
2 arborist, that it is an opinion that due to the tree
3 for tree replacement Petitioner was committed to
4 doing, the opinion of the expert was that effect on
5 climate change did not materialize.

6 Does the Outdoor Circle have a
7 scientifically-based opinion that would agree or
8 disagree with the opinion expressed by the
9 Petitioner's expert?

10 THE WITNESS: We don't have any scientific
11 opinion on that, but I think we signed onto various
12 things, global climate change, recognize that trees
13 are a very effective way to mitigate climate change,
14 and as far as the idea of tree removal and planting
15 some trees elsewhere, so let's just say you have ten
16 trees that are this thick (indicating) and they're
17 exactly replanted ten trees that thick ten miles
18 away. You're changing an apple for an apple.

19 But that's not what we are looking at,
20 because those trees that have grown there are mature
21 healthy trees and large trees, by far have a much
22 greater positive effect with ecoservice benefits than
23 they do a planted tree. It's common sense.

24 But not to everybody, because with the
25 City, it also does the one for one exchange, but we

1 have to realize you have to factor in another 30 or
2 40 years before that tree may be mature.

3 COMMISSIONER GIOVANNI: That's your
4 personal opinion, not scientific based
5 (indecipherable)?

6 THE WITNESS: I think it's commonly held
7 scientific knowledge that a large mature tree
8 provides many more ecosystem service than they do
9 planted tree. I think without question as far as
10 water absorption, cooling effects, carbon sequestration, I
11 don't think that's a question.

12 COMMISSIONER GIOVANNI: So back to my
13 original question.

14 Do you, in your opinion representing
15 Outdoor Circle, do you agree or disagree with the
16 opinion expressed in the Petition matter of whether
17 or not the tree for tree replacement program is
18 result in time and material, change --
19 (indecipherable).

20 THE WITNESS: I'm having trouble hearing
21 you. Could you repeat that last part?

22 COMMISSIONER GIOVANNI: Do you agree or
23 disagree with the position, the opinion offered by
24 the expert for the Petitioner, that as a result of
25 the tree for tree exchange program, it would not be a

1 material effect to climate change as a result of this
2 project?

3 THE WITNESS: I would qualify that and say
4 I would disagree that in the initial years it would
5 certainly be a change, because you're taking large
6 mature trees and planting them with saplings. Over
7 time in 50 years it may be that that balances out,
8 so, yeah.

9 COMMISSIONER GIOVANNI: So my question was
10 material opinion was they acknowledge that there
11 would be just -- (indecipherable) expressed
12 neutralize itself and it would not -- over time it
13 would not be material, would you agree or disagree
14 with that?

15 THE WITNESS: That over time it might
16 agree -- I mean, that the issue of climate change is
17 very complex and has a lot of controversy for it, and
18 that, you know, when we're looking at -- this is
19 often brought up where people don't want a tree, they
20 do point to climate change. They say this one tree
21 is not going to make a difference. We can plant
22 these other ones, they will have that benefit after a
23 while, so it's accumulative effect that we really
24 look at there and that this is sort of an emblematic
25 on a small scale of what we are really looking at.

1 COMMISSIONER GIOVANNI: So as a matter of
2 policy, Outdoor Circle, (indecipherable) matter of
3 fact, that many cases Outdoor Circle has endorsed the
4 approach of tree for tree replacement when in fact
5 tree community removal or one reason or another
6 associated (indecipherable) --

7 THE WITNESS: I think the general
8 replacement is three for one. So for every tree that
9 is taken out three should be planted. Obviously in
10 some places, and that's just because our city has
11 lost so much coverage, down to 20 percent now, and
12 that's in the Urban areas. It's not including the
13 (indecipherable) area, but in our Urban areas, and
14 obviously you can only have so many trees in one
15 space shading a sidewalk, but the idea is to increase
16 the overall canopy, not to do one for one exchange,
17 but actually increase what we are looking at.

18 And so given that when a mature tree is cut
19 down, you lose so much of its value that one for one
20 is not an equal comparison for decades.

21 COMMISSIONER GIOVANNI: Thank you. I have
22 no further questions.

23 CHAIRPERSON SCHEUER: Thank you very much,
24 Commissioner Giovanni.

25 Commissioner Ohigashi.

1 COMMISSIONER OHIGASHI: So, Mr. Welch,
2 you're an expert in the area of Outdoor Circle policy
3 matters, is that right?

4 THE WITNESS: I would say that I represent
5 the Outdoor Circle in its policies and positions,
6 yes.

7 COMMISSIONER OHIGASHI: And you're not here
8 to testify as an engineer, nor are you here to
9 testify as an entomologist, nor as an expert arborist
10 or any other type of scientific field, is that right?

11 THE WITNESS: Correct or legal field.

12 COMMISSIONER OHIGASHI: So what I
13 understand you to be is, your testimony is that
14 argument made by the Intervenors in this matter. And
15 I will probably treat it as such. Therefore, I don't
16 have any more questions at this time.

17 THE WITNESS: I would say that we are, our
18 position is one of advocate for the natural and
19 scenic beauty of Hawaii. That is what the Outdoor
20 Circle is often called upon to testify in.

21 CHAIRPERSON SCHEUER: Anything else,
22 Commissioners? Any other hands up for Mr. Welch?

23 Commissioner Cabral.

24 VICE CHAIR CABRAL: Thank you very much for
25 the information. I'm trying to put all these pieces

1 together.

2 Mr. Welch, thank you for coming in and
3 working with us on this.

4 Am I hearing you that you're suggesting
5 that the cemetery should in fact go ahead and make
6 the improvements and provide the access for the
7 cultural site, and not expand their cemetery site, so
8 is -- does that mean that you're willing that they
9 should make that access available, if necessary, that
10 they would make land movement changes to put in an
11 access road from their current cemetery site as
12 planned to make access for the cultural site?

13 Are you suggesting that it's okay to make
14 the changes for the cultural site if that would -- in
15 order, like you said, to be a good neighbor, are you
16 acceptable if the roadways or whatever were to be
17 done in order to promote the cultural site?

18 THE WITNESS: Well, I wouldn't want to
19 prescribe any specific measures that the cemetery
20 might take. I'm just saying that they could take
21 that. It might be a foot path in there that will be
22 maintained from higher ground.

23 If they just maybe leave it as is, or
24 creating an easement that could be held in trust.
25 What is specifically done or even requested is -- I

1 don't know, I wouldn't want to say, because it's
2 there for the people that use that land for
3 traditional cultural practices, but having it
4 preserved by the cemetery and enhanced as those
5 folks -- as they have talked about doing.

6 If they got this land use done, if they did
7 that -- without doing that, I think that would be
8 being a really great corporate citizen and neighbor
9 and steward of the land, the same way about putting
10 up high fences to keep the damselfly area from pigs.

11 So I don't think that they need to be
12 granted any variance of the Conservation District to
13 do that. I think they can do that just because
14 they're a good landowner and steward.

15 VICE CHAIR CABRAL: I'm not sure about
16 that, but my second question to you is that you've
17 indicated that you represent the Outdoor Circle. You
18 are their current president.

19 Since this project has been going on for a
20 long time period, but you did not indicate that your
21 board of directors actually knew or had observed or
22 reviewed your position or your testimony, but that
23 they agree with you, so because this project has been
24 going on so long, have you in fact ever had a meeting
25 with your board or membership and have they ever

1 taken a vote to take this stand; or is it you're just
2 sure because you guys all think alike that it's okay
3 that your representing that the Outdoor Circle has
4 taken a stance.

5 THE WITNESS: Our concerns, and my
6 testimony is based on our policies, which is what I
7 would go off of as well as my history of the
8 organization.

9 I also consult various leaders inside of
10 the organization, and I give regular updates on a
11 monthly or bimonthly basis to my board to review or
12 ask any questions about various testimonies that I
13 give for boards or committees, and the like.

14 So this has been before the board for
15 awhile, and I think it's fair to say that this is the
16 position of the Outdoor Circle, and it reflects the
17 will of the board as well as that of the local
18 branches in the area.

19 VICE CHAIR CABRAL: Thank you too. I'm in
20 Hilo, so green is the color when it's not raining.
21 And I was interested in that you're saying three
22 trees for one, because I have done -- a number of
23 times I've heard the policy is one for one. I didn't
24 know that we increased that to three. And I have had
25 conversations with members of the Outdoor Circle here

1 in Hilo, so thank you for that updated information.
2 Thank you.

3 THE WITNESS: Thank you.

4 CHAIRPERSON SCHEUER: Commissioners,
5 anything further? I have a few comments, with the
6 Commissioner's indulgence I would like to do my
7 questioning so we could be done Mr. Welch's testimony
8 prior to the lunch break, if that's okay.

9 Mr. Welch, as somebody who has served on
10 non-profit boards, I don't have any problems with the
11 fact that sometimes our executive directors make
12 testimony on their own without fully consulting the
13 board on exact wording or exact version of the
14 testimony. I don't doubt that this is your testimony
15 in part because actually on October 28, 2018, you
16 commented on the DEIS, restating -- it's in the Final
17 EIS, commented in opposition to this as well as
18 individual testimony provided by your chair and one
19 of your branches.

20 THE WITNESS: So we had three pieces of
21 testimony from Outdoor Circle.

22 CHAIRPERSON SCHEUER: Yeah.

23 So my problem, actually one of my problems
24 is that under Hawaii's Environmental Review Law, if
25 you testify, or if you offer comments on the DEIS and

1 the Final EIS comes out, and you do not feel your
2 comments were addressed, you actually have 30 days by
3 which to bring suit against the adequacy of the EIS.

4 And this is something that the Outdoor
5 Circle, to my knowledge, has actually done repeatedly
6 in the past over the adequacy of the 343 documents.

7 But you guys did not bring suit against the
8 adequacy of the EIS?

9 THE WITNESS: Not to my knowledge.

10 CHAIRPERSON SCHEUER: Did you contest the
11 EIS acceptance when we accepted it?

12 THE WITNESS: Not to my knowledge.

13 CHAIRPERSON SCHEUER: Why do you come now
14 and say the EIS is wrong?

15 THE WITNESS: I see certain things inside
16 the EIS, the FEIS, and wanted to give our position on
17 this as well as what we believe is some
18 inconsistencies with how -- and to reiterate our
19 testimony more clearly before the board.

20 CHAIRPERSON SCHEUER: But the Outdoor
21 Circle believes in the inadequacy of the EIS was not
22 to such a degree that you thought to invalidate it?

23 THE WITNESS: That's correct.

24 CHAIRPERSON SCHEUER: During one of the
25 many hearings we have held on this matter, there was

1 some chuckling in the audience when a resident of
2 Pohai Nani talked about the need to preserve this
3 forest of beautiful alien trees, got sort of a
4 chuckle, but that's the argument you're making, for
5 example, even though this is acknowledged in the EIS
6 as a degraded non-native invasive forest, you want to
7 see it protected in that state?

8 THE WITNESS: Well, I won't say degraded,
9 but if -- but if we are talking about the native
10 versus non-native issue, it's a huge issue and we
11 would have to remove most trees, I think, 2500 feet
12 in State if we were going to go with all native
13 trees.

14 So it's a complex issue, and if we are
15 going back and replanting with sandalwood and native
16 species all around the islands, it's a massive
17 undertaking which I don't think we would oppose, but
18 at this point we support current forested canopy, but
19 there are some that are invasive in a way like you
20 could see the albezia, they snap off, they can have
21 hazards over the roadways.

22 There are certain trees that are more, I
23 guess, invasive or worse than others, but taking down
24 all the trees, it's the same argument about lowland
25 shade tree, for example, the monkeypods native of

1 Central America. We have a huge majority of our
2 trees, I think over 70 percent in Honolulu are
3 actually monkeypod trees that are providing that huge
4 shade.

5 I hope we never get hit with an insect that
6 destroys the monkeypods, but the reality is there are
7 no good lowland shade canopy trees that would give
8 that sort of coverage.

9 So while this topic does come up, we don't
10 take the non-native versus native argument in this
11 context.

12 CHAIRPERSON SCHEUER: But in this case
13 actually the trees, many of the trees to be removed
14 are albezia.

15 THE WITNESS: If some were to be removed
16 and be replanted, I don't think the Outdoor Circle
17 would have a problem with that. But destroying a
18 mountain and replacing with turf and replanting trees
19 with native coverage are different issues.

20 CHAIRPERSON SCHEUER: So just wanted one
21 last bit of questioning.

22 The Koolaupoko Hawaiian Civic Club, and
23 other native organizations have supported this
24 project testifying in favor of promoting this both
25 the cultural practices as well as their understanding

1 of the Conservation rules.

2 But the environmental -- the Outdoor Circle
3 is opposing this project?

4 THE WITNESS: Yes. But offering an
5 alternative for the landowner to do that same good
6 deed for the civic club in a different way.

7 CHAIRPERSON SCHEUER: Perhaps not a realist
8 alternative.

9 THE WITNESS: Perhaps, but it's possible.

10 CHAIRPERSON SCHEUER: I have nothing
11 further.

12 Do you have any redirect, Mr. Yoshimori?

13 MR. YOSHIMORI: I do not. Thank you, Mr.
14 Welch.

15 CHAIRPERSON SCHEUER: So it is 12:21. I
16 would like to reconvene at 1:00 o'clock, if that's
17 possible, 39 minutes for a fairly brief lunch, then
18 proceed on with Mr. Yoshimori's witnesses.

19 Who is your next witness?

20 MR. YOSHIMORI: Mr. Nathan Yuen.

21 CHAIRPERSON SCHEUER: We will bring in Nate
22 after the break if he can be ready a couple minutes
23 before. We are in recess.

24 (Noon recess taken.)

25 MR. YOSHIMORI: Mr. Higham is available to

1 testify. Can we promote him, please.

2 CHAIRPERSON SCHEUER: Intervenor's witness,
3 John Higham.

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

6 THE WITNESS: I do.

7 JOHN HIGHAM

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

11 DIRECT EXAMINATION

12 CHAIRPERSON SCHEUER: Please proceed, Mr.
13 Yoshimori.

14 MR. YOSHIMORI: For the record, Mr.
15 Higham's resume is Intervenor's Exhibit 11, and his
16 written testimony is Intervenor's testimony No. 4.

17 BY MR. YOSHIMORI:

18 Q Mr. Higham, thank you so much for
19 testifying today.

20 Can you please state your name and address
21 for the record?

22 A Mr. Chairman and Commissioners, my name is
23 John Higham. I live at 44-048 Kaimalu Place in
24 Kaneohe.

25 Q Can you please describe your educational

1 background?

2 A I received a Bachelor of Science degree in
3 civil engineering from the University of Hawaii in
4 1973.

5 Q Can you please summarize some of your
6 experience related to the field of civil engineering?

7 A In 1977 I received a professional civil
8 engineering license from the State of Hawaii. Since
9 then, I've held the following positions.

10 Most recently from 2008 to 2018, vice
11 president in charge of engineering and construction
12 at the development company for the James Campbell
13 Company in Kapolei.

14 Before that, from 2004 through 2007 I was
15 the chief engineer at Waiawa Ridge Development, LLC,
16 which is an affiliate of Gentry Homes.

17 Before that, from 1990 through 2003, I was
18 the director of development at Amfac/JMB Hawaii, for
19 the master planned Waikele Community in Central Oahu
20 and various other projects on Maui.

21 And before that from 1979 through 1989 I
22 was the project engineer at a Kaiser Development
23 Company who is the developer of Hawaii Kai.

24 Q Thank you.

25 I would like to submit Mr. Higham as an

1 expert in civil engineering.

2 CHAIRPERSON SCHEUER: Petitioner?

3 MR. TABATA: No objection.

4 CHAIRPERSON SCHEUER: County?

5 MR. PANG: No objections from the County?

6 CHAIRPERSON SCHEUER: Office of Planning?

7 MS. APUNA: No objection.

8 CHAIRPERSON SCHEUER: Commissioners?

9 Seeing none, Mr. Higham is so admitted.

10 Please continue.

11 MR. YOSHIMORI: Thank you.

12 Q Mr. Higham, can you summarize your concern
13 with the sediment basins during construction as
14 outlined in EIS page 2-46, also in the engineering
15 report Petitioner's Exhibit 6, Appendix B?

16 A Yes. The preliminary engineering report
17 states that during construction sediment basins
18 designed for a 2-year, 24-hour storm will be used.
19 Which would be insufficient should a storm of greater
20 intensity occur during the 12 to 16-month anticipated
21 construction period.

22 Depending on when the construction starts,
23 it is likely that construction will be ongoing
24 through at least one rainy season, if not two.

25 Q What other risks should a severe storm

1 occur during this construction period?

2 A Grant, can I ask you if you can share
3 Figure 2.4 at this point?

4 While he's working on that, there is risk
5 of sediment runoff to Kawa Stream and Kaneohe Bay.
6 Also should rocks and boulders or other debris roll
7 down the steep slopes in a severe storm and enter or
8 enclosing the existing drainage system, the runoff
9 could overflow the existing drainage system and flood
10 some of the downstream homes.

11 There's a higher risk of the existing
12 drainage system overflowing during construction when
13 the vegetation has been removed and the land has been
14 disturbed.

15 MR. YOSHIMORI: Chair, is it okay -- I'll
16 refer to the proper exhibit number. This is
17 Exhibit 6, Appendix C2.

18 A This is going to be hard to see, what I
19 wanted to show. That's great.

20 This is the predevelopment drainage map
21 that Ms. Hirota prepared for her preliminary
22 engineering report. It breaks down the areas into
23 the separate drainage areas within the Petition Area,
24 and I would like to just briefly walk you through
25 that.

1 Area E, which is the area on the right
2 side, and by far the biggest area, drains basically
3 to the end of Lipalu Street. Lipalu Street where it
4 says existing D1, that's where there is an existing
5 catch basin that's maybe two feet by two feet with
6 grade. That's where all that water goes.

7 All three of the remaining areas actually
8 go into the backyards of houses. They don't go to a
9 street like the first one does like Area E. Area D,
10 as in dog, going down to that little purple or pink
11 dot just below the word "Lipalu". It runs by surface
12 on through ditches and just over the ground.

13 That's where a catch basin drops it down
14 into a pipe that takes it to the City or to the road.
15 So if that catch basin, the top of it which is graded
16 inlet, gets filled with rocks that roll down there
17 from construction and the water can't get into the
18 basin, it's overflowing through those two yards to
19 get to the street.

20 Likewise in Area C, that whole area drains
21 to the place where it says "existing D 1", right
22 where the arrow is now. Same thing, if the top of
23 the graded inlet gets covered up with rocks or
24 branches or leaves or anything, the water can't get
25 in. It overflows in the backyards of those two

1 houses and finds its way to the street, and the last
2 one isn't labeled, but it's a little farther to the
3 left.

4 And it's where Area B is further up near
5 the cul-de-sac, little to the left and up there,
6 (indicating) that's the third inlet. And Area B
7 which is a narrow area, that drains over land down to
8 that graded inlet. And, again, if it clogs up, it
9 goes through that property yard, around this house.

10 So that's why it's really critical in this
11 case, because three out of the four downstream inlets
12 are in people's yards, not at the end of a street.

13 Grant, if you can leave that up for the
14 next question, that would help.

15 Q So do you have any concerns, do you have
16 concerns with the current runoff calculation used in
17 the preliminary engineering report?

18 A I do. The preliminary engineering report
19 states that there will be a four percent reduction in
20 the water runoff rate, which is measured in cubic
21 feet per second. And a five-and-a-half percent
22 reduction in the amount or volume, which is measured
23 in cubic feet as a result of the proposed
24 development.

25 However, I think two corrections should be

1 made to the calculations. The first correction is
2 that the runoff from sub-area A, which is shown on
3 this figure here, in the predevelopment calculations
4 -- well, the runoff from this area is included in the
5 predevelopment calculation, but it should be removed
6 because it does not currently drain into the Petition
7 Area. It actually drains the opposite way into the
8 cemetery. And if you can see where Area C, D and A
9 all kind of come together at a point right there
10 (indicating), where there's -- you don't see any
11 contour lines, that's the top of that little hill
12 from which the water runs off in all different
13 directions, because it's literally the top of a hill.

14 So the Area A side runs off down and into
15 the cemetery, and not the other way towards Area B, C
16 and D.

17 In the predevelopment calculation the
18 engineers had assumed that that Area A went towards
19 the Petition Area instead of to the cemetery as it
20 actually does. So it overstates the amount of water
21 that runs off into the Petition Area in the
22 predevelopment condition.

23 The other correction is that what's called
24 runoff coefficient assumed for sub-area D -- Grant,
25 can you show Figure 5.2.

1 Area D is kind of upside down V shape
2 between Ohana Street and Lipalu Street. Pull the
3 picture down a little bit more, if you can.

4 Area D, the engineers assumed a coefficient
5 of .27 which represents pretty much a fully graded
6 site, but I think it should be changed to .33 to
7 reflect that most of it is not graded. If none of it
8 was graded, the coefficient would be .35. So by
9 assuming lower runoff coefficient, they're
10 underestimating the amount of post development
11 runoff.

12 And if you make those two corrections, then
13 it would virtually eliminate the calculated reduction
14 in the post development runoff rate, and reduce the
15 reduction in the volume from five-and-a-half percent
16 to something less than 2.9 percent.

17 I would also like to note that these are
18 theoretical calculated figures, not necessarily the
19 actual runoffs, as I will address further later on in
20 the testimony.

21 And although these changes are small, I
22 thought it was important to point out, because the
23 report implies a reduction in runoff due to the
24 proposed development, but that probably isn't the
25 case.

1 In fact, as I will mention later in my
2 testimony, if the Plate 6 method is used to calculate
3 the runoff, the runoff could be five times what has
4 been calculated via the rational method.

5 I think we're done with that figure.

6 Q Do you have concerns with the proposed
7 detention and/or detention/retention basins?

8 A I do. First, there's enough information to
9 determine what is really being proposed.

10 On page 515 of the EIS there is a
11 description of three proposed detention basins. It
12 lists the size of the basins as an area in square
13 feet, but there's no indication of the volume of
14 detention that each basin will have, which is the
15 critical metric for a detention basin.

16 Two of the three proposed basins appear to
17 be located on the side of the lower hills just above
18 the residential area. This will require a lot of
19 excavation to create a basin on the side of the hill
20 and greatly reduce the potential volume of detention
21 that can be provided due to the area that will be
22 lost in the cut slopes around the majority of the
23 perimeter, and the two that are not the best of
24 places is the one on the upper right side at the end
25 of Lipalu Street.

1 The contour lines that you see cutting
2 across it, the dark ones are every ten feet, and the
3 lighter lines are every two feet. So there's a grade
4 change of almost 30 feet across that detention basin.

5 So ideally you pick the level place where
6 you can dig a depression and create a basin. This
7 one has 30-foot of change, elevation change from one
8 end to the other, it's going to be very, very
9 difficult to create that basin.

10 The other one is at the end of the short
11 cul-de-sac near where it says "proposed wall A". The
12 same thing is true. There's about 20-foot of
13 elevation change between the bottom and the top, so
14 you're basically, again, constructing it on a
15 hillside.

16 The irony of both of these basins is that
17 there are nearby existing natural gullies that could
18 have been used that would have required much less
19 excavation and been able to provide much more
20 detention volume in the same amount of area, but they
21 are currently being proposed to be filled.

22 And, Grant, if you can go back to the first
23 one, just below the first basin -- no, same figure,
24 sorry.

25 So the basin proposed at the end of the

1 Lipalu Street just below it there's some V-shaped
2 contour lines that are very close together. That
3 area right there. That's a natural gully that
4 directs water down towards the stream. That area you
5 could dig out a little bit, hollow it out a little
6 bit, it would be an easy place for a detention basin,
7 but it's being proposed to be filled so they can
8 recover more land to be used, that part makes sense,
9 but it's a shame to see that natural feature being
10 lost.

11 And the same thing is true of the other
12 basin just below that, between wall A and wall B,
13 that's a natural gully.

14 Little above that, Grant, just there, right
15 there. That area is where you see the contour lines
16 curve around. That's a natural gully that's taking
17 the water down towards that existing basin and would
18 have been a much easier place for a detention basin.

19 But, again, that would conflict with the
20 rest of the their grading plans. So they've put it
21 here, and I should point out that these basins, all
22 three of them, are right now outside of the limits of
23 grading.

24 So there's no way for me to look at it and
25 see how they were proposed to make them into

1 detention basins if there's no information on how
2 they would be graded.

3 The other thing is, in both Chapters 2 and
4 5 of the EIS, it refers to the detention basins. In
5 other places in the same chapters it refers to
6 retention/detention basins. There are references to
7 runoff being retained and allowed to infiltrate, but
8 there is no real information on how much permanent
9 retention, and how much detention will actually be
10 provided at each of the three permanent basins.

11 In the engineering report on page 20 and 24
12 it indicates a portion of the temporary sediment
13 basins will be converted to the permanent BMPs, these
14 three phases. And that it is anticipated an
15 additional 12,700 cubic feet of storage from the
16 permanent basins will be achieved.

17 I always get a little worried when I hear
18 words of "anticipated" because what if they aren't
19 able to reach what they anticipate, do they just
20 settle for whatever they can achieve?

21 But to give you a perspective on this, the
22 predevelopment runoff in the table in the preliminary
23 engineering report for this site is about 110 cubic
24 feet per second, cubic feet per second. It's a hard
25 thing to get a picture of, but if you convert it to

1 gallons per minute, which we're probably more
2 familiar with, that's about 6,300 gallons per minute
3 is the runoff from this entire site under the
4 precondition, predevelopment condition.

5 So the 12,700 cubic feet of anticipated
6 storage could be filled up in as little as two
7 minutes. So that's not a whole lot of detention
8 given the amount of runoff.

9 So without detailed information on the
10 volumes of each of the three permanent basins, it is
11 impossible to determine what risks of flooding the
12 downstream homeowners may be exposed to.

13 In summary, two of the three proposed
14 detention basins appear to be in locations that are
15 well-suited for detention basins. And also there's
16 not enough detail of the proposed basins, no
17 information on the capacity, and little or no
18 distinction as to how the basins will function via
19 detention or retention.

20 Q I just want to clarify.

21 You had said that currently planned
22 retention/detention basins could possibly be filled
23 within two minutes; is that correct?

24 A Yes, theoretically, the runoff,
25 theoretically. The 110 roughly cubic feet per second

1 doesn't happen with the first drops of rain. There's
2 a thing called "time of concentration" that until all
3 the water, all the rain that hits the farthest piece
4 of land can run through the detention basin or the
5 outlet area, the initial -- I guess what I'm saying
6 is the initial runoff is low, but you're just getting
7 the immediate area.

8 As time progresses and more and more area
9 or the rainfall hitting more and more areas breaches
10 the outlet, the flow increases until you hit the time
11 of concentration where all of the project is now
12 reaching that point.

13 And at that point, that's the point where
14 there's 6,300 -- excuse me, I said gallons per
15 minute, it's cubic feet per minute. I was incorrect
16 there.

17 So 6,300 cubic feet per minute is the flow
18 rate at when, for example, everything is hitting the
19 outlet area.

20 And for this site, that time of
21 concentration is over 50 minutes. So long before you
22 hit this peak flow, those basins are going to be
23 filled up, and it will act as if they're not there.
24 Every gallon or cubic feet of water that goes into
25 them will go out through the overflow. So they're

1 just not very big.

2 Q Do you have any concerns with the
3 conclusion, proposed drainage improvements of the
4 preliminary engineering report as it relates to the
5 proposed grading and drainage improvements?

6 A I do.

7 Earlier in a previous meeting, during Ms.
8 Hirota's testimony she referenced a portion of my
9 written testimony about the use of Plate 6 for the
10 drainage calculations.

11 Now, I thought it might be helpful if I
12 took a moment to provide a little background on that.

13 First, I would like to commend Ms. Hirota
14 on a preliminary engineering report that she
15 prepared. It is a difficult site, and with a couple
16 of exceptions which I covered earlier, I think she
17 did a great job calculating the runoff using what's
18 called the rational method for areas up to 100 acres.

19 And I also agree with Ms. Hirota that the
20 Plate 6 graph that I mentioned, which is contained in
21 the drainage standards, is intended to be used for
22 drainage areas of 100 acres or more.

23 That said, because the two drainage
24 calculation methods are totally different, the
25 calculated runoff from a project that has 101 acres

1 using Plate 6 would be approximately five times the
2 calculated runoff from a project that has 99 acres
3 using the so-called rational method.

4 As a result, there's a disconnect between
5 the two methods near the transition size of a 100
6 acres. In reality there would be little difference
7 in the actual runoff between a 99-acre site and
8 101-acre project in the same area.

9 The difference is that Plate 6 method is
10 intended to be more conservative because it deals
11 with larger areas, often which are undeveloped and/or
12 steep.

13 The rational method is intended to be used
14 to design drainage improvements in smaller areas and
15 generally flatter areas that are being subdivided
16 and/or developed usually with roads that would be
17 dedicated to the city.

18 The rational method uses nice smooth
19 rainfall contours running around the island, assuming
20 every storm hits the entire island somewhat evenly
21 with increasing rainfall amounts as the ground
22 elevation gets higher.

23 As we have often seen, storm events, even
24 of the same period and duration, can be very
25 different. Some impact the entire island somewhat

1 evenly, as assumed in the drainage standards, other
2 storms impact some areas much harder than others such
3 as in the 2018 Aina Haina storm, or the 2004 Manoa
4 storm.

5 My point is that the calculation of storm
6 water runoff is not an exact science. The actual
7 runoff can vary significantly from the calculated
8 runoff even though calculated using the accepted
9 standards.

10 The Petition Area looks and acts more like
11 a steep undeveloped area, the kind of area that Plate
12 6 was intended for, than a fairly small flatter area
13 being developed into a subdivision for which the
14 rational method was intended.

15 I think the grading of the Petition Area
16 poses more flooding risks to the downstream
17 residential area than is accounted for in the
18 rational method that was used.

19 When I look at the big picture I try to
20 look at whether the risks to existing developments
21 are sufficiently minimized from the proposed project.
22 If a project is seeking a discretionary approval to
23 extensively grade a relatively steep area, not quite
24 100 acres directly upstream of an existing
25 residential area that already experiences flooding,

1 seeking a discretionary approval to extensively grade
2 a relatively steep area, not quite 100 acres,
3 upstream of an existing residential area that already
4 experiences flooding should do more than just the
5 minimum required by the less conservative rational
6 method.

7 I think they should be required to increase
8 the size of their anticipated 12,700 cubic feet
9 permanent basins by five times to an actual minimum
10 of 63,500 cubic feet.

11 Factoring all these things into
12 consideration, I believe this project, as currently
13 proposed, puts downstream homeowners at an increased
14 risk when a large or concentrated storm hits the
15 area.

16 Q Thank you, Mr. Higham. Thank you so much
17 for volunteering all your time to do that detailed
18 analysis and also your testimony today.

19 Mr. Higham is available for questions.

20 CHAIRPERSON SCHEUER: If you could stop the
21 screen sharing for now, Mr. Yoshimori.

22 We will start with the Petitioner.

23 MR. TABATA: Chair, may I be able to us the
24 share screen function, please?

25 CHAIRPERSON SCHEUER: Yes, go ahead.

1 MR. TABATA: Thank you.

2 CROSS-EXAMINATION

3 BY MR. TABATA:

4 Q Good afternoon, Mr. Higham.

5 A Good afternoon.

6 Q We are looking right now at your written
7 testimony. This is basically what you just testified
8 to, I believe. And you're looking at page 2 of your
9 written testimony.

10 What I'm looking at is paragraph -- well,
11 retention/detention basin paragraph where you talk
12 about -- and I'm using my cursor here where I say at
13 drainage Area A, which is 2.3 acres into the
14 tributary in its existing condition which we think is
15 incorrect.

16 And just to go back and show where A is,
17 I'm now referring to Figure 2.4, which is in the
18 preliminary engineering report which is attached to
19 the Final EIS Exhibit 6 and the PER is Appendix D to
20 the FEIS, just for the record.

21 So Area A is down here (indicating). I
22 believe that's this area. And you said that it's
23 incorrect to include that in our existing runoff
24 calculation. Is that correct?

25 A It is incorrect to include it in the

1 predevelopment runoff calculations, that is correct.

2 Q Now, isn't it correct, Mr. Higham, that we
3 are required to calculate all of the runoff from our
4 project area; isn't that right?

5 A I'm not sure I understand your question.
6 But you can't include this in your runoff in the
7 predevelopment scenario and then compare that number
8 to a post development runoff number. It's like
9 apples and oranges.

10 You're saying this is included in the total
11 predevelopment, and after development the hilltop is
12 gone, so Area A drains the opposite way. It doesn't
13 drain into the cemetery any longer, it drains upward
14 in this figure, because the hilltop that makes it run
15 towards the cemetery is no longer there, and the
16 slope of the ground reverses, and it does, in the
17 post development condition, drain into the Petition
18 Area.

19 But you can't include it now and then
20 compare it to a number later where it does go that
21 way, because it's just not -- it's literally apples
22 and oranges.

23 Q So is it your testimony that the only
24 runoff that we need to calculate is the runoff that
25 flows into the Petition Area?

1 there should be -- what it says is, however, there
2 should be another 9.7 acres of undisturbed area,
3 which is a buffer area, Area D highlighted in red,
4 and I assume partly near the cultural preserve Area
5 E2, if the additional 9.7 acres are corrected as
6 undisturbed, it increases the post development runoff
7 volume.

8 Did I read that correctly?

9 A As it was written, you read it correctly.
10 I did not include that in my oral testimony, because
11 after Ms. Hirota's testimony, I had a better
12 understanding of what she was doing.

13 I had trouble verifying the areas in the
14 post development plan. I don't have CAD, so I'm
15 doing this by hand, and I kept getting a discrepancy
16 of 9.7 acres or thereabouts. But after I listened to
17 her testimony, I didn't want to confuse things any
18 more than necessary, so I dropped that issue. And
19 the only issue I carried forward was the coefficient
20 for Area D that's circled in the drawing that you
21 have up.

22 Q I believe the issue of Area D is still
23 something you're pursuing so --

24 A Yes.

25 Q I'll turn to Figure 3.6 in the PER.

1 A Yes.

2 Q When you speak of Area D, you're speaking
3 of this area where I'm pointing to; is that correct?

4 A Well, bigger than that.

5 Q It's bigger than that?

6 A It goes down to the blue line to the left,
7 and I believe to the road on the right, wraparound,
8 yeah, all of that. Not quite way out there, but,
9 yeah.

10 Q And your understanding is that this area is
11 for the most part undisturbed; is that correct?

12 A Well, it's -- most of it is outside the
13 limits of grading, so I would assume it would be
14 undisturbed.

15 Q Is there --

16 A Is there some information that says
17 otherwise?

18 Q Well, the runoff coefficient is one
19 indicator that this will not be an undisturbed area,
20 and my understanding is that there will be grading
21 done in this buffer area.

22 So my question is: Why do you have an
23 understanding that the Area D and its surrounding
24 areas within the buffer will be mostly undisturbed?
25 How do you come to that conclusion?

1 A Because it's outside the limits of grading
2 shown on this plan.

3 Q I don't believe this diagram is showing the
4 limits of grading by color, if that's what you're
5 looking at.

6 My understanding is that there will be
7 grading and the area will be disturbed in this buffer
8 area.

9 A Okay.

10 Q Let me ask you this question.

11 Do you understand what our buffered area is
12 being used for, or why the buffered area is being
13 created?

14 A I think I understand why it's been created,
15 I'm not sure where it's located.

16 Q It's located in this area here where I'm
17 pointing out in Area D, Area E6, and Area C1. It's
18 between this brown area or brownish/reddish area and
19 this dark red line which outlines our Petition Area.

20 A So let me ask you what's happening in the
21 buffer area.

22 Q Well, let me back up and ask the question.

23 What is your understanding for the purpose
24 of the buffer area?

25 A I did not look at the buffer area. I

1 looked at this plan and assumed that the red contours
2 shown on this plan showed the proposed grading and
3 the black line showed the existing grading. And that
4 if I didn't see red contour lines, then that area
5 wasn't being graded.

6 And typically, if it's outside of the
7 limits of grading, it's not to be cleared and
8 grubbed.

9 Now, if there's another plan that shows
10 additional grading or additional clearing and
11 grubbing beyond this, I did not have access to that.

12 Q I can sympathize with you. It's not easy
13 for people to read something like this.

14 A I can read this map fine. I can't
15 anticipate a map I haven't seen.

16 Q And I wish I had your ability. But I can
17 represent to you that this is a buffer area.
18 (Indicating). This is not a cemetery expansion area.
19 And the reason why it is different from this area,
20 which is the cemetery expansion area, is because the
21 buffer area is an area where we are not allowed to
22 have cemetery use. That is the purpose for the
23 buffer area.

24 It does not mean that there will be no
25 grading. It does not mean that the land will be

1 undisturbed. And I'm just wondering if you are aware
2 of the purpose of the buffering area and the
3 significance as a buffer?

4 A So it sounds like you're saying this buffer
5 area is going to be cleared and grubbed and graded,
6 but isn't included in the grading plan shown and may
7 not be included in the volume shown. And I wonder if
8 the homeowners realize that the cemetery folks are
9 planning to clear and grub the hillside behind their
10 houses? Is that the plan?

11 Q Well, if you could allow me to ask the
12 questions. I do have one that I believe will address
13 what you just said or asked.

14 Now, going back to your written testimony,
15 it says: If the additional 9.7 acres are corrected
16 and undisturbed, it increases the post development
17 volume.

18 Did I read that correctly?

19 A When I wrote that I was under the
20 impression -- well, I couldn't verify the areas. And
21 I thought that it was off by 9.7 acres, and if that
22 change was made, it would actually increase the
23 runoff.

24 But as I said a minute ago, after Ms.
25 Hirota's testimony, I just decided not to even try to

1 sort that out, because I couldn't point to a map and
2 show where 9.7 acres was potentially off.

3 Q Forget about the acreage, the 9.7 acres.
4 What I'm looking at this sentence for is this
5 assertion that if the undisturbed area is corrected,
6 meaning if it is increased, what it will do then is
7 it increases the post development runoff volume.

8 Is that your understanding?

9 In other words, if we had more undisturbed
10 area, do we have more runoff, is what I'm asking; is
11 that true?

12 A Yes.

13 Q And when you say "undisturbed area", you're
14 talking about the existing condition; correct?

15 A Yes.

16 Q Thank you.

17 Let's move on to the lower part of page 3
18 of your written testimony.

19 In paragraph 2 of page 3, where the lower
20 part of the page, you talk about the city standards.
21 City's rules relating to storm drain standards, Plate
22 6.

23 And just to recap your testimony, Plate 6
24 at 100 acres will give us 1000 cubic feet per second,
25 correct?

1 A Correct.

2 Q And this is existing runoff, is that right?

3 A Correct. Actually not sure it makes a
4 difference. Plate 6 doesn't differentiate between
5 developed or undeveloped.

6 Q Okay. We'll get to that in a moment.

7 Thank you.

8 Now, you compare our numbers, you refer to
9 our EIS which talks about less than 200 cfs, correct?

10 A Correct.

11 Q And that if we had 7 more acres added to
12 our drainage area we would then be required to use
13 Plate 6 and come up with the 1000 cfs number; is that
14 right?

15 A That's correct.

16 Q Now, let's take a look at the two methods
17 that you brought up. And I'm showing you the written
18 testimony of Jami Hirota, our civil engineer.

19 Looking at Table 1 from Ms. Hirota's
20 written testimony. Is this what you referred to as
21 the rational method?

22 A Yes. She used the rational method to do
23 her calculations.

24 Q Thank you.

25 Now, Table 1 compares the existing

1 conditions with the proposed conditions. And it
2 gives basically a summary of the flow rate, runoff
3 rates depending on the intensity of the rainfall;
4 correct?

5 A Correct.

6 Q Thank you.

7 Now, I'm turning back to the PER and this
8 is Table 1. I need to make it larger.

9 So in the PER, Appendix A there are two
10 tables. Table 1 is the predevelopment hydrology. Is
11 that correct?

12 A That is correct.

13 Q And can you -- well, the rational method,
14 would you agree that the rational method is based
15 upon calculation -- the calculation being Q equals
16 CIA , is that correct?

17 A Yes, yes.

18 Q So the Table 1 in Ms. Hirota's written
19 testimony is a summary showing the difference between
20 existing conditions and post development conditions.
21 This Table 1 in Appendix A of the PER only looks at
22 the existing conditions; is that correct?

23 A The predevelopment, right, that's correct.

24 Q And in this we have Table 1 that we're
25 showing on screen. We have A, B, C, D and E for the

1 drainage areas; is that correct?

2 A That's correct.

3 Q And then we have the areas, the area
4 acreage C being the runoff coefficient, because this
5 is existing, it's all .35, and we have the intensity,
6 the rainfall?

7 A Right.

8 Q Then we get the numbers, okay. That's how
9 we get the volume, the Q runoff rates and V for
10 volume; is that right?

11 A That's correct.

12 Q And then with respect to post development
13 we have Table 2 also in the PER.

14 Did you have a chance to review this, sir?

15 A I did.

16 Q Thank you.

17 A It's the one I had trouble verifying the
18 areas to.

19 Q Again, I sympathize with you. I've gone
20 over this graph many times, and it was an educational
21 experience, I can say that.

22 So when we look at the areas here, we have
23 instead of A, B, C, D, we now have 25 different
24 areas. And that's because of the various surface
25 conditions that would exist if our project is

1 approved; is that your understanding?

2 A Yes.

3 Q And then we have different areas of course
4 in the acreage column and different coefficient
5 numbers, because we have different surface areas.

6 Could you give us a definition of runoff
7 coefficient, your understanding, sir?

8 A I doubt it. I could give you a definition.
9 The way I think of it is that it's sort of like the
10 percentage of runoff, percentage of the rainfall that
11 runs off. So the higher the number, the more of the
12 rainfall runs off.

13 So like in Area C2b, as in boy, where it's
14 .9, that represents a hard surface like a road or
15 something hard, where virtually all of the water runs
16 off. .35, some of the areas in the figure that Ms.
17 Hirota used for undeveloped land, and .25, 25 was the
18 factor she used for developed area or grassed area.

19 So her coefficient for grassed developed
20 cemetery land said that only roughly 25 percent of
21 the water would runoff, where in the undeveloped
22 condition 35 percent would runoff.

23 And where an area is a mix between
24 developed and undeveloped, if you sort of take an
25 average of the two figures, depending on the prorated

1 area that's one category, the other.

2 Did that answer your question?

3 Q That's consistent with my understanding.
4 And it's also consistent with your written testimony,
5 I believe, where you say that where you have
6 undisturbed area, you have more runoff basically; is
7 that correct?

8 A That was Ms. Hirota's, that was from her
9 report.

10 Q Correct, and your written testimony also
11 says if we increase the undisturbed area, then we get
12 more runoff. And isn't that --

13 A Well, what I thought I was saying is that
14 undeveloped area has more runoff than grassed
15 cemetery land, according to the PER.

16 Q And do you agree with that?

17 A I don't disagree with it.

18 Q You do not disagree, correct?

19 A I do not disagree.

20 Q Thank you.

21 Okay. So this is how we calculate our post
22 development runoff, Q equals CIA.

23 Then we get the columns here of volume,
24 runoff rate and the volumes and the they all get
25 added up. And tallies at the bottom correlate to

1 that summary in Ms. Hirota's written testimony. Is
2 that correct?

3 A That is correct.

4 Q Thank you.

5 Now, and this is the rational method,
6 correct?

7 A That is correct.

8 Q Now, if we turn to storm drainage
9 standards, are you familiar with the storm drainage
10 standards of the City?

11 A I am familiar with them.

12 Q And is this where we can find Plate 6?

13 A I hope so.

14 Q Let's see if I can find it for us.

15 A Way at the back. There you go.

16 Q Plate 6. Entitled Design Curves For Peak
17 Discharge Versus Drainage Area More Than 100 Acres.

18 Is this the Plate 6 that you speak of, sir?

19 A Yes, it is.

20 Q And just to describe it for the record,
21 this is Petitioner's Exhibit 5, drainage rules, and
22 we are on page 23, PDF page No. 28.

23 So Plate 6 comprises -- is a graph with a
24 horizontal axis, what we have is the acreage in
25 hundreds of acres, correct?

1 A That's correct.

2 Q So it starts at one, which is 100, correct?

3 A Correct.

4 Q And on the vertical axis we have a peak
5 discharge in 100 cfs; is that correct?

6 A That is correct.

7 Q So if we have -- we start at 100 acres, go
8 up the vertical axis to, it intersects -- I should
9 back up.

10 We have also three lines on the graph
11 represented as Group A, Group B, and Group C; is that
12 right?

13 A That is right.

14 Q And those three groups represent different
15 areas of Oahu where Group A is on the east side,
16 Group B is central part of Oahu, and Group C is on
17 the west side; correct?

18 A Correct.

19 Q And our project is located in Group A, is
20 that right?

21 A That is right.

22 Q So if we start at 100 acres, go up to Group
23 A, then we intersect the vertical axis at 1000 cfs,
24 is that correct?

25 A That is correct.

1 Q And that's the number -- and you believe
2 that this Plate 6 is a more appropriate method than
3 the rational method for our project?

4 A Given the nature of the terrain, I do, yes.

5 Q And this calculates our existing runoff,
6 correct?

7 A As I said, it doesn't differentiate between
8 existing or developed. It's just what group are you
9 in and how big an area, and you get the runoff.

10 It's actually a much simpler method than
11 the rational method.

12 Q Right, it does appear to be much simpler.

13 CHAIRPERSON SCHEUER: Mr. Tabata, if I may,
14 can you give me a sense of how long your cross is
15 going to go, because we did accidentally end up with
16 the engineering diagrams directly after lunch as
17 opposed to the other witnesses.

18 MR. TABATA: I may have another 45 minutes
19 or so.

20 CHAIRPERSON SCHEUER: 45 minutes. Well, we
21 are definitely taking a break. And I'm declaring
22 that getting through all the Intervenor's witnesses
23 by the end of the day to be wildly optimistic.

24 It's 2:06 P.M. We will take a ten-minute
25 recess, which will give us about 45 minutes, then we

1 have to actually end at 3:00 o'clock today. My
2 intention, for various reasons I will say more about
3 this later, I don't think it's going to make sense to
4 continue this matter tomorrow, given the complexity
5 of issues arising. We have to reschedule the closure
6 of the evidentiary hearing for August 12th.

7 Right now let's take a ten minute break to
8 2:16. Thank you.

9 (Recess taken.)

10 CHAIRPERSON SCHEUER: It's 2:16.

11 Mr. Tabata, you were going to continue your
12 torture of the witness -- I mean your questioning of
13 the witness.

14 Q (By Mr. Tabata): Mr. Higham, just to recap
15 briefly. Is it your testimony that it is fair to use
16 Plate 6 to calculate the existing runoff versus using
17 the rational method?

18 A DPP, Department of Planning and Permitting
19 would not require the use of Plate 6 in this
20 situation. Because this is a discretionary approval,
21 and the nature of the existing ground is very steep,
22 very rugged, I believe it's the more appropriate way
23 to calculate the runoff.

24 Q Would you agree that as the Petitioner, we
25 are required to calculate the post development

1 runoff?

2 A You're required to calculate both
3 predevelopment and post.

4 Q How can we use Plate 6 to calculate the
5 post development runoff?

6 A You just walked us through it, 1000 cubic
7 feet per second. Group A 100 acres straight up, 1000
8 cubic feet per second.

9 Q So there would be no change then in the
10 runoff based on your use of Plate 6, is that correct?

11 A If there were no other changes, the fact of
12 it being developed versus undeveloped, you're right,
13 using Plate 6 it would not change.

14 In this case -- well, you're basically
15 adding the Area A into the post development scenario,
16 but since it's still less than 100 acres, that really
17 wouldn't make a difference, so I think that's
18 correct.

19 Q So according to your testimony, our project
20 will not increase the runoff then, correct?

21 A No, what I'm trying to say is that the
22 rational method doesn't apply well given the terrain
23 of this site, and that the Plate 6 is a more
24 appropriate way to calculate the runoff. And the
25 runoff you get from Plate 6 is about five times what

1 you would get from the rational method.

2 Q I would like to turn back to the rules --
3 well, we are on the rules.

4 And this is the drainage rules that we were
5 discussing. And when you said that DPP would not
6 require the use of Plate 6, is it -- is that based on
7 what's stated on page 1 of the rules under paragraph
8 B, runoff quantity?

9 A Yes.

10 Q Paragraph B1 states for drainage areas of
11 100 acres or less, the rational method shall be used.
12 Did I read that correctly?

13 A You did, yes.

14 Q So the use of the rational method for our
15 project area which is 93.2 acres, or drainage area,
16 sorry, the use of the rational method is mandatory;
17 is that correct?

18 A I'm not saying that. I think DPP would be
19 fine if you use the more conservative method. I'm
20 hoping that the Commission, because this is a
21 discretionary approval, will impose a higher standard
22 than what DPP has in the drainage standards.

23 But there is no downside to DPP if you guys
24 decide to use Plate 6, it's just everybody is safer
25 that way.

1 Q And for drainage areas greater than
2 100 acres, paragraph 2, that's when Plate 6 would be
3 used; correct?

4 A You could ask DPP if they objected to using
5 Plate 6 for a 93 acre area. I suspect they would
6 have no objections.

7 Q So, again, what you're saying is that we
8 should be using Plate 6 for both our existing and our
9 post development runoff, correct?

10 A I'm saying it's a more appropriate method
11 to calculate runoff for this site, yes.

12 Q And you're also saying that we need to, or
13 we should disregard the language of the rules in
14 which mandate the use of the rational method for our
15 drainage area; is that correct?

16 A I'm just suggesting you use a higher
17 standard.

18 Q Even though that standard is contradictory
19 to the mandatory language of the rules?

20 A I don't think it's contradictory. Nothing
21 you design in the rational system or use in the
22 rational system would not be sufficient for the
23 rational method. Nothing you would design would be
24 undersized as you walk through the same thing with
25 the rational method. What you would typically find

1 is that all your pipes and inlets and everything
2 would be larger than what the rational method would
3 require. So where's the harm in that?

4 Q I have no more questions. Thank you.

5 CHAIRPERSON SCHEUER: That was a very fast
6 45 minutes. County.

7 MR. PANG: The County has no questions for
8 this witness.

9 CHAIRPERSON SCHEUER: Thank you, Mr. Pang.
10 Office of Planning?

11 MS. APUNA: Office of Planning has no
12 questions.

13 CHAIRPERSON SCHEUER: Commissioners,
14 starting with Commissioner Okuda.

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

17 Thank you, Mr. Higham, for your testimony.

18 Can I ask you this? Is it your testimony,
19 or do you have an opinion looking at the bottom line
20 here, is it your testimony that there is -- that this
21 project poses a foreseeable danger of flooding to the
22 neighbors downslope?

23 A I believe that it has the potential to, and
24 it's not the fault of the cemetery necessarily, it's
25 just that three of the inlets are in the backyards of

1 home lots, of houses. I think I went to all but one
2 of the inlets, and the one closest to the cemetery,
3 the farthest to the left, I happened to talk to the
4 homeowner there, and he said shortly after he moved
5 in -- this is probably in the sixties -- water was
6 running down, and the country line ditch going down
7 to the inlet had some pipe sticking up to act as a
8 debris barrier. And they did what they were designed
9 to do, they collected all the debris. But the runoff
10 was coming so fast, that the debris shot up into the
11 area and went right over the inlet and landed in his
12 backyard.

13 So it doesn't take much to cause these
14 basins to get clogged up and overflow. So there is a
15 risk.

16 COMMISSIONER OKUDA: Is it your opinion
17 that the grading that is proposed by Hawaiian
18 Memorial Park alters in any way the existing drainage
19 patterns?

20 THE WITNESS: Yes. I can explain, but the
21 short answer is yes.

22 COMMISSIONER OKUDA: I think you already
23 gave some of that explanation in testimony, I just
24 wanted that as a preliminary question.

25 Let me ask a followup question then.

1 Is it your opinion that this alteration of
2 the existing drainage flow of water, the alteration
3 caused by, or which would result from the proposed
4 development of HMP, that that alteration contributes
5 or increases a foreseeable risk of flooding to the
6 neighbors?

7 THE WITNESS: I think there is increased
8 risk during construction. Things are exposed and
9 that would be an area of concern. That sub-area A
10 that we talked about isn't a huge area, and if you
11 don't count it in the predevelopment runoff, what it
12 basically does is say to me that the post development
13 runoff is going to be about the same as the
14 predevelopment runoff.

15 The one saving grace to me from the
16 cemetery is the detention basins they're proposing
17 because that has the ability to slow down the runoff,
18 and hopefully protect the inlets from debris and
19 possibly make things better. But 12,000 cubic feet,
20 in my mind, isn't really enough to move the needle a
21 lot.

22 COMMISSIONER OKUDA: My question is really
23 a more bottom-line question.

24 It's whether or not after development has
25 been finished and completed, whether or not the

1 alteration of the present existing drainage pattern,
2 whether that alteration increases the foreseeable
3 risk of flooding to the neighbors?

4 THE WITNESS: Well, I guess I would answer
5 it this way.

6 Right now the site is heavily forested,
7 lots of roots and branches and trees. All of that is
8 going to tend to slow the runoff down, and the slower
9 things are, the better. When water gets velocity,
10 that's where it can do great damage.

11 Once the cemetery, if that's approved and
12 its developed, if the debris barriers were ever
13 overwhelmed, if there was a rock slide that crushed
14 the chain link fence and that stuff came on to the
15 cemetery property, there's literally nothing to slow
16 it down. Cemetery is 20 to 30 percent slope.

17 So if it's raining hard in the middle of
18 the night, a bunch of rocks hit that fence and crush
19 it, and things start rolling down the cemetery, it's
20 going to hit one or more of those inlets. And if
21 it's any of the three behind the houses, then there
22 is that risk of flooding those adjacent homes.

23 COMMISSIONER OKUDA: Just to sum up, is it
24 yes, the alteration of the currently existing
25 drainage patterns will increase a foreseeable risk of

1 flooding; no, it won't; or you really don't know?
2 You don't have an opinion at this point in time.

3 THE WITNESS: I can say yes, it may have an
4 adverse impact.

5 COMMISSIONER OKUDA: My final question is
6 this.

7 Even though a drainage plan has been
8 proposed for or submitted by the Applicant as part of
9 this Boundary Amendment Application, is it true or
10 not true that DPP or some other City agency will pass
11 on the sufficiency of the drainage plan, the ultimate
12 drainage plan?

13 THE WITNESS: I believe that DPP would look
14 at this and say it meets their standards, and the
15 residents are not involved in the review of the
16 grading plan. They're not part of that process.

17 So once the Land Use Commission rules in
18 favor, then the homeowners have no chance of being
19 part of making this better for them, keeping it from
20 being a bigger problem.

21 COMMISSIONER OKUDA: I understand.

22 But it is true that DPP supposedly using
23 the expertise that they have, engineering expertise,
24 will evaluate whatever plan that the landowner
25 proposes, assuming that the landowner gets past at

1 least this approval by the Land Use Commission. Is
2 that correct?

3 THE WITNESS: I believe that is correct.

4 COMMISSIONER OKUDA: So what is being
5 proposed to us right now may not be the final plan
6 which is submitted and approved by DPP. Would that
7 be a fair statement?

8 THE WITNESS: Well, I hope it wouldn't be,
9 but I think that's largely up to you folks.

10 COMMISSIONER OKUDA: Okay, thank you, Mr.
11 Chair.

12 Thank you, Mr. Higham. I have no further
13 questions.

14 CHAIRPERSON SCHEUER: Thank you very much,
15 Commissioner Okuda.

16 Commissioner Chang.

17 COMMISSIONER CHANG: Thank you, Chair.

18 Mr. Higham, I probably have learned more
19 than I needed to learn about drainage.

20 THE WITNESS: Sorry about that.

21 COMMISSIONER CHANG: Not at all. You got
22 my attention.

23 And I'm curious now, given the
24 cross-examination, if you were to use Plate 6 rather
25 than the rational method, what would be the

1 difference?

2 THE WITNESS: Well, in this case, maybe not
3 that much. Usually the rational method is used like
4 for subdivision, where they're going put in roads,
5 houses, dedicate the road to the City. If you follow
6 the rational method and design the pipes accordingly,
7 the City will accept your drainage system.

8 In this case, all the roads are going to be
9 private, so they don't have to worry about the City
10 accepting it.

11 The difficulty I have trying to answer that
12 question is that the water quality requirements are
13 somewhat independent of the amount of runoff, I
14 think. If I'm right, you provide for a volume of one
15 inch of rainfall over the area and there is a couple
16 of factors that are getting multiplied in there. I
17 forget the formula.

18 But whether you follow the rational method
19 or the Plate 6 method, the water quality basins, if
20 you will, detention basins, follow slightly different
21 rule that are somewhat independent, at least that's
22 my understanding, which is why in my testimony I made
23 it a point of making an issue of the volume in the
24 basin.

25 That's to me the critical thing to protect

1 the homeowners is to make detention/retention basins
2 as big as possible to afford them the most
3 protection.

4 COMMISSIONER CHANG: So that leads me to my
5 next question.

6 If you were designing, in light of what
7 you're seeing in their proposed plan, if you were
8 designing it to provide homeowners greater
9 protection, what would you do differently?

10 THE WITNESS: Well, primarily I would try
11 to move the two large detention basins into the
12 gullies, and that's not as easy as it sounds, because
13 it will take away some of their usable land. So
14 although it will reduce their cost by reducing the
15 excavation, it reduces some of the revenues by
16 reducing the land that they have to sell plots.

17 But I would look at relocating those two
18 basins and trying to make them as big as possible.
19 The one area in actually Area D is the only one that
20 wouldn't have a detention basin upstream of the
21 inlet.

22 And when I look at the grading plan, it
23 looked like they were actually trying to take some of
24 the runoff that currently goes down to Area D, and
25 shift it over into Area C, which I thought made a lot

1 of sense because Area C had a detention basin to
2 protect that inlet.

3 But, you know, if all these inlets at roads
4 where if the water just jumped the inlet, it would
5 run down the road, it wouldn't be as big an issue.
6 But three of them in the backyards, that's a concern.

7 COMMISSIONER CHANG: Based upon your
8 testimony, that seems to be your major concern is
9 that three of the outlets are in the backyards of the
10 residents?

11 THE WITNESS: Yes.

12 COMMISSIONER CHANG: If they were relocated
13 to another location, you would feel much more
14 comfortable with what they --

15 THE WITNESS: Well, you may not be able to
16 relocate the inlets with the existing ones, but put
17 detention basins as big as possible upstream of them
18 to catch all the debris and mitigate the peak flows
19 to some extent.

20 COMMISSIONER CHANG: Thank you so much. I
21 really appreciate your testimony. Very enlightening.

22 CHAIRPERSON SCHEUER: Thank you,
23 Commissioner Chang.

24 Anything further, Commissioners?

25 If I may, Mr. Higham, briefly.

1 I understand, I believe, the main thrust of
2 your testimony which is that especially if you happen
3 to have rainfall heavily centered over this one area,
4 these calculations would not be adequate to protect
5 the downstream neighbors particularly during the
6 construction period.

7 Is that essentially the main thrust of your
8 testimony?

9 THE WITNESS: Yes. Yes, it is.

10 CHAIRPERSON SCHEUER: I spent New Year's
11 Eve 1987 in Kaiser High School Auditorium because of
12 the New Year's Eve flood when Niu Valley looked like
13 a raging river. So, again, the intensity of rainfall
14 that can happen.

15 What I'm trying to understand is, is it
16 reasonably calculable in any meaningful way the
17 chance that this might occur?

18 THE WITNESS: Well, none that I can think
19 of. I happen to be in charge of Hawaii Kai Marina in
20 that late 1980 storm, and in one night we had mud and
21 rocks rolling down Kaalakei Valley, the first valley
22 in Hawaii Kai, filled up an entire waterway. People
23 could walk from one side to another. I wouldn't have
24 thought that possible in one night, New Year's Eve of
25 all nights.

1 CHAIRPERSON SCHEUER: 13 inches of rain in
2 nine hours I believe.

3 THE WITNESS: And most of that stuff, the
4 Kaheka Street, that central drain channel was
5 designed using Plate 6. It was a big channel but
6 there was blockage at the top where the boulder basin
7 was, water couldn't get into the channel, and it went
8 down the street. It literally ripped the street out
9 because it was steep, it was fast moving and that's
10 where it gets dangerous.

11 CHAIRPERSON SCHEUER: Thank you very much
12 for your responses.

13 Anything further, Commissioners? If not,
14 is there any redirect?

15 Commissioner Cabral.

16 VICE CHAIR CABRAL: Thank you very much. I
17 think you've answered some of these, but I get
18 confused because with different information and the
19 different questions it seems to sometimes redirect in
20 my brain. So whether my questions have been answered
21 or not --

22 So did you say that the statistical
23 information that all of these studies are being based
24 on is really the islandwide, so I think at one point
25 you had like A, B, C maps, and there's like an

1 average of that, so they're taking that as how much
2 rainfall that is going to happen at any given time
3 and that's how they calculated it; or you went back
4 and forth a couple of times and I wasn't sure where
5 we ended up on that.

6 THE WITNESS: That graph that you're
7 referring to I think is the Plate 6 graph. That's
8 the 100-acre and more graph. The rational method
9 there are graphs that show the projected rainfall for
10 the island, and I don't think we punched any of them
11 up, so you didn't see them on the screen.

12 But there are graphs for a ten-year storm
13 and 20-year storm, 100-year storm, and they have
14 contours around the island.

15 So all the shoreline areas are like two
16 inches per hour, and then as you go up a hill, goes
17 to three inches or four inches farther up, but those
18 are the contours that act like the storm hits the
19 entire island evenly. It's raining everywhere.

20 In that late '80 storm in Hawaii Kai, that
21 did all that damage, at that time I lived in town in
22 a condo. It wasn't raining in town, but it was
23 flooding in Hawaii Kai and East Honolulu.

24 So there's a storm that didn't hit the
25 entire island like the rational method anticipates,

1 it just hit East Honolulu.

2 VICE CHAIR CABRAL: Thank you that's what I
3 understood.

4 And then, again, some of the primary
5 concerns you've expressed is what's going to happen
6 during construction time, correct, as opposed to
7 after the construction you have referenced some of
8 that too because, of course, unknown rain factor and
9 rain time. But it's mostly what you were analyzing
10 was during construction?

11 THE WITNESS: That's the biggest concern by
12 far. The 100 -- it's really hard to get a feel for
13 this, but the 100 cubic feet per second, when you
14 equate that, when you do the math and turn it into
15 gallons per minute, that's like almost 50,000 gallons
16 a minute. So the runoff at 110 cfs, cubic feet per
17 second is equal to about 50,000 gallons a minute. So
18 the runoff from that entire site is filling up a
19 large swimming pool every minute, large swimming pool
20 is 30 or 40,000 gallons, so every minute or two,
21 that's how much water.

22 So you can't hope to detain all that water
23 on-site during construction. You can put sediment
24 basins and silt screens and things, and you can try
25 to trap the silt, but there's typically so much water

1 that you just, you can't slow -- you can slow it down
2 a little, but it's leaving the site and usually with
3 a lot of runoff with a lot of sediment.

4 VICE CHAIR CABRAL: If you do
5 construction -- and I don't know what the plans are
6 in terms of timing -- but if you were you to have the
7 construction happen over a variegated time period, so
8 at no one time is the entire runoff slope of an area
9 under construction at the same time, is that
10 something that would help to possibly mitigate these
11 problems?

12 THE WITNESS: It will. And the City does
13 have fairly strict grading guidelines. They're not
14 supposed to open up more than I think it's 15 acres
15 in any one area. When you have a site like this that
16 has 470,000 yards of excavation and nearly that much
17 in fill, what you're doing really is you're
18 excavating in one area, and taking that over and
19 filling another area.

20 So you're going to end up opening up a lot
21 of area. They may not be all connected, but you're
22 going to have probably more than 15 acres open at any
23 one time in order to do it in 12 to 16 months.
24 That's a lot to dirt to move, and it's not just dirt,
25 they're cutting 100 feet, so it's going to be in

1 rock, some hard excavation in some areas.

2 VICE CHAIR CABRAL: Thank you. I live in
3 Hilo and Waiakea Uka, which means upper white water.
4 I had potholes in the county roadway in front of my
5 house, my Yukon truck could have dropped in it.
6 That's a water hole for you. So I've lived around
7 some white water.

8 So thank you. It is a concern. Thank you
9 very much for your good information.

10 THE WITNESS: Thank you.

11 CHAIRPERSON SCHEUER: Commissioner
12 Ohigashi.

13 COMMISSIONER OHIGASHI: I want to thank Mr.
14 Higham. He came across as intelligent and he made
15 some good points. And I, however, I also enjoyed his
16 testimony, and I just wanted to tell you that.

17 I also enjoyed Curtis Tabata, and unlike
18 the Chairman, I was not bored, but I was watching
19 every single part of it. I just want to thank you.

20 THE WITNESS: Thank you.

21 CHAIRPERSON SCHEUER: The Chair will note
22 he watched every single part of the testimony and was
23 not bored, but I was tortured. Anyways, is there any
24 redirect, Mr. Yoshimori?

25 MR. YOSHIMORI: There is no redirect.

1 Thank you, Mr. Higham.

2 CHAIRPERSON SCHEUER: Thank you very much.

3 It is 2:46 P.M., I'm guessing that Mr. Yuen
4 appears to be here, but I'm not thinking that his
5 testimony is brief enough to handle both his direct
6 and any cross prior to 3:00 o'clock.

7 MR. YOSHIMORI: I would like to ask if we
8 can move in Mr. Middleton. I think his testimony is
9 relatively short and he is unavailable on the
10 proposed August date.

11 CHAIRPERSON SCHEUER: We actually have a
12 hard stop at 3:00 o'clock. If this is the case,
13 let's do it. Ken Middleton, is that correct?

14 MR. YOSHIMORI: Yes.

15 CHAIRPERSON SCHEUER: There's two Ken
16 Middletons in the waiting room. I'll do one, see if
17 that works, Mr. Middleton.

18 Mr. Yoshimori?

19 MR. YOSHIMORI: We're checking.

20 CHAIRPERSON SCHEUER: Do you swear or
21 affirm the testimony you're about to give is the
22 truth?

23 THE WITNESS: Yes, I do.

24 CHAIRPERSON SCHEUER: Please proceed, Mr.
25 Yoshimori.

1 MR. YOSHIMORI: For the record, Mr.
2 Middleton's resume is Intervenor Exhibit 9, and his
3 written testimony is Intervenor's testimony No. 3.

4 KEN MIDDLETON

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

8 DIRECT EXAMINATION

9 BY MR. YOSHIMORI:

10 Q So thank you very much, Mr. Middleton, for
11 testifying today.

12 A Sure. It's Ken Middleton, reside 796
13 Kalaniulu Street in Hawaii Kai 96825.

14 Q Can you please describe your occupation?

15 A I'm self-employed. I've operated Tradewind
16 Charters for the last almost 35 years, and we have a
17 number of charter vessels and we provide recreational
18 service with ash scattering.

19 Q I would like to submit Mr. Middleton as
20 expert on ash scatterings.

21 CHAIRPERSON SCHEUER: Petitioner?

22 MR. TABATA: No objection.

23 CHAIRPERSON SCHEUER: City?

24 MR. PANG: City has no objections.

25 CHAIRPERSON SCHEUER: OP?

1 MS. APUNA: No objection.

2 CHAIRPERSON SCHEUER: Commissioners?

3 Commissioner Wong.

4 COMMISSIONER WONG: Yes. If you could ask
5 Mr. Middleton to speak little bit louder. Very hard
6 to hear him at the end. Thank you.

7 THE WITNESS: Is this better?

8 CHAIRPERSON SCHEUER: Yes.

9 So you're admitted as an expert.

10 Please continue, Mr. Yoshimori.

11 Q (By Mr. Yoshimori): Mr. Middleton, can you
12 please review the key reasons people give for giving
13 ash scattering?

14 A Certainly. Yeah, I mean the deceased often
15 request that in their estate planning or their will.
16 Lots of different reasons, you know, possibly water
17 men or water women that had a favorite surf break or
18 fishermen or just enjoyed the marine environment,
19 marine life that we have offshore.

20 We have a lot of our-of-towners that fly
21 home, maybe they grew up here and went to the
22 mainland and they wanted to come home and --
23 (indecipherable).

24 Q Did they also mention affordability and
25 environmental factors?

1 A Yeah, to some degree. I mean, obviously
2 you know, I've got experience myself, personally, on
3 the cost differences between us and some of the
4 facilities here on the island. But, yeah, they like
5 our pricing. We try to keep it affordable for
6 everybody.

7 And I think, yeah, I think a lot of folks,
8 you know, are environmentally conscious. They
9 realize we have no impact on the environment. Very
10 clean process that we release someone's ashes out at
11 sea.

12 Q You mentioned the prices. Would you mind
13 sharing how your prices compare to traditional
14 burials?

15 A I don't have a lot of experience with
16 traditional burials. My wife's grandparents
17 (inaudible) and they already owned a plot actually at
18 Hawaiian Memorial Park and with the cremation all the
19 procedures and everything that involved in doing it
20 traditionally it was about \$10,000 a piece, which
21 shocked me.

22 We have packages that start at \$500 for
23 simple (indecipherable).

24 Q In your written testimony you said that you
25 performed over 600 ash scattering in 2019; is that

1 correct?

2 A That's correct.

3 Q Hawaiian Memorial had commissioned a study
4 by CBRE saying that 2019 ash scattering numbers are
5 estimated to be 1074.

6 Your written testimony says that that
7 number is low. Can you explain why you think it's
8 low?

9 A Well, just last year, for instance, we did
10 about 450 or -- excuse me, yeah, 450 for local
11 families. So I'm sure we are not doing half of the
12 ash scattering being conducted here on Oahu. I'm
13 guessing. I don't have any numbers on that. But
14 simple to calculate up the number of cremations that
15 occur on the island.

16 Q The same study assumed that ash scatterings
17 were 18 percent of cremations. Do you think that's
18 correct?

19 A I'm not a statistician, but I'm guessing
20 that's probably low. Definitely a growing trend. We
21 have been conducting ash scattering for most of those
22 35 years I've been in business, particularly in the
23 last 12 to 15 years, growing probably by ten percent
24 year over year of earnings, definitely a growing
25 trend, you know, like the Catholics have embraced

1 that as suitable disposition of ashes. So they did
2 that a number of years ago. So, yeah, it's being
3 embraced by many people around the world.

4 Q And you testified that you can accommodate
5 -- go ahead.

6 CHAIRPERSON SCHEUER: Mr. Yoshimori, we
7 have seven minutes left. You indicated Mr. Middleton
8 is not available on August 12th. In fairness of the
9 parties we want to make sure there is a chance for
10 any cross, otherwise we run into procedural issues.

11 MR. YOSHIMORI: I just have one last
12 question.

13 You testified that you can accommodate
14 more, is that correct?

15 A Yeah, definitely.

16 MR. YOSHIMORI: Thank you, Mr. Middleton,
17 for volunteering your time and testimony.

18 Mr. Middleton is available for questions.

19 CHAIRPERSON SCHEUER: Mr. Tabata?

20 CROSS-EXAMINATION

21 BY MR. TABATA:

22 Q Thank you, Mr. Middleton.

23 Would you agree that people should have a
24 choice on how their remains are treated?

25 A Oh, of course.

1 Q And your testimony here today with respect
2 to scattering of ashes, do you necessarily oppose
3 Hawaiian Memorial Cemetery expansion project?

4 A I don't really have an opinion on it one
5 way or another. I'm not a party to it as far as
6 impact. I'm not familiar with all the circumstances.
7 I tuned in three or four times to testify, and I just
8 kept hearing the testimony each time waiting for my
9 turn. I don't have an opinion.

10 MR. TABATA: Thank you. I have no more
11 questions.

12 CHAIRPERSON SCHEUER: City?

13 MR. PANG: The city has no questions for
14 this witness.

15 CHAIRPERSON SCHEUER: Thank you.

16 Office of Planning?

17 MS. APUNA: We have no questions.

18 CHAIRPERSON SCHEUER: Commissioners?

19 Any redirect, Mr. Yoshimori?

20 MR. YOSHIMORI: I have no redirect. Thank
21 you, again, Mr. Middleton.

22 CHAIRPERSON SCHEUER: Thank you very much,
23 Mr. Middleton.

24 It's 2:55, we are losing a Commissioner at
25 3:00. As I indicated before, given the complexity of

1 the issues, and desire of all parties to have full
2 opportunity to thoroughly question all witnesses, I
3 think it's in the best interest to not continue this
4 matter to tomorrow, because there is a possibility on
5 the agenda, but rather try and devote August 12th,
6 2020 to this matter and closing the evidentiary
7 proceedings on this matter.

8 Is that acceptable to the Parties?

9 MR. PANG: For the City, yes.

10 CHAIRPERSON SCHEUER: Mr. Tabata?

11 MR. TABATA: That is acceptable to
12 Petitioner.

13 MS. APUNA: That's acceptable to OP.

14 CHAIRPERSON SCHEUER: Mr. Yoshimori, it
15 sounds like you checked with your witnesses, and Mr.
16 Middleton was the one not available?

17 MR. YOSHIMORI: He's the only one I checked
18 with, but we have no objection.

19 CHAIRPERSON SCHEUER: Thank you very much.

20 Everybody, we are going go into recess
21 until 9:00 A.M. tomorrow via ZOOM.

22 Commissioner Aczon.

23 VICE CHAIR ACZON: Do you have any idea for
24 tomorrow what time we're convening?

25 CHAIRPERSON SCHEUER: Convening at

1 9:00 A.M. and go until 3:00 P.M. again, hard stop.

2 So next item on our agenda will be Item V.

3 VICE CHAIR ACZON: Great, thank you.

4 CHAIRPERSON SCHEUER: Any other questions,
5 Commissioners? If not, gratitude to the parties and
6 the witnesses for today, and we are in recess.

7 (The proceedings recessed at 2:58 P.M.)

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CERTIFICATE

1 STATE OF HAWAII)
2) SS.
3 COUNTY OF HONOLULU)

4 I, JEAN MARIE McMANUS, do hereby certify:

5 That on July 22, 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 22nd day of July, 2020, in Honolulu,
16 Hawaii.

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19 /s/ Jean Marie McManus
20 JEAN MARIE McMANUS, CSR #156
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