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LAND USE COMMISSION

3

STATE OF HAWAI'I

4 HEARING

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5 A09-782 TROPIC LAND, LLC (O'ahu)) 5
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TRANSCRIPT OF PROCEEDINGS

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10 The above-entitled matter came on for a Public Hearing
11 at Conference Room 405, 4th Floor, Leiopapa A
12 Kamehameha, 235 S. Beretania Street, Honolulu,
13 Hawai'i, commencing at 9:10 a.m. on September 10,
14 2010 pursuant to Notice.

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REPORTED BY: HOLLY M. HACKETT, CSR #130, RPR
20 Certified Shorthand Reporter

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COMMISSIONERS:
KYLE CHOCK
CHARLES JENCKS
LISA M. JUDGE (Vice Chair)
DUANE KANUHA
NORMAND LEZY
NICHOLAS TEVES, JR.

EXECUTIVE OFFICER: ORLANDO DAVIDSON
ACTING CHIEF CLERK: RILEY HAKODA
STAFF PLANNERS: BERT SARUWATARI

DEPUTY ATTORNEY GENERAL: DIANE ERICKSON, ESQ.

AUDIO TECHNICIAN: WALTER MENCHING

Docket No. A09-782 Tropic Land, LLC

For the Petitioner: WILLIAM YUEN, ESQ.
ARICK YANAGIHARA,
Project Manager

For the County: DAWN TAKEUCHI-APUNA, ESQ.
Deputy Corporation Counsel
MIKE WATKINS, DPP

For the State: BRYAN YEE, ESQ.
Deputy Attorney General
ABBEY MAYER
Office of Planning

For the Intervenor

Concerned Elders of Wai'anae: MARTHA TOWNSEND, ESQ.
ALICE GREENWOOD
LUCY GAY

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2 September 10, 2010

3 VICE CHAIR JUDGE: This is September 10th.

4 And this is the meeting of the Land Use Commission.

5 We are going to resume the hearing on Docket A09-782

6 Tropic Land, LLC. Yesterday we left off with the

7 Petitioner presenting their witnesses.

8 And, Mr. Yuen, we're going to ask you to

9 resume. But could you give the Commission an idea of
10 who you'll be presenting today.

11 MR. YUEN: Good morning, Madam Chair.

12 William Yuen on behalf of Petitioner Tropic Land, LLC.

13 Today I'll be presenting in order John McHugh, first,

14 who is our agricultural expert. Second, David

15 Shideler who is the archaeological expert. I had

16 originally listed Hallett Hammatt who's unavailable.

17 Mr. Shideler is in his office and actually prepared

18 the last report that we filed.

19 The third witness would be Randall Okaneku

20 our traffic consultant.

21 Fourth witness Ricky Minn, the economic

22 expert followed by Harvey Hida, civil engineer; Arick

23 Yanagihara, project manager, and finally Glenn Kimura,

24 the planning consultant.

25 Before I close, I'd just like to introduce

1 Michael Nekoba, sitting behind me. Mr. Nekoba is one
2 of the principals of Tropic Land, LLC.

3 VICE CHAIR JUDGE: Thank you, Mr. Yuen. You
4 can go ahead with your first witness. Mr. McHugh, may
5 I swear you in?

6 THE WITNESS: Yes, you may.

7 JOHN McHUGH,
8 being first duly sworn to tell the truth, was examined
9 and testified as follows:

10 THE WITNESS: Yes, I do.

11 VICE CHAIR JUDGE: Thank you.

12 DIRECT EXAMINATION

13 BY MR. YUEN:

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

16 A My name is John McHugh. My address is
17 95-1048 Keakea Street, Mililani, 96789.

18 Q Mr. McHugh, what is your profession and your
19 business affiliation?

20 A I have a Bachelor of Science, a Master of
21 Science Degree in horticulture from the University of
22 Hawai'i at Manoa. I also have a Ph.D. in entomology
23 from Purdue University. And I'm an agronomist, a
24 farmer and agriculture consultant.

25 Q Could you please describe some of your

1 recent farming experience in the state.

2 A Well, I've been involved in agriculture in
3 Hawai'i for the last 36 years since 1974. And that
4 experience includes some time spent as a watercress
5 farmer, research associate or weed scientist for the
6 University of Hawai'i at Manoa, a horticulturist for
7 the Hawai'i Agriculture Research Center, a
8 horticulturist and entomologist for Larry Jefts Farms,
9 and as an independent agronomist working for Crop Care
10 Hawai'i, which was my business for eleven years.

11 Currently I'm the agronomist and research
12 scientist for Pioneer Hydrid International in Kunia.
13 I might also add that I've a cover crop for Sunn hemp
14 seed *Crotalaria juncea*. I grow about 10 acres of this
15 seed on the North Shore here. It's a cover crop
16 that's used for farmers to enrich their soil, kill
17 nematodes and protect the soil from erosion.

18 I do want to point out before where we go
19 any further that I'm not testifying here in my
20 capacity as the agronomist and research scientist at
21 Pioneer. I'm testifying in my capacity as a farmer
22 and an agronomist. And my experience is with
23 agriculture here in Hawai'i.

24 Q Thank you.

25 MR. YUEN: Based on Mr. McHugh -- or

1 Dr. McHugh's stated qualifications and his resumé,
2 which is marked as Exhibit No. 44, I'd like to have
3 Dr. McHugh qualified as an expert in agriculture.

4 VICE CHAIR JUDGE: Do the parties have any
5 objection?

6 MR. YEE: No objection.

7 MS. TAKEUCHI-APUNA: No objection.

8 MS. TOWNSEND: No objection.

9 MS. TAKEUCHI-APUNA: No objection.

10 COMMISSIONER JUDGE: Commissioners? The
11 witness is so qualified.

12 MR. YUEN: Thank you.

13 Q Dr. McHugh, what is the agricultural
14 potential of most of the Petition Area?

15 A Well, approximately 30 percent of the
16 subject area is rockland with slopes of 5 to
17 70 percent; 25 to 90 percent of the soil on the
18 property depending on the location within the property
19 has exposed at soil surfaces.

20 There are three types of soil productivity
21 ratings for this property which in essence describes
22 what the potential for agriculture is.

23 Those three productivity ratings are: No. 1
24 that which is described by the Soil Survey of the
25 State of Hawai'i. And this was produced by --

1 actually this is the Islands of O'ahu, Kaua'i, Maui,
2 Moloka'i and Lana'i. This particular soil
3 classification report was produced by the University
4 of Hawai'i in conjunction with the USDA Soil
5 Conservation Service which the Soil Conservation
6 Service today is known as the National Resource
7 Conservation Service, RCS.

8 The second type of classification system
9 that's used is the ALISH system. That is the
10 Agricultural Lands of Importance to the State of
11 Hawai'i. And that will rate the agricultural land
12 base on its productivity.

13 And the third system that's used is that of
14 the Land Study Bureau which is from the State of
15 Hawai'i. That also rates the lands on various
16 productivity on a rating scale on A to E where A is
17 the highest productivity and E is the totally
18 nonproductive for agricultural use.

19 Q What are the various ratings for the
20 Petition Area?

21 A I just described what those ratings are.
22 And under this particular system, the Land Study
23 Bureau System, for example, approximately 40 acres of
24 the property are considered to be type B land. That
25 means these lands can be productive for agricultural

1 use provided irrigation water is applied.

2 The ALISH system, the Agricultural Lands of
3 Importance to the State of Hawai'i, rates that same 40
4 acres as highly productive, again, provided irrigation
5 water can be provided. So, but that includes about
6 40 acres only of the subject property.

7 Q What are some of the factors that limit the
8 agricultural potential of the Petition Area?

9 A Well, first let me talk about water
10 requirements. The loss of water through croplands is
11 pretty much defined by evaporation and transpiration.
12 Transpiration being the breathing process associated
13 with plant growth.

14 And in the subject area that
15 evapotranspiration rate, which is commonly used to
16 predict what a crop's irrigation water requirements
17 are, it's very high. That's due to the very dry
18 conditions in the area, the extreme stoniness which
19 has a very little water holding capacity and the high
20 temperature that's found in the area.

21 Because of that, because of those
22 conditions, we find that in a situation like that the
23 irrigation water requirement can be as much as twice
24 what we normally would expect. For most crops we
25 project a need of 2500 gallons of water per acre per

1 day for irrigation requirements. In the subject area
2 we would anticipate that those water requirements
3 would be as high as 5,000 gallons of water per acre
4 per day. And because of that the irrigation water
5 costs can be a huge factor. And in the cost
6 production it can be the difference between making any
7 sort of profit on the farming activity or failure.

8 Q Thank you. Does Ulehawa Stream impact the
9 agricultural potential of the Petition Area?

10 A Ulehawa Stream is an intermittent and dry
11 stream at the point at which it bisects the property.
12 And as far as I can tell it divides the property,
13 bisects the property into two areas. Because of the
14 way it divides up the land it takes those 40 acres,
15 essentially reduces the productive area in which can
16 be cultivated by a factor of about 20 percent.

17 The other issue there is because it does
18 cross the property where the agricultural production
19 is potentially the most favorable, is that during the
20 rainy season when you have flood or heavy rainwater
21 events could potentially flood the area and drown the
22 crops.

23 Q Is it likely that a prospective farmer would
24 consider farming the Petition Area?

25 A Well, the combination of the steep soils

1 throughout more than 80 percent of the property along
2 with potential for periodic flooding and high
3 irrigation water requirements would make it unlikely
4 that a prospective farmer would take on the entire
5 parcel only to farm a fraction of it.

6 Q Is the Petition Area comparable to land
7 being farmed on other parts of O'ahu?

8 A Since sugarcane went out of production on
9 O'ahu in the '90s, now we see pineapple is going down
10 that same road. There are large tracts of agriculture
11 lands available starting from Central O'ahu out to the
12 North Shore of the island.

13 Much of those lands are highly suited for
14 the farming because of favorable slope conditions,
15 favorable soil texture, although some of the soils may
16 need amendments because they were pineapple lands and
17 the soils tend to be very high acid. And any farmer
18 that would go into that situation would probably have
19 to put lime on it to get it up to a situation where
20 they could actually farm it.

21 And there's also -- associated with those
22 lands there is availability of irrigation water which
23 is relatively affordable. And those areas on the
24 island that are affected by that would be in Kunia,
25 Wahiawa, Melemanu area, Waialua and Haleiwa.

1 Q Could you please describe the effect of the
2 development of the Petition Area would have on the
3 availability of land for diversified agriculture on a
4 statewide basis?

5 A On a statewide basis or even on a local
6 basis the loss of that portion of the property
7 available for agriculture would have little to no
8 impact because other more suitable agricultural lands
9 are available which do have access to affordable
10 irrigation water.

11 There are currently about 170,000 acres of
12 agricultural lands statewide that could be used for
13 diversified ag or other farm uses.

14 Q The state Department of Agriculture has
15 opposed the boundary amendment because Department of
16 Agriculture believes that urban encroachment would
17 place undue procedure on viability of existing farms
18 and production of leafy vegetables, herbs, pork and
19 eggs in Lualualei Valley.

20 Is there any validity of this concern in
21 your opinion?

22 A Well, you know, the urban developments do
23 not necessarily mean that there's exclusion of
24 agriculture. There are many examples where you have
25 agriculture existing side by side with urban on this

1 island. Sumida Farms, for those of you who are aware
2 of it, grow watercress farm next to Pearl Ridge. Has
3 been farming there for over 80 years. And then
4 there's Watercress Farms behind Leeward Community
5 College. There's seed production in O'ahu -- not
6 O'ahu, in Kunia. There's an ag park in Mililani. And
7 much of Waimanalo is area that has residential and
8 urban use next to farming area. So it's not really
9 something that would be necessarily mutually
10 exclusive.

11 In fact in Japan and Taiwan you see farms
12 commonly between buildings, urban developments
13 throughout the countries. And in my opinion it may be
14 that that would be a better use for land here on
15 O'ahu, urban mixed with agriculture not necessarily
16 restricted by rural boundaries.

17 Q Are other lands in Lualualei more suitable
18 for agriculture?

19 A Yeah. Are they more suitable? There are
20 lands in Lualualei Valley that have similarities to
21 that area on the subject property that is suited for
22 agriculture. But the problem is that none of those
23 farms have the same topography and potential flooding
24 issues that are associated with this particular piece
25 of property.

1 Q You inspected the Petition Area, did you
2 not?

3 A Yes, I did.

4 Q What are the agricultural uses that are
5 adjacent or near the Petition Area?

6 A Right now we see there's fighting chickens,
7 there's pasture for horses, there are some vegetable
8 farms near the property. As far as I know there was
9 egg operations in that area.

10 Q Lualualei used to have a large number of egg
11 farms. And there was some testimony yesterday that
12 the egg farming business is in decline. In your view
13 what is the reason for that decline?

14 A Well, it's not just egg farms. Livestock in
15 general on O'ahu has been going out of production for
16 many years. And most of that is due to the high cost
17 of production. For any livestock operation there is a
18 huge cost associated with the feed because we don't
19 produce any local feed sources. We cannot produce it
20 economically effectively here to provide that for
21 livestock operators.

22 So that is really the main reason why most
23 livestock, including egg production facilities, have
24 gone out of business mainly due to the high cost of
25 feed.

1 Q All the feed has to be imported from the
2 mainland.

3 A Yes, yes.

4 Q Turning to the criteria for designation of
5 property as Important Agricultural Lands under the IAL
6 program. Does the Petition Area satisfy any of the
7 requirements for designating property as an important
8 agricultural land?

9 A Well, if we look at the property in total,
10 some 236 acres of it, there's only that portion of it
11 that's been considered to be type A by the ALISH
12 system.

13 Q Or type B, is it?

14 A Type B is for the Land Study Bureau. Type A
15 is for the ALISH system. But besides that fraction of
16 the property none of the subject property would be
17 considered to be important ag land.

18 Q Is there any association of the property
19 with traditional Native Hawaiian agriculture or any
20 unique agricultural crops or uses?

21 A No. And there were none there when I
22 inspected the property.

23 Q In conclusion, as a farmer do you consider
24 development to be a good use of this land?

25 A You know, we've been in an extreme drought

1 situation for almost two years here in the state. The
2 subject property would be a risky venture for any
3 farmer that would want to take on the entire property
4 only to farm the 40 acres. Then they'd have to deal
5 with the situation related to availability of
6 irrigation water. So it may well be that that
7 particular use that is being proposed is, if you look
8 at the entire property, would be an appropriate use.

9 MR. YUEN: Thank you very much. That
10 concludes my direct.

11 COMMISSIONER JUDGE: City and County, do
12 you have any questions for this witness?

13 MS. TAKEUCHI-APUNA: No questions.

14 COMMISSIONER JUDGE: Mr. Yee, does the State
15 have questions?

16 MR. YEE: Yes, thank you.

17 CROSS-EXAMINATION

18 BY MR. YEE:

19 Q A public witness testified yesterday that
20 she believed that with irrigation some of the lands
21 rated E would be rated or could be rated as B. Are
22 you aware of that testimony?

23 A No, I'm not.

24 Q Would it be your opinion, or do you have an
25 opinion as to whether that would be true?

1 A I don't think it's true, no.

2 Q Can you explain -- my understanding is that
3 the ratings that were made are based upon at the time
4 the availability of water. Is that correct?

5 A Ah, there's more to it than just
6 availability of water. Texture, composition, climate,
7 microclimate, elevation, those all go into the
8 classification of the land.

9 Q Let me rephrase. What I meant to say was
10 that the classification, included within that
11 calculation the availability of water at that time?

12 A That's probably true, yeah.

13 Q So if water became available the argument of
14 the testifier was that she argued that would change
15 the classification. My question to you is simply: At
16 the time the classification of E was made it was made
17 with the understanding or was based upon the
18 availability of water at that time?

19 A You know, for that property we're
20 considering the slope too, and it goes from about 80
21 feet or so above sea level to 1300 feet above sea
22 level probably about a quarter of a mile. That I
23 don't think the availability of irrigation water for
24 around 80 percent of it would be, necessarily turn
25 that into productive ag land or change the

1 classification of it under the Land Study Bureau
2 classification.

3 Q Okay. And you're jumping ahead of me a
4 little bit 'cause I'm just sort of starting at a
5 certain level and I'm going to get to the issues on
6 this particular property.

7 At the moment I'm just focusing on the
8 process and the classification to understand how the
9 classification applies.

10 A Okay.

11 Q So when the classification of E was made
12 that was made with the understanding of the
13 availability of water at the time of the
14 classification, correct? And the same would be true
15 of the B lands?

16 A Not necessarily.

17 Q Do you know in this case, then, if the
18 classification of B and E was made based upon the
19 availability of water at the time?

20 A No.

21 Q Okay. And then as you jumped ahead of me a
22 little bit, it was your opinion that if the land could
23 be irrigated -- even if the land could be irrigated
24 those E lands would not be rated -- would not satisfy
25 the rating for B.

1 A Yes.

2 Q Now, could you explain why you think that
3 would be true?

4 A Primarily because of the slope and the rock
5 that's located on much of the property. So you can't
6 have farmland that has a slope of 5 percent or
7 greater. The erosion hazard is just too high.

8 I serve on the West O'ahu Soil and Water
9 Conservation District Board. And that property is
10 within our district. We are constantly working with
11 farmers seeking to mitigate erosion hazards associated
12 with slope. Once you start to get to a slope of that
13 magnitude it becomes virtually impossible to farm the
14 land.

15 Ranching, yes, you'd have a possibility if
16 there was water available to make the vegetation grow.

17 Q So when you say a slope of 5 percent or
18 greater you cannot have farming on, that would. I
19 assume you're referring to diversified agriculture.

20 A Yes.

21 Q You said you could do other -- you could
22 raise animals on a slope of 5 percent or greater, but
23 then there are other issues to be considered as to the
24 practicality, correct?

25 A You'd have to be able to make sure there's

1 water available to the pasture areas that would be
2 needed to support the animals.

3 Q And, you know, I note that on the Big
4 Island, for example, there is no A or B land but they
5 have a very successful coffee farm, for example,
6 because that's a different crop, has different
7 requirements, right?

8 A Yes, that's true.

9 Q Did you look at the type of crops that might
10 be appropriate? That is did you look at whether
11 there's a type of crop that would be appropriate for
12 this site?

13 A For the entire site or for that portion of
14 it that is rated B or A?

15 Q Let's start with the portion rated B.

16 A The portion rated B generally is associated
17 with truck crops, row crops, short-term row crops like
18 vegetables primarily. As far as the rest of the
19 property the only real option would be potentially
20 ranchland if there was enough rainfall to support it.
21 There are really no other agricultural uses.

22 Q Did you look at the practicality of
23 irrigation for the area?

24 A Yes.

25 Q Did you look at the cost of how much it

1 would be to bring in water or to provide water?

2 A For the entire area all the way up to the
3 1300 feet above sea level? What are you specifically
4 referring to?

5 Q I guess when I say practicality what I mean
6 is did you look at where could you in this Petition
7 Area bring agriculture in some reasonable or practical
8 way.

9 A Yes. In that subject -- in that portion of
10 the subject area that's classified B or type 1F, yes.

11 Q With respect to flooding I take it that
12 would require the farmer to, in order to -- that would
13 require capital costs to avoid flooding.

14 A Yes.

15 Q So that's part of the practical discussion
16 that you had that flooding would drown the crops. So
17 in order to avoid that you need to expend additional
18 capital costs to avoid that.

19 A Yes. Put in diversions or any sort of berms
20 that might be needed to divert water away from the
21 area.

22 Q Outside of the 40 acres is that a practical
23 consideration? Or in your opinion is it just not
24 practical to do?

25 A It's not.

1 Q Within the 40 acres, though, would diversion
2 of some type or --

3 A Yes.

4 Q -- or some point be practical?

5 A Yes, it would be.

6 Q In your slide show you indicated Tropic Land
7 had no other lands rated B. Do you remember that?

8 A Yes.

9 Q Did you look to see whether Tropic Land owns
10 land outside the Petition Area that's rated prime?

11 A No.

12 Q You did not look at it or there isn't any?

13 A I did not look at whether they have any
14 lands outside of the Petition Area that was rated A.

15 MR. YUEN: Rated B.

16 THE WITNESS: Rated B.

17 Q (By Mr. Yee): Did you look at lands that
18 were outside the Petition Area that were rated prime?

19 THE WITNESS: Yes. For Tropic Ag (sic) or
20 for the area itself? Excuse me. For Tropic Land or
21 the area itself?

22 Q Tropic Land.

23 A No.

24 Q You didn't look.

25 A No.

1 Q Okay. You then talked about the
2 availability of land elsewhere. Would it be fair to
3 say that the different farmers -- well, my
4 understanding is different farmers have different
5 needs; smaller farmers need smaller parcels. Larger
6 farmers need larger parcels. Right?

7 A What do you consider to be "larger farmer"
8 or "smaller farmer"?

9 Q Well, before I get there I was just going to
10 ask you the issue of in terms of access to land the
11 size of the parcel can make a difference to a
12 particular farmer.

13 A Yeah. I mean most farmers in Hawai'i are
14 small farmers in my opinion. And whether it's farming
15 2 acres or it's farming a thousand acres, by national
16 standards they're small farmers. That's the problem
17 we have here in Hawai'i. We have microcrops versus
18 most of the country.

19 So I think to have this discussion we need
20 to -- I need to have a better idea what you consider
21 to be a small farmer or a large farmer.

22 Q The point I was getting to is when you
23 talked about the 170,000 areas that are available.
24 You could not ask someone to take 10,000 acres and
25 expect that to satisfy the need of a small farmer

1 because a small farmer couldn't afford it, right?

2 A You know, Monsanto just picked up 1900 acres
3 in upper Kunia. Their arrange -- their agreement with
4 ACTUS Hawai'i was to provide three agricultural parks
5 through the Hawai'i Farm Bureau within that
6 1900 acres. Those three agriculture parks would be
7 available for, I think, what you're calling small
8 farmers. So there are options if that's -- if that's
9 where, what you're getting at. I don't really
10 understand the question.

11 Q Let me just move on. The 170,000 acres, do
12 they all have water infrastructure available to it?

13 A No.

14 Q Do you know how many acres have water and
15 infrastructure available to it?

16 A On O'ahu there's probably anywhere between 5
17 and 7,000 acres that do have water infrastructure
18 available.

19 Q Are they all available for long-term leases?

20 A What do you consider to be a long-term
21 lease?

22 Q The Department of Agriculture has lease
23 terms of 35 years. Of those 5 to 7,000 acres how many
24 of them are available for 35-year leases?

25 A I don't know.

1 Q Do you know of any acres that are available
2 for 35 years?

3 A Thirty-five years?

4 Q Yes, for a lease term of 35 outside the
5 Department of Agriculture?

6 A There may be some with Kamehameha Schools in
7 Haleiwa. There's some with Dole up in the Helemano
8 area, or possibly in Waialua, yes.

9 Q How many acres would that make up?

10 A I don't know the amount. Here's the thing
11 about long-term leases that many of the farmers have
12 to consider when they go into a long-term lease
13 arrangement with their landlord.

14 It actually is more expensive to get a
15 long-term lease in terms of the lease rent than it is
16 to take a short term-lease. By "short-term" lease I
17 mean five years or less.

18 So farmers are constantly making this
19 decision, "Do I wanna put in the effort to prepare the
20 farm for planting if I have a less than 5-year lease?
21 Or do I wanna get a 30-year lease and make that effort
22 but pay a higher lease rent per acre?"

23 So those decisions are constantly being made
24 by farmers.

25 Q Certain crops take a longer time to mature.

1 In fact certain crops take more than five years to
2 mature and be ready for sale, correct?

3 A Oh, yeah. I mean if you do tree crops, yes,
4 like coffee, papaya, not five years but tree crops are
5 primarily orchard crops. And even within short-term
6 row crops you can have some that last for a year or
7 more so like basal.

8 Q So they would need more than a 5-year lease
9 to be economically successful?

10 A Ah, not necessarily. Depends on how much
11 they're leasing the land for and what their water rate
12 is.

13 Q Well, if you can't actually sell your crops
14 within that five year period you need a lease, a term
15 longer than five years, right?

16 A If that's what you plan is, if that's what
17 your business plan is and you're going in to your
18 landlord and you're saying, "Look, I want to grow
19 coffee on this. It's gonna take me three to five
20 years before I get at my first crop," then, yeah, that
21 situation would apply.

22 Q If you need to get a loan that will take
23 longer than five years to pay off, you're going to
24 need a lease term longer than five years, correct?

25 A Possibly.

1 Q Do you think the bank would loan someone
2 money for land which has a lease term shorter than the
3 loan itself?

4 A Possibly. There are groups like the Hawai'i
5 Production Credit Association that would work with
6 farmers depending on what their needs are.

7 Q That would be the exception rather than the
8 rule.

9 A State of Hawai'i has a loan program as well.

10 Q Because it's needed. Because they can't get
11 the loan in private, correct?

12 A Possibly.

13 Q You talked about the fact that there are
14 agricultural lands that are located in urban use
15 areas. Do you remember that?

16 A Yes, I do.

17 Q Are you aware of the general principle that
18 you try to separate such uses?

19 A Who tries to separate which uses, these
20 uses? Who's making that attempt?

21 Q The land use planners try to separate
22 agricultural from urban uses.

23 A I know that there are areas that have been
24 set aside for agriculture and areas that have been set
25 aside for urban and residential uses, yes.

1 Q Are you aware of farmer complaints that
2 urban encroachments infringes upon their ability to
3 farm?

4 A All the time. That happens all the time.

5 MR. YEE: Thank you. I have no further
6 questions.

7 VICE CHAIR JUDGE: Intervenor?

8 CROSS-EXAMINATION

9 BY MS. TOWNSEND:

10 Q Hi. Thank you very much for your testimony.
11 I wanted to go over your familiarity with the area and
12 sort of your background. So have you been to the
13 parcel?

14 A Yes, I have.

15 Q Okay. And have you done a -- I recall a
16 sort of list that you gave describing your experience
17 in the beginning of your testimony. But didn't really
18 hear anything related to farming in Wai'anae or
19 Lualualei vertisol. I'm just curious what your
20 familiarity is would be.

21 A I'm very familiar with that type of soil
22 because it occurs on other places on O'ahu, a very
23 similar soil, yes.

24 Q A very similar soil occurs there.

25 A Yes.

1 Q Okay. But from your resumé, your Ph.D. is
2 actually in entomology?

3 A Yes, it is.

4 Q Yeah. I'm making the logical leap that it's
5 like pests related to agriculture.

6 A Yeah.

7 Q But it's not actually in soil though.

8 A You notice my bachelor's and master's is in
9 horticulture. We spend a lot of time with soil.

10 Q Okay. That's fair enough. You do need dirt
11 to grow things. The point I was only making is you're
12 not a soils scientist. You're an entomologist.

13 A Oh, no. I've never made any... that I'm a
14 soil scientist.

15 Q Okay. That's cool. Thanks. Okay. So, you
16 know, I know, maybe give a percentage in the amount of
17 time in your career maybe in the last couple of years
18 how much time you've spent working with Lualualei
19 vertisols.

20 A I've not worked with the Lualualei vertisols
21 within the last two years.

22 Q So Lualualei Vertisols in your experience
23 are they fertile?

24 A They can be fertile, yeah.

25 Q In your, I guess, maybe work on this

1 Project, maybe were you aware that this parcel had
2 been farmed in the past?

3 A Yes, I was.

4 Q And how familiar are you with the past
5 farming use of this parcel?

6 A I know it's been used for truck crops,
7 vegetable crops in the past, yes, and also for nursery
8 crops as swell.

9 Q And for how long?

10 A For how long?

11 Q Was it used as farming.

12 A For how long? I don't understand your
13 question. For how long was it farmed?

14 Q Yeah. There you go.

15 A I think it's been farmed for several years
16 by other farmers, at least that portion of it that's
17 favorable for ag.

18 Q Do you know why they're no longer farming
19 there?

20 A Well, I've heard farmers say that they have
21 had difficulty with farming the soil, that potential
22 flooding has occurred during certain times of the year
23 where you get heavy rains.

24 Q Okay. Let's talk about the flooding. Can
25 you just talk a little bit more, like what is the

1 nature of the flooding? Do you know anything about,
2 like, maybe where the water is coming down off the...?

3 A Yeah. If you look at the subject property
4 it all funnels off the mountain right into that area
5 that would be used for farming.

6 Q Okay. I'm familiar with the property but
7 I'm afraid some of the Commissioners aren't. So maybe
8 could you try to use some descriptors to help people
9 locate themselves? Like, is this closer to the Navy
10 side of the property or the ocean side? You know what
11 I'm saying?

12 A Not really knowing what testimony has been
13 provided before --

14 Q Yeah, I know that's hard.

15 A -- let's say that we're starting off when
16 you come into the subject property I think it's around
17 70 or 80 feet above sea level. Within about a quarter
18 mile the land slopes up quickly to the peak of the
19 mountains to around 1300 feet above sea level. That
20 occurs from the west side of the property all the way
21 to the east side of the property. Is that right? Do
22 I have my directions, right?

23 Q Yeah, yeah, yeah.

24 A So what happens is you have this natural
25 drainage pattern where the agricultural portion that

1 is rated type 1 ag by the ALISH system or type B by
2 the Land Study Bureau, that will receive that water if
3 there is a heavy rain event. So that is essentially
4 the nature of where the flooding would occur is at the
5 base of the mountains on that property where if there
6 is any farming would occur.

7 Q So if I may try to interpret what you just
8 said. So basically it's almost like a bowl.

9 A Yes, it is.

10 Q Now my question is: If you were to pave
11 that area that would be farmed, would that make the
12 flooding that results better or worse?

13 MR. YUEN: I'm going to object to that
14 question. That's beyond the scope of this witness's
15 expertise. That's not related to farming.

16 VICE CHAIR JUDGE: I think you're going to
17 be presenting a civil engineer that can address that
18 question better.

19 MR. YUEN: That's correct.

20 VICE CHAIR JUDGE: If you want to pose that
21 question to a different expert then.

22 MS. TOWNSEND: Okay. Thanks.

23 Q Okay. So let's go back to the farmers and
24 the farms that you've worked with. You had mentioned
25 that there's a lot of complaints from farmers about

1 urban encroachment. Could you kind of articulate
2 those complaints?

3 A Well, the public is known to complain about
4 dust. So if you have farming next to urban areas and
5 you're downwind of where it's farming, the farmer
6 needs to go in and prepare their field for planting,
7 you can get dust complaints.

8 You can get noise complaints because farmers
9 like to start their machinery at 5 in the morning, 6
10 in the morning when people, if they're not farmers,
11 are still in bed.

12 Another complaint that comes often with
13 farmers that are located next to urban areas or
14 residential is those associated with spraying.
15 Farmers have to spray their fields with pesticides to
16 control their pests. They often get complaints from
17 neighbors that say, "Gee, you guys are spraying
18 pesticides over here." Who was here first, the
19 farmers or the urban people? It doesn't seem to
20 matter.

21 Q What about the property values? Are
22 farmers -- in my limited -- I come from a farming
23 family also. And in my experience when neighbor
24 farmers sold their properties for, to be subdivided,
25 and then my aunt's and uncle's property value shot up

1 and they couldn't afford the taxes. I'm just curious
2 if that's something that you've heard from local
3 farmers?

4 A I think wouldn't the tax structure be based
5 on the classification of the land as ag or urban, if I
6 understand?

7 Q Okay. So the use of neighboring -- the use
8 of land near farms for urban activities does that
9 detrimentally affect farmers in those neighboring
10 properties?

11 A Not necessarily.

12 Q All right. Is ranching considered
13 agriculture?

14 A Yes, it is.

15 MS. TOWNSEND: All right. Thank you.
16 That's all my questions.

17 VICE CHAIR JUDGE: Commissioner, any
18 questions for this witness? Commissioner Heller?

19 COMMISSIONER HELLER: I just want to make
20 sure we have some of the numbers straight here. You
21 said that there's about 40 acres on the parcel that
22 would be potentially suitable for farming?

23 THE WITNESS: Yes.

24 COMMISSIONER HELLER: Okay. And is that 40
25 areas the portion that's rated B on this?

1 THE WITNESS: Yes.

2 COMMISSIONER HELLER: Because I thought I
3 saw something else for the number of acres rated B.

4 THE WITNESS: No, not in my testimony.

5 COMMISSIONER HELLER: Okay. What's the
6 total size of the parcel?

7 THE WITNESS: I think it's 236, 237 acres.

8 COMMISSIONER HELLER: Okay. So you were
9 talking about the potential farming area as about
10 20 percent?

11 THE WITNESS: 17 percent.

12 COMMISSIONER HELLER: Okay. So the
13 potential farming area, B rated area is 40 out of 236.

14 THE WITNESS: That's correct.

15 COMMISSIONER HELLER: You also mentioned the
16 170,000 acres of land potentially statewide that could
17 be used for diversified agriculture.

18 THE WITNESS: Yes, that's correct.

19 COMMISSIONER HELLER: Approximately how much
20 of that is on O'ahu?

21 THE WITNESS: Probably about 5, 6 percent.

22 COMMISSIONER HELLER: When you say
23 170,000 acres that could be used you're talking about
24 land that's currently vacant? Or does that include
25 land that is being used now?

1 THE WITNESS: Land that's been vacated by
2 plantation agriculture primarily.

3 COMMISSIONER HELLER: Okay. So that's
4 statewide a total of about 170,000 acres that is not
5 in use now but could be.

6 THE WITNESS: Exactly.

7 COMMISSIONER HELLER: Thank you.

8 VICE CHAIR JUDGE: Commissioner Jencks.

9 COMMISSIONER JENCKS: Mr. McHugh...

10 THE WITNESS: Sure, yeah.

11 COMMISSIONER JENCKS: Did you look at the
12 preliminary engineering report that was done for the
13 Project?

14 THE WITNESS: I was not asked to do that.

15 COMMISSIONER JENCKS: Are you familiar with
16 the existing water delivery system in the area of the
17 Project?

18 THE WITNESS: The only thing I saw was that
19 there was an agricultural water meter on the property.

20 COMMISSIONER JENCKS: Do you know how big
21 that meter was?

22 THE WITNESS: I think it's a 2-inch meter.

23 COMMISSIONER JENCKS: Okay. If you wanted
24 to use this land for agriculture -- and by "land" I
25 mean the subject which is about 96 acres, how much

1 would it cost to improve the water system to
2 effectively irrigate that land? Because you said
3 something about 5,000 gallons per acre per day.

4 THE WITNESS: Right.

5 COMMISSIONER JENCKS: Which is pretty
6 intensive ag water use.

7 THE WITNESS: That is.

8 COMMISSIONER JENCKS: You can grow grass at
9 that rate.

10 THE WITNESS: Yes.

11 COMMISSIONER JENCKS: Would it make any
12 economic sense to install a water system to provide
13 that level of water for this land given the existing
14 agriculture economy we have in the state of Hawai'i?

15 THE WITNESS: Well, it depends on what you
16 grow. There are high value crops that it may make
17 some sense for you. If one was to study the market
18 well and determine where they could sell their
19 products. And you're looking at around 10 to \$12,000
20 an acre to build it up to the point where you could
21 supply enough water to grow crops there successfully.

22 COMMISSIONER JENCKS: Okay. thank you.

23 VICE CHAIR JUDGE: Commissioner Lezy?

24 COMMISSIONER LEZY: Thank you, Chair. Thank
25 you for your testimony, Dr. McHugh. Kind of a broad

1 question. Because we have been facing this issue
2 frequently in the petitions before us and we don't
3 often have an opportunity to get testimony from
4 farmers like yourself. And you are, in addition to
5 being -- did you say an agronomist or a
6 horticulturist?

7 THE WITNESS: I've done all those things in
8 my career.

9 COMMISSIONER LEZY: Okay. In addition to
10 that you're also a commercial farmer, correct?

11 THE WITNESS: Yes, I am.

12 COMMISSIONER LEZY: I'd just like to know
13 what your general opinion is of the practice of taking
14 A and B-rated agricultural lands out of the
15 Agriculture District and putting them into the Urban
16 District?

17 THE WITNESS: I'm not sure I understand the
18 question.

19 COMMISSIONER LEZY: Sure. I'm just saying
20 as a general practice do you have an opinion as to
21 whether that is a positive thing for our state to do?
22 Or should the state endeavor to keep A and B-rated
23 agriculture lands in the Agricultural classification?

24 THE WITNESS: I think it makes sense to keep
25 the rating system and to try where you can to keep it

1 in agriculture as a general rule of thumb. I think
2 that each situation, like in this particular case, may
3 be different because only a portion of that property
4 can actually be farmed.

5 If you're the landowner what do you do? The
6 landowner has to make some decision about what they do
7 with their own property. It would be great in an
8 ideal world to maintain those lands that have been
9 identified as either type B or ag type 1.

10 So as a general rule it would be a good
11 practice. But each individual situation needs to be
12 evaluated.

13 COMMISSIONER LEZY: Thank you.

14 VICE CHAIR JUDGE: Commissioner Kanuha.

15 COMMISSIONER KANUHA: Thank you, Madam
16 Chair. In your analysis of the property are there any
17 farms situated around it?

18 THE WITNESS: Yeah. There are some farms in
19 the area.

20 COMMISSIONER KANUHA: What's the closest
21 farm?

22 THE WITNESS: I think the closest actual
23 farm is about a half a mile away. When I say "actual
24 farm" that's growing like row crops, green onions and
25 vegetables. Right across the street it looked like

1 there was some pasture. Down the road there was some
2 fighting chicken structures and chickens there. So
3 I'm assuming that was fighting chicken production.

4 COMMISSIONER KANUHA: Do you have any idea,
5 like, how much acreage was involved?

6 THE WITNESS: In the area's that was right
7 across the street from them?

8 COMMISSIONER KANUHA: Yes.

9 THE WITNESS: No, I don't know what the
10 acres are.

11 COMMISSIONER KANUHA: Thank you.

12 VICE CHAIR JUDGE: Redirect?

13 MR. YUEN: I have no redirect for the
14 witness.

15 VICE CHAIR JUDGE: Your next witness then,
16 please.

17 THE WITNESS: Thank you.

18 MR. YUEN: My next witness is David
19 Shideler.

20 VICE CHAIR JUDGE: Good morning,
21 Mr. Shideler. May I swear you in?

22 DAVID W. SHIDELER
23 being first duly sworn to tell the truth, was examined
24 and testified as follows:

25 THE WITNESS: I do.

1 VICE CHAIR JUDGE: Thank you.

2 DIRECT EXAMINATION

3 BY MR. YUEN:

4 Q Mr. Shideler, please state your name and
5 address for the record.

6 A David William Shideler. I work for Cultural
7 Surveys, Hawai'i, Post Office Box 1114, Kailua 96734.

8 MR. YUEN: Based on Exhibit No. 13 we
9 request that Mr. Shideler be qualified as an expert in
10 archaeology and Native Hawaiian cultural practices.

11 VICE CHAIR JUDGE: Are there any objections
12 from the parties?

13 MR. YEE: I have no objection. Although I
14 would ask for clarification if cultural impact is
15 among the areas of his expertise.

16 MR. YUEN: He did not prepare the cultural
17 impact study for this report, but it is among his
18 areas of expertise.

19 MR. YEE: We have no objection.

20 VICE CHAIR JUDGE: Thank you. Intervenor?

21 MS. TOWNSEND: May I voir dire?

22 VICE CHAIR JUDGE: Yes, go ahead.

23 VOIR DIRE EXAMINATION

24 BY MS. TOWNSEND:

25 Q Okay. So what we're trying to figure out

1 whether you should be an expert to speak both to
2 archaeology and cultural practice. So from reading
3 the EIS I can see that you didn't write the cultural
4 impact statement. Someone else wrote that part.

5 A Right.

6 Q How -- how do I ask this question? How much
7 effort in the research that you were charged to do by
8 the Petitioner, did you look into cultural impacts?

9 A I have reviewed the materials pertaining to
10 cultural impacts on this Project.

11 Q So you're talking about the 11-page cultural
12 impact assessment.

13 A Yes, and comments made by commentators on
14 the subject.

15 Q But you haven't done any of your own
16 independent research on cultural impacts?

17 A That is correct. I have done -- I routinely
18 manage cultural impact assessment productions for
19 Cultural Surveys Hawai'i. And I have done cultural
20 impact statements in adjacent areas.

21 Q Okay. But I'm more concerned about this,
22 this Project and its impact. So I'm trying to narrow
23 it down. So for this Project, the cultural impacts,
24 how familiar are you professionally with them?

25 A I would say I'm very familiar.

1 MS. TOWNSEND: So we're going to object.
2 We understand that he's an expert in archaeology and
3 that's very appropriate. But as far as cultural
4 impacts related to this Project on this parcel we
5 don't think he should be qualified as an expert in
6 that.

7 MR. YUEN: The witness did testify he's very
8 familiar with cultural impacts in the Lualualei area.

9 VICE CHAIR JUDGE: Commissioners, are there
10 any objections? Your objection is noted. And it's my
11 understanding that we're trying to qualify him as an
12 expert in the field over all and what he's -- looking
13 at his credentials I'm going to go ahead, for this
14 docket, go ahead and accept him, qualify him as an
15 expert. But you can, during your questioning, go
16 ahead and go to the heart of this particular docket
17 and establish his credibility. Thank you.

18 MS. TOWNSEND: Thank you.

19 MR. YUEN: Thank you.

20 CONTINUED DIRECT EXAMINATION

21 Q Mr. Shideler, did you prepare an archaeology
22 inventory survey for the Petition Area?

23 A Yes. I was involved in the production of
24 the archaeological inventory survey for the 170-acre
25 parcel which includes the entire Petition Area as a

1 subset.

2 Q Could you please summarize the results of
3 your archaeological inventory survey?

4 A The archaeological inventory survey was
5 prepared in 1991, revised in 1993 and accepted by the
6 regulatory state Historic Preservation Division in
7 1993.

8 That study documents eight sites within the
9 170-acre Project Area including the entire Petition
10 Area. Of those eight sites six were regarded as
11 relating to ranching or military activity. There were
12 two pre- contact sites recognized. One of them was a
13 wall remnant, and one of them was regarded as a
14 pre-contact or traditional Hawaiian habitation
15 structure.

16 The recommendation of that study were for
17 preservation of pre-contact traditional Hawaiian
18 structure, habitation structure, which is located
19 upslope outside of the Petition Area approximately 700
20 meters.

21 All of the other sites on the State Historic
22 Preservation Division agreed with us it need not
23 require further treatment. We did recommend
24 preservation of the one traditional Hawaiian site.

25 Q That is site 4366? Is that the site?

1 A That is correct. That's the last 4 digits
2 of the state inventory of historic properties number.

3 Q In the course of your survey of the Petition
4 Area did you come across any other physical evidence
5 of Native Hawaiian cultural or traditional use of the
6 Petition Area?

7 A Other than --

8 Q Other than that site.

9 A No, we didn't. Well, to be completely clear
10 there was a wall remnant that was understood as
11 possibly of pre-contact origin. But that was not
12 regarded as a significant site and the state agreed.

13 Q The other sites you found were associated
14 with ranching or post contact origin?

15 A Ranching and/or military activity, yes.

16 Q Please describe SHPD's approval of your
17 reports and your recommendations.

18 A The State Historic Preservation Division
19 accepted our report and agreed with our
20 recommendation for preservation of the habitation
21 site.

22 Q And in response to a complaint that Tropic
23 Land had modified an alleged sacred site, was your
24 firm asked to do further work with regard to site
25 4366?

1 A Yes. The State Historic Preservation
2 Division carried out a field assessment in response to
3 a public complaint. They wrote, I think, rather
4 clearly -- their letter is included as an appendix
5 within our study, so you're welcome to review that for
6 yourself, but they concluded that there were no
7 constructions that were adversely impacted. And that
8 the complaint did not have grounds.

9 They did, as a result of this, express a
10 desire that the site to be preserved be more
11 accurately located and be protected by physical
12 barrier from any potential adverse impact coming up
13 from developable lands downslope.

14 Q Did your firm resurvey the site and carry
15 out SHPD's recommendations?

16 A Yes, we did.

17 Q Were any other further preservation actions
18 recommended or required?

19 A No. None were recommended or required by
20 Cultural Surveys Hawai'i or the State Historic
21 Preservation Division.

22 Q The Concerned Elders of Wai'anae, who are
23 the Intervenor in this case, contend that development
24 of the Project will undermine the cultural continuity
25 of Lualualei because they feel that access to cultural

1 history cannot be limited to certain property lines.

2 In your experience have you seen the -- can
3 you say that there's a validity to this kind of claim
4 where there's no physical evidence on the property of
5 the mo'olelo or the culturally significant place in
6 question?

7 A What comes to mind would be Mauna Kea in
8 which there has been a designation of a state
9 inventory of historic properties site in the complete
10 absence of any structural materials in the, as a
11 result of consideration of Native Hawaiian traditions
12 and customary practices. That site is exclusive to
13 the immediate summit area of the mountain.

14 Q But in the case of Mauna Kea there is
15 development and there is, there have been numerous
16 discussions with Native Hawaiian cultural groups about
17 siting development in culturally appropriate ways, are
18 there not?

19 A Right.

20 Q So that it is possible to conduct a
21 development under those circumstances.

22 A Yes.

23 MR. YUEN: I have no further questions.

24 VICE CHAIR JUDGE: County, do you have
25 questions for this witness?

1 MS. TAKEUCHI-APUNA: No questions.

2 VICE CHAIR JUDGE: Mr. Yee, does the State
3 have questions?

4 MR. YEE: Thank you.

5 CROSS-EXAMINATION

6 BY MR. YEE:

7 Q Was a preservation plan already submitted or
8 is it going to be submitted to SHPD?

9 A What SHPD has asked for at this time is
10 interim preservation buffer be established. The way
11 it presently stands is that to the best of my
12 knowledge there are no plans for any development or
13 impact within 500 meters of this site.

14 The way it stands is that if plans change
15 and impact the land development should occur higher on
16 the slope, that that may need to be revisited in terms
17 of a formal production and review of a preservation
18 plan.

19 Q So no preservation plans are required at
20 this time.

21 A Correct.

22 Q During construction is there a need for, as
23 you said, an interim protection to ensure there's no
24 inadvertent disturbance of the site?

25 A I would say in an abundance of caution the

1 State Historic Preservation Division has asked for the
2 establishment of interim preservation -- a physical
3 barrier even though it's more than 500 meters outside
4 of the Petition Area. And that has been established,
5 yes, physically on the ground.

6 Q Physically on the ground. Thank you. Then
7 I'm going to rely on you to tell me whether you don't
8 know some of these answers, because I have some
9 questions about the cultural impact survey. Are you
10 familiar with -- let me backtrack. Is there a
11 generally accepted standard for the methodology in
12 creating a cultural impact survey?

13 A The Office of Environmental Quality Control
14 of the State Department of Health has published
15 long-standing guidelines. These are guidelines. I'll
16 leave it to you to slice whether guidelines are more
17 than guidelines.

18 Q Is there an industry standard, not
19 necessarily a mandatory state-imposed or
20 government-imposed standard, is there an industry
21 standard setting forth how you do cultural impact
22 surveys?

23 A This continues to be something of an
24 evolving field. In general I would say that the
25 industry of cultural impact assessment production

1 takes into consideration the factors pertaining to the
2 size and history of the parcel, its location, its
3 cultural sensitivity in determining an appropriate
4 scope of work.

5 Q I take it, then, that depending on the
6 particular case the methodology or the standards
7 required of how much you need to do varies depending
8 on the individual case.

9 A That's certainly a fact of the matter, yes,
10 absolutely.

11 Q So there's no one particular standard that
12 everybody applies and says: You have to do the
13 following things. Then that meets an industry
14 standard. You've not evolved to that level is what
15 I'm hearing you tell me.

16 A Well, Cultural Surveys Hawai'i follows the
17 promulgated guidelines of the State Department of
18 Health. I think even a cursory review of cultural
19 impact assessments that have been produced generally
20 would show that that is not a norm.

21 Q Explain what you mean by that, that it's not
22 a norm.

23 A Other than the Land Use Commission there is
24 no regulatory agency for cultural impact assessments.
25 The vast majority of cultural impact assessments do

1 not go through any kind of a formal review process.
2 The Office of Hawaiian Affairs may or may not
3 comment. But that because of this odd circumstance
4 with these studies of no clear review agency in the
5 vast majority of the cases, there's a wide variety in
6 perspective of the appropriate scope of work.

7 Q So I'm going to try to sum -- repeat that
8 and see if I have the same understanding. Although
9 there are guidelines established by OEQC, in practice
10 there's no single norm for a cultural impact survey?

11 A Amongst those parties producing cultural
12 impact assessment studies, yes, I would say that that
13 is correct.

14 Q My understanding is we are not going to have
15 the particular individual who prepared -- who prepared
16 the Cultural Impact Survey for this case?

17 A Three names, and I'll leap to the conclusion
18 that they're all Hawaiian, are associated with the
19 document. I would want to refresh my memory real
20 quick here. We're looking at Kaohu, Aipoalani, and
21 another Aipoalani, three women. The company is
22 indicated as based in Nanakuli, O'ahu.

23 Q My understanding is I don't believe any of
24 them are currently scheduled to testify. So, again,
25 I'm going to have to ask you some of these questions.

1 If you can't answer them just let me know.

2 How many people were contacted to create the
3 Cultural Impact Survey?

4 MR. YUEN: I'm going to object. This
5 witness did not prepare that Cultural Impact Survey.
6 And I don't think he should be asked to testify on a
7 report that he didn't prepare.

8 VICE CHAIR JUDGE: Mr. Yuen, are you going
9 to have a witness that will answer questions regarding
10 the cultural impacts?

11 MR. YUEN: The planning consultant who
12 subcontracted that report is going to testify on the
13 impact survey. If necessary I could bring the person
14 who did prepare the report.

15 MR. YEE: I'm sorry, can I be -- the
16 planning consultant, is that different than the people
17 who actually prepared the Cultural Impact Survey?

18 MR. YUEN: That's correct. But if necessary
19 we will bring the person who did prepare the report.

20 MR. YEE: I'd be happy to put off these
21 questions if the person who prepared the report
22 testified. The Office of Planning's position in this
23 case is that we have not taken a position. So we
24 simply wanted to find out information. So if there's
25 another witness I'm happy to defer to the other

1 witness.

2 I think my only complaint would be is if
3 they don't call him, then Mr. Shideler, who's been
4 qualified as an expert in archaeology whom I
5 specifically asked is he qualified in the issues of
6 cultural impacts, was accepted as an expert in these
7 fields. So I'd be left without anyone else if
8 Mr. Shideler does not testify in this without the
9 additional witness.

10 MR. YUEN: We will put Hanalei Aipoalani.
11 We'll call him, we can't call him today. But we will
12 call him at a later date. He did prepare the report.

13 MR. YEE: Thank you. I have no further
14 questions then.

15 VICE CHAIR JUDGE: So just to clarify then
16 the Petitioner will be calling the preparer of
17 the document.

18 MR. YUEN: That's correct.

19 VICE CHAIR JUDGE: Okay. So we can reserve
20 the questions regarding that document for that
21 witness. Intervenor?

22 MS. TOWNSEND: Just to clarify so that my
23 questions are within the scope. So he's still
24 qualified as an expert in cultural impact -- or I can
25 ask questions like in general on cultural impacts?

1 VICE CHAIR JUDGE: That's correct. But if
2 you have anything pertaining to the study done for
3 this property those questions should be reserved for
4 the witness who's going to come forth at a later date
5 who prepared that.

6 MS. TOWNSEND: Okay. So I'll try and speak
7 about it generally.

8 CROSS-EXAMINATION

9 BY MS. TOWNSEND:

10 Q Hi. Thank you very much for coming. So you
11 worked on the 1991 report?

12 A Yes.

13 Q Okay. And that was for the golf course.

14 A Yes, correct.

15 Q Okay. And so I'm kind of surprised because
16 1991 I was in middle school. That's a long time ago.
17 A lot has changed since then.

18 I was wondering if you could speak a little
19 bit about the changes that have occurred in the
20 standards for all of the stuff that's associated with
21 trying -- for the state to try to protect its, to
22 uphold its constitutional responsibilities. So I'm
23 talking about like assessing cultural impacts,
24 reviewing archaeological, you know, kinda all in one.

25 Could you talk about the standards and how

1 they've changed over time? Is that clear? Sorry.

2 A Um, to the best of my recollection the Act
3 50 regarding Cultural Impact Assessments came into
4 effect circa 2000.

5 Q Right.

6 A So that there were no formal requirements
7 for the consideration of Cultural Impact Assessments
8 in EA's and EIS's prior to that date or at the time
9 the archaeological study was done.

10 Q Okay. Thank you. So just to be clear when
11 you guys wrote the 1991 report you just looked at the
12 archaeological impacts. You didn't look at the
13 cultural impacts.

14 A That is correct.

15 Q Just to clarify they even further, so the
16 guidelines that you spoke of earlier while Mr. Yee was
17 questioning you were adopted in 1997?

18 A Yes.

19 Q So that's after that report was done. Okay.
20 And the -- okay. So you're an expert. And you've
21 done many of these for Cultural Surveys Hawai'i. I've
22 read many of the other ones that you've written. So
23 you're familiar --

24 MS. ERICKSON: Could you slow down a little
25 bit for the court reporter.

1 MS. TOWNSEND: Sorry. My heart's racing.

2 Sorry. (Audience laughter) Are you caught up?

3 THE REPORTER: Yes. (Audience laughter)

4 Q (By Ms. Townsend): So you're familiar with
5 the Hawaii Revised Statutes section 69(e)?

6 A Yes.

7 Q Hawaii Administrative Rules Chapter 13-284,
8 275, those are all familiar to you?

9 A I work with Hawaii Administrative Rules
10 regarding archaeological studies every day of my life
11 virtually. However, even having said that I'm not so
12 good on specific number references off the top of my
13 head.

14 Q Okay. So let's just speak in general
15 because I'm not good at that either. Okay. So in
16 the -- let's start with the 2010 review that you did.
17 What was -- do you have the document in front of you?

18 A Yes, I do.

19 Q Do you have the title of the document? It's
20 Exhibit 42 for everyone else. Can you read the title?

21 A The title I'm looking at is Archaeological
22 Documentation Report on Site Protection of SIHP No.
23 50-80-06-4366.

24 Q Okay. So this is not an archaeological
25 inventory survey.

1 A Correct.

2 Q So what was done to do what's in this title?
3 What work did you do?

4 A I personally was involved in the field work
5 to go out and revisit the site, to take GPS
6 coordinates on the site, to compare the site to the
7 way it was described in the field notes from 1990.

8 This involved comparison not only with the
9 Archaeological Inventory Survey Report but also
10 additional photographs, notes in our files. Then
11 primarily to establish an event fencing which is that
12 orange web material on steel posts --

13 Q Very nice.

14 A -- on the downslope side for the purpose of
15 avoiding any inadvertent adverse impact to this site.

16 Q Okay. But so, just to make sure I
17 understand. So you, based on the 1991 report you went
18 back to the same parcel and you looked at the same
19 site that was identified.

20 A Correct.

21 Q You didn't look at the parcel to identify
22 any new sites.

23 A That is correct. I mean the physical
24 traverse was on the order of 800 meters in and 800
25 meters out. And we did it twice. But other than that

1 you are correct.

2 Q Okay. So our concern is that since
3 standards have changed over time, in the 1991 report
4 you found seven sites on the Petition Area. And...

5 A I believe actually it was four sites in the
6 Petition Area.

7 Q Oh, okay. I'm sorry. The 170 acres was the
8 larger number. Okay. So it's four sites in the
9 Petition Area. Thank you.

10 In that the standards have changed over
11 time, presumably they have gotten stricter.

12 A Correct.

13 Q The technologies, technics have also changed
14 over time? You guys have gotten better at finding
15 cultural, archaeological sites, physical sites?

16 A Technologies have changed and improved. And
17 certainly in some ways we have gotten better. Yes,
18 that is correct.

19 Q Okay. But you haven't -- but the
20 information that's before the Land Use Commission
21 today is based on the technology, techniques and
22 standards of 1991.

23 A Correct.

24 Q Okay. Thank you. All right. So talking
25 about the regulations in general, can you help the

1 Land Use Commission understand the difference
2 between -- let me back up. Okay. So in the 1991
3 report the site 4366 is identified as -- I'm not sure
4 what the right word is -- but it's labeled D.

5 A "Significant" under criteria D of the state
6 and federal registers of historic properties, yes.

7 Q Thank you. For the Land Use Commission can
8 you help them understand the difference between that D
9 criteria and an E criteria?

10 A Mmm-hmm. The E criteria is something
11 specific to the State of Hawai'i.

12 Q Okay.

13 A The criteria's A through D are national
14 criteria applied by archaeologists working throughout
15 the United States. The E criteria denotes special
16 significance to an ethnic group or community. It
17 could be a variety of ethnic groups and communities.
18 The vast majority of the time it's a Native Hawaiian
19 community.

20 The E criteria is typically used in the
21 event of the identification of a religious site, a
22 he'iau, a ko'a or burial. So it's not routinely used
23 for every precontact Hawaiian site, but it is
24 routinely used for sites that are regarded as
25 religious sites or burial sites.

1 Q Okay. Who makes that decision? How is the
2 decision made?

3 A The decision is ultimately made by the
4 regulatory State Historic Preservation Division.
5 Typically it is made on the basis of an archaeologist
6 report under their review.

7 Q Okay. So let me be a little more pointed.
8 When you, an archaeologist, do an assessment you
9 identify a site as D, are you required to contact the
10 Office of Hawaiian Affairs and inform them so they may
11 take a site visit and assess whether it should be
12 deemed an E?

13 A No.

14 Q Really? Okay.

15 A I might comment this is an actively evolving
16 field. That on the one hand the HAR rules were
17 promulgated and are straight forward. That within the
18 last 10 days we have gotten clarification from the
19 regulatory State Historic Preservation Division on the
20 specific matter of consultation in archaeological
21 inventory survey studies that was a significant
22 revision from what most of my colleagues believed.
23 Thus, I just point out that it's an actively evolving
24 field.

25 But in answer to your question the general

1 rule of thumb of longstanding has been that E sites
2 require consultation minimally with the Office of
3 Hawaiian Affairs. Consultation is generally
4 recommended across the board. And we routinely do
5 consult across the board in archaeological studies and
6 finds.

7 Q So I'm really fascinated by the whole change
8 in the last 10 days. Is it relevant to what we're
9 talking about today? I don't want to go way off the
10 course.

11 A There has been a progression over time
12 regarding the level of effort that needs to be made to
13 consult with the Native Hawaiian community in the
14 course of the identification of archaeological
15 properties.

16 Q Okay. So let's back up then. So for the
17 1991 report did you consult OHA?

18 A No, we did not, to the best of my
19 recollection.

20 Q For this 2010 archaeological documentation
21 and report did you contact OHA?

22 A No, we have not as yet. It is not an E
23 site. Furthermore, I guess I would point out let us
24 be clear the subject of this report is a site that is
25 being preserved in its entirety.

1 Q Yes. Yes, true.

2 A In conformity with specific directives from
3 the State Historic Preservation Division.

4 Q Yes. Just to clarify. We're very happy
5 with all that's been done to protect site 4366. We're
6 more concerned about the rest of the parcel. In 1991
7 you found four sites using lesser technology and
8 lesser techniques, it's reasonable that if an actual
9 archaeological inventory survey was done now with the
10 updated techniques and updated standards we could find
11 more.

12 MR. YUEN: I'm going to object to that
13 question. Calls for speculation on the part of the
14 witness. And the witness has already testified that
15 the State Historic Preservation Division accepted and
16 approved the 1991 study.

17 VICE CHAIR JUDGE: I'm going to let her ask
18 a question.

19 MS. TOWNSEND: Sorry.

20 VICE CHAIR JUDGE: The last thing was not a
21 question. That was rather a statement I believe.

22 MS. TOWNSEND: Sorry.

23 VICE CHAIR JUDGE: So if you have a question
24 for this witness then you can ask it but not a
25 statement.

1 MS. TOWNSEND: Okay. Sorry.

2 Q So OHA was not consulted. I'm trying to get
3 back on track. Were neighbors consulted in making any
4 of the reports?

5 A I don't recall that then or now there are
6 neighbors.

7 Q I guess I meant in general. Did you
8 interview people around this property who may know
9 about...

10 A To the best of my recollection, no.

11 Q No. Okay.

12 MS. TOWNSEND: I'm not sure how to do this.
13 I want to draw his attention to testimony raised
14 yesterday. But I'm pretty sure he wasn't here. Do I
15 just recite it or is that appropriate? Sorry.

16 COMMISSIONER JUDGE: If it's in a question.

17 MS. TOWNSEND: Yeah. Okay. So let me try
18 this.

19 Q Okay. So yesterday Mr. Silva -- you're
20 familiar with Albert Silva.

21 A Yes, I am.

22 Q So he testified that in the early '40s he
23 used this property for ranching. And he talked about
24 how he built a fence to pen in his cattle. And he
25 talked about he shot a straight line all the way up to

1 this large pile of rocks. And in describing this area
2 he talked about mountains of rocks.

3 And I'm just curious if in your assessment,
4 either the 1991 report or in the 2010 report, if
5 you've seen any of these kinds of evidence of
6 mountains of rocks in Kapolei.

7 A Mountains of rocks.

8 Q Yeah.

9 A The nature of the landscape as I think is
10 rather well documented in the independent State
11 Historic Preservation Division field inspection is
12 that the alluvium and colluvium of the talus slopes,
13 you have boulder trains and boulder terraces that are
14 natural.

15 They can mimic or be perceived as human
16 constructions, and in fact probably have been by
17 Hawaiians since time immemorial. But we did not see
18 any other sites. Nor when the State Historic
19 Preservation Division went to inspect certain of talus
20 slope formations, geologic formations, they
21 independently agreed that what was being cited as a
22 he'iau or sacred site was a, was a natural geologic
23 feature.

24 So, yes, there are definitely boulder
25 trains, there are definitely boulder terraces. There

1 are fans of erosional deposition.

2 Q Thank you. Okay. That just reminded me of
3 something. Turning your attention back to the 2010
4 archaeological documentation. What is -- so normally
5 when I read these in the beginning they have a Purpose
6 of Document. You have, like, this is Exhibit 42
7 again. There is a table and it sort of summarizes
8 everything that's in the report. And there's usually
9 a section that says Document Purpose.

10 Is that in this one in this 2010 report to
11 the document?

12 MR. YUEN: I'm going to object to do
13 question. I think the report speaks for itself.

14 VICE CHAIR JUDGE: Do you want to rephrase
15 your question.

16 MS. TOWNSEND: All right.

17 Q All right. So I really don't know how -- so
18 normally these -- this kind of documents that are
19 produced by Cultural Surveys Hawai'i have a section
20 that says: "This document was prepared in support of
21 provisions," and they talk about the administrative
22 rules and the HRS. Is that section in this document?

23 A My answer is yes. The sentence under
24 Project Description and the SHPD letter dated
25 June 3rd, 2010 "Log number, dock number, present

1 appendix A requested that preservation measures be
2 carried out to secure this site from inadvertent
3 disturbance. This study documents the present
4 condition of the site and those preservation efforts
5 undertaken."

6 THE REPORTER: Mr. Shideler, would
7 you please slow --

8 MS. TOWNSEND: I'll give it to you.

9 Q Thank you very much. So it's not -- so this
10 document's purpose is not in satisfaction of the
11 Hawai'i Revised Statutes or the Administrative Rules
12 related to archaeology and cultural assessments in
13 Hawai'i? I'm specifically thinking about 6(e).

14 A Sure. The short answer is that this
15 document was prepared in response to a specific
16 regulatory agency request, which was cited properly
17 and included.

18 MS. TOWNSEND: All right. Thank you very
19 much. I think I'm done. Thank you.

20 VICE CHAIR JUDGE: Commissioners, any
21 questions? Commissioner Jencks.

22 COMMISSIONER JENCKS: Mr. Shideler, do you
23 think, based upon what you know of this site, the
24 subjected area, the 96 areas, that SHPD would require
25 monitoring during any excavation work?

1 THE WITNESS: No.

2 COMMISSIONER JENCKS: You don't believe so.

3 THE WITNESS: Well, I think -- I can be a
4 little stronger than that. There is no requirement
5 for archaeological monitoring and there's no
6 indication that the SHPD has any intention of
7 revisiting that.

8 COMMISSIONER JENCKS: I didn't see that
9 request that their letter. I was just going to
10 confirm with you. You don't think that they would --
11 for example, when a grading permit is pulled by the
12 city and county or by the Applicant to do work you
13 don't think they would require monitoring on the site?

14 THE WITNESS: I definitely do not think
15 that. The SHPD is in unprecedented flux and has been
16 for sometime. The O'ahu Island archaeologist --

17 COMMISSIONER JENCKS: I think that's a fair
18 statement. (Laughter)

19 THE WITNESS: -- the O'ahu Island
20 archaeologist attended his first burial council
21 meeting to the best of my knowledge ever this week.
22 So I mean he's brand new. Thus there's the concept of
23 a track record or predictability is... is....

24 COMMISSIONER JENCKS: Okay. You've answered
25 the question.

1 VICE CHAIR JUDGE: Commissioner Heller.

2 COMMISSIONER HELLER: Yes. Understanding
3 that site 4366 is not actually within the area that's
4 proposed to be developed, my question relates to
5 access to that site. Would the proposed development
6 affect the ability of anybody who wanted to get to
7 4366, to physically get there?

8 THE WITNESS: Right. Well, first I would
9 like to agree with you and thank you for making that
10 point again that the site of discussion is 500 meters
11 outside of the Petition Area.

12 Addressing your point of access, this is
13 also something of an evolving field and gray area. It
14 is not -- what it is regarded as is a pre-contact
15 Hawaiian habitation. There will be always advocates
16 that there should be access. And there will always be
17 advocates that there should not be public access, that
18 public access in an unregulated format. The greater
19 the public access the greater the potential for
20 degradation of the site.

21 There are no plans -- there are no
22 requirements for public access. If at such time there
23 was a preservation plan developed, there would be
24 explicit addressing of public access issues.

25 COMMISSIONER HELLER: Are you aware of any

1 members of the community who actually go to that site
2 for any kind of cultural or religious purposes?

3 THE WITNESS: I am not. The SHPD
4 archaeologist indicated he had been to that site. I
5 have no reason to believe anyone else has been to that
6 site in 15 years. It's -- it's, you will sweat
7 profusely to get there. And there's not a whole lot
8 of attraction on that slope other than the site.

9 COMMISSIONER HELLER: Thank you. That's all
10 I have.

11 VICE CHAIR JUDGE: Commissioner Kanuha.

12 COMMISSIONER KANUHA: Thank you, David. How
13 long have you been in the profession?

14 THE WITNESS: As a professional archeologist
15 in the State of Hawai'i?

16 COMMISSIONER KANUHA: Well, just overall.

17 THE WITNESS: Thirty-two years.

18 COMMISSIONER KANUHA: Thirty-two years. So
19 my question is: How is it possible for you to do what
20 you do without having some relationship between
21 cultural and traditional uses?

22 THE WITNESS: Well, I would want to be clear
23 that I regard there is a very close relationship
24 between cultural from traditional uses. And that
25 these have come into much tighter alignment and

1 continue to do so.

2 If your question... well.

3 COMMISSIONER KANUHA: That's kind of what I
4 was looking for. Now, prior to the requirements that
5 a separate Cultural Impact Assessment be conducted
6 were there -- when you do your reports, your studies,
7 and make your recommendations, were some of those
8 guidelines integrated into those reports or studies or
9 considerations prior to the actual enactment of that
10 statute?

11 THE WITNESS: Let me try and address your
12 question. If we're talking about sort of the norms in
13 the timeframe of 1990, if they would be specific to
14 the nature of the Project Area. An important thing I
15 think to understand about this Project Area and our
16 view of it at that time, is that there are no Land
17 Commission Awards here.

18 Lualualei was very, very sparsely settled,
19 by all evidence. The nearest kuleana, commoner Land
20 Commission Award, to the best of my knowledge, now,
21 maybe because there's the ridge line and Nanakuli --
22 I'm not so sure about the over the ridge line in
23 Nanakuli off the top of my head -- but I don't believe
24 that there was a commoner Land Commission Award in
25 Lualualei within two kilometers of this Project Area.

1 In other words, quite aways.

2 That because of the low rainfall all
3 evidence suggests a long history extending unbroken to
4 this day of very, very low population densities in
5 Lualualei; that this was a hard scrapple scramble
6 existence. I mean you could eke out on living on the
7 coast.

8 There was a small pocket in like the extreme
9 northwest corner where there was a spring that
10 facilitated life. But you could not live in this
11 Project Area. That you know, it was not appropriate
12 land for, you know -- maybe in a good year once every
13 20 years you could try to grow some sweet potatoes.
14 But generally it is our belief it could not sustain
15 human life.

16 And if we were addressing a project area
17 with a long human history even back in 1990, we would
18 have tried to consult with Native Hawaiians,
19 residents, neighbors, people knowledgable about the
20 land use history.

21 You had Albert Silva, I don't know his
22 testimony, but I was impressed with his testimony in
23 the Cultural Impact Assessment along with that of the
24 Lawrence J. Andrews.

25 Here you have kama'aina who are basically

1 supporting what I'm suggesting to you that there
2 aren't -- in 1990 or today there weren't knowledgeable
3 parties about cultural resources in this area.

4 COMMISSIONER KANUHA: Okay. Thank you very
5 much. Appreciate it.

6 VICE CHAIR JUDGE: Commissioner Lezy.

7 COMMISSIONER LEZY: Thank you for your
8 testimony, Mr. Shideler. There's been some competing
9 information provided to the Commission specifically
10 regarding an issue as to whether there is some
11 significance as to the ridgeline that backs against at
12 least a portion of the Petition Area. That
13 significance being that it shows the outlines of the
14 Demigod Maui.

15 And I'm just wondering do you have any
16 information either way on the validity of whether
17 there was significance to that ridgeline as far as the
18 Native Hawaiian population is concerned?

19 THE WITNESS: Yes. Pu'uheleakala is much
20 associated with the Maui traditions of Lualualei. Of
21 long standing the traditions have particularly focused
22 on these so called Maui stones which are located
23 almost immediately adjacent to Farrington Highway
24 approximately two kilometers to the northwest of the
25 Project Area.

1 There has been a tradition certainly from
2 the late 20th century of this view of the
3 Pu'uheleakala ridgeline and the appearance of a
4 humanlike recumbent figure.

5 I'm not sure about the antiquity of that
6 tradition, but it has been a tradition of at least a
7 couple decades and may, in fact, be a precontact
8 tradition.

9 We have -- I have evaluated that viewplane.
10 An the interesting thing is that it seems fairly clear
11 to me that a cursory examination of it would show that
12 this specific Petition Area will not impact that
13 viewplane in any way at all.

14 There is a rather pronounced wing ridge off
15 of Pu'uheleakala that lies between the viewplane from
16 makai, from the Farrington Highway side, and the
17 Petition Area. And what you see in that proposed
18 recumbent form is two peaks of Pu'uheleakala but the
19 intervening ridge prevents vision of the Petition
20 Area. And I think I would invite your independent
21 assessment of that for yourselves.

22 COMMISSIONER LEZY: But in so far at least
23 as the information you have, is that significance,
24 though, the consideration of that outline is fairly
25 recent? I mean in the last 20 years I think you said?

1 THE WITNESS: You know, I'm in a neutral
2 position on that. It could be a pre-contact
3 tradition. My general belief is the sleeping giant,
4 George Washington's nose, those kinds of things that
5 some people probably made that association from time
6 immemorial. But when there became some currency, some
7 popularity of it, whether that was Maui or someone
8 else, I don't know the time depth of that tradition.
9 To me it's not particularly important. It is a
10 tradition.

11 COMMISSIONER LEZY: Thank you.

12 VICE CHAIR JUDGE: Redirect, Mr. Yuen?

13 MR. YUEN: I just have one short line of
14 questioning.

15 REDIRECT EXAMINATION

16 BY MR. YUEN:

17 Q I just have one short line of questioning.
18 The State Historic Preservation Division's request to
19 have that site 4366 protected by a construction
20 barrier, is the purpose of that request to discourage
21 people from visiting and actually making direct
22 contact with the site?

23 A My perception of that is that it was to
24 produce a physical barrier between the archaeological
25 site to be preserved, a pre-contact habitation site,

1 and any inadvertent mechanical operations on the slope
2 as might occur in the course of a fire line or future
3 development.

4 MR. YUEN: Thank you. No further questions.

5 VICE CHAIR JUDGE: Thank you, Dr. Shideler.

6 MS. TOWNSEND: Is it possible to ask him a
7 redirect question?

8 VICE CHAIR JUDGE: Is your question directly
9 related to the last redirect question that Mr. Yuen
10 just asked? If it's related to why the orange barrier
11 was put on -- that SHPD required that orange barrier
12 then you can ask a question. If it's not related to
13 last redirect --

14 MS. TOWNSEND: It's related to the question
15 of access.

16 MR. YUEN: That's not what I asked.

17 MS. TOWNSEND: Because he asked whether if
18 the orange barrier was meant to deny people access to
19 the habitation site.

20 VICE CHAIR JUDGE: Okay, I'll let you ask
21 one question.

22 RECROSS-EXAMINATION

23 BY MS. TOWNSEND:

24 Q Did -- in your assessments did you assess
25 any of the access practices for cultural

1 practitioners?

2 VICE CHAIR JUDGE: Actually that's not an
3 archaeological -- that's for the Cultural Impact
4 Assessment people.

5 MS. TOWNSEND: Sorry. All right.

6 VICE CHAIR JUDGE: Thank you, Dr. Shideler.
7 At this point we're going to take a 10-minute recess,
8 come back at around 10:45.

9 (Recess was held. 10:38)

10 VICE CHAIR JUDGE: We're going to go back on
11 the record. Before we start with your next witness
12 I'm just going to let everyone know the proposed
13 schedule for today. We plan to break at 3:30. And
14 we're going to plan to take a real short lunch. We're
15 going to go, see how many witnesses we can get through
16 'til about maybe 12:30 and then take a half hour
17 lunch, be back shortly after 1 and then go 'til 3:30.

18 MR. YUEN: Thank you. My next witness is
19 Randall S. Okaneku.

20 RANDALL S. OKANEKU
21 being first duly sworn to tell the truth, was examined
22 and testified as follows:

23 THE WITNESS: Yes.

24 VICE CHAIR JUDGE: Thank you.

25 xx

1 xx

2 DIRECT EXAMINATION

3 BY MR. YUEN:

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

6 A My name is Randall Okaneku. My address is
7 1188 Bishop Street, Honolulu, Hawai'i.

8 Q What is your professional affiliation?

9 A I'm the principal of the traffic management
10 consultant.

11 Q Did you prepare the Traffic Impact Analysis
12 Report for the Nanakuli Community Baseyard Project?

13 A Yes, I did.

14 MR. YUEN: Based on Exhibit No. 46, which is
15 Mr. Okaneku's resumé, we request that Mr. Okaneku be
16 qualified as an expert in traffic engineering.

17 VICE CHAIR JUDGE: Any objections from the
18 parties?

19 MS. TAKEUCHI-APUNA: No objections.

20 MR. YEE: No objection.

21 MS. TOWNSEND: No objections.

22 VICE CHAIR JUDGE: Commissioners? Okay.

23 Mr. Okaneku is so qualified.

24 Q (By Mr. Yuen) Thank you. Mr. Okaneku, will
25 you please describe the existing roadways and traffic

1 patterns that serve the Petition Area.

2 A Farrington Highway is the primary arterial
3 in the Leeward Coast. It's a 4-lane undivided roadway
4 which carries about 48,000 vehicles per day. It's
5 signalized at Lualualei and Naval Road. At the
6 current time there is no exclusive left-turn lane on
7 southbound Farrington Highway. Lualualei Naval Road
8 is a 2-lane roadway which serves commercial,
9 industrial and military activity.

10 Lualualei Naval Road will be the primary
11 access route to the Nanakuli Community Baseyard.

12 Q Will you please describe the existing AM
13 peak hour traffic volumes and operating conditions at
14 the Farrington Highway and Lualualei Naval Road
15 intersection?

16 A The AM peak hour traffic occurs between 5:45
17 and 6:45 a.m. Peak direction of traffic is
18 Honolulu-bound which is where about 2100 vehicles head
19 town-bound and about 700 vehicles head toward
20 Wai'anae.

21 There's about 200 vehicles that turn left
22 from southbound Farrington Highway into Lualualei
23 Naval Road and about 50 vehicles come from Honolulu
24 turning right onto Lualualei Naval Road.

25 There's about 150 vehicles turning left out

1 of Lualualei Naval Road and about 50 turning right.

2 The intersection of Farrington Highway and
3 Lualualei currently operates at Level of Service D.
4 The left-turn movement from Farrington Highway
5 operates at Level of Service E while the left-turn
6 movement from Lualualei Naval Road operates at Level
7 of Service F. The intersection currently operates at
8 capacity during the AM peak hour traffic.

9 Q Do the current traffic conditions during the
10 AM peak hour warrant construction of a southbound
11 left-turn storage lane on Farrington Highway?

12 A Yes, it does. The volumes are such that the
13 left-turn movement from Farrington Highway pretty much
14 shuts down the left-turn lanes. So through-traffic is
15 pushed over to the right lane. So basically there's
16 one lane exiting Wai'anae in the morning.

17 Q Could you please describe the existing PM
18 traffic, peak hour traffic conditions at the
19 Farrington Highway/Lualualei Naval Road intersection?

20 A The PM peak hour occurs from 3:15 to 4:15
21 p.m. Farrington Highway carries about 2,000 vehicles
22 per hour in the northbound direction, and about 1300
23 vehicles in the southbound direction.

24 There's about a hundred cars turning left
25 from Farrington Highway into Lualualei Naval Road.

1 This again pretty much shuts down the left-turn left
2 lane to a left-turn only lane only because the
3 opposing traffic is so heavy that there's few
4 opportunities to turn left. So through traffic again
5 headed toward town is relegated to one lane.

6 About 168 vehicles turning left from on
7 Lualualei Naval Road and 38 vehicles turning right to
8 northbound Farrington Highway.

9 The intersection operates at Level of
10 Service D-- C, excuse me. The left-turn movement from
11 Lualualei Naval Road operates at Level of Service D.

12 Q Could you please describe your analysis of
13 the year 2020 AM peak hour traffic at the Farrington
14 Highway/Lualualei Naval Road intersection both without
15 and with development of the proposed Nanakuli
16 Baseyard.

17 A The Nanakuli Community Baseyard is expected
18 to generate a total of 500 vehicles per hour during
19 the AM peak hour traffic. What a peak hour traffic is
20 generally by employee traffic. So traffic during the
21 day is suspected to diminish.

22 Q So the 500 vehicles an hour, the Intervenors
23 sometimes said 500 trucks an hour. First of all, this
24 is a total of 500 vehicles, not exclusively trucks.
25 And second, this traffic will diminish during offpeak

1 hours. Is that correct?

2 A That's correct. Most employees drive by
3 passengers vehicles, personal vehicles, that sort of
4 thing. The vehicles exiting the site might --
5 contains a larger percentages of trucks where they're
6 going about their business. But anyway the peak
7 direction of traffic is expected to be primarily
8 passenger vehicles, passenger trucks, that kind of
9 thing.

10 I estimated about 3/4 of the traffic from,
11 generated from community baseyard to be originating
12 from the Honolulu direction and about 25 percent from
13 the Wai'anae direction.

14 Q Does the AM peak hour traffic projected in
15 2020 exceed the carrying capacity of the intersection?

16 A Yes, it does. While the existing peak hour
17 already meets the capacity conditions. So obviously
18 we add more traffic to the intersection it will go
19 beyond its theoretical capacity. The intersection is
20 expected to operate at Level of Service F both without
21 and with the Project.

22 Q What about the left-turn movements?

23 A The left-turn movements in both directions
24 either from Farrington Highway into Lualualei Naval
25 Road or Lualualei Naval Road to Farrington Highway,

1 both are expected to operate at Level of Service F.

2 Q Would you please describe your analysis of
3 the 2020 PM peak hour traffic projections both without
4 and with the proposed Nanakuli Community Baseyard?

5 A The proposed Project is, again, expected to
6 generate about 500 vehicles per hour during the PM
7 peak hour traffic. The traffic patterns are expected
8 to reverse where you have about 3/4 of the traffic
9 headed back to town and about 25 percent headed back
10 to Wai'anae.

11 The intersection is expected to operate at
12 Level of Service C without the Project and Level of
13 Service F with the Project. The PM southbound
14 Farrington Highway traffic and the left-turn morning
15 movement from Lualualei Naval Road are expected to
16 operate at Level of Service D without the Project.
17 With the Project the intersection is expected to
18 operate at Level of Service F.

19 Both approaches of the Farrington Highway
20 and the left-turn movement from Lualualei Naval Road
21 are expected to operate at Level of Service F.

22 Q Please describe the projected traffic
23 conditions at the intersection of Lualualei Naval Road
24 and the main entrance to the Project on Lualualei
25 Naval Road.

1 A The main driveway at Lualualei Naval Road is
2 expected to operate at Level of Service C in the AM
3 peak hour and B during the PM peak hour.

4 Q What measures are you recommending to
5 ameliorate the traffic conditions at the Farrington
6 Highway/Lualualei Naval Road intersections?

7 A I'm proposing that Farrington Highway should
8 be widened at Lualualei Naval Road to provide an
9 exclusive left-turn lane in addition to the two lanes
10 in each direction.

11 In addition to that, I'm also recommending
12 that Lualualei Naval Road be widened to provide an
13 additional left turn lane so you have two left-turn
14 lanes going towards town and one right-turn lane going
15 toward Wai'anae.

16 The proposed mitigation would improve the
17 intersectional operation Level of Service F to Level
18 of Service C during the AM peak hour and Level of
19 Service F to Level of Service D during the PM peak
20 hour.

21 Q Just to qualify the first recommendation of
22 widening Farrington Highway to provide a left-turn
23 lane, that's a left-turn lane in the southbound
24 recollect, correct?

25 A Yes. Yes, it is.

1 Q Has the state Department of Transportation
2 accepted your Traffic Impact Analysis Report?

3 A Yes, the Department has.

4 Q DOT recommends that Tropic Land pay the full
5 cost of traffic improvements recommended in your
6 Traffic Impact Analysis Report and not the fair-share
7 of these improvements as proposed by Tropic Land,
8 because DOT says that the traffic impacts to the
9 Farrington Highway/Lualualei Naval Road intersection
10 are primarily the result of the proposed Project.

11 Do you agree with DOT's recommendation?

12 A No, I do not. The intersection's expected
13 to operate at Level of Service -- for the left-turn
14 movement is expected to operate at Level of Service F
15 under both conditions whether with or without the
16 Project.

17 In my experience DOT has required the
18 developer to pay its fair share of regional
19 improvements such as this where you have, you know,
20 multiple users on the main highway as well as on the
21 side street.

22 Current traffic conditions already warrant a
23 left-turn storage lane. And the improvements to the
24 intersection not only benefits the Lualualei Naval
25 Road but it pretty much benefits the entire

1 intersection by relieving a lot of the capacity
2 conditions on particular movements. I estimate that
3 the Lualualei -- excuse me, Nanakuli Community
4 Baseyard traffic will account for about 15 percent of
5 the total peak hour traffic at the intersection.

6 Q Are there other reasons?

7 A Um, well there are, um...

8 Q Do you want to refer to the slide?

9 A Well, the left-turn lane is a, I guess, a
10 program that DOT is implementing at this time.
11 They're starting from Nanakuli Avenue working their
12 way north. There's about six intersections, by my
13 count anyway, in the vicinity of Nanakuli that don't
14 have left-turn lanes. Two of them are to be
15 constructed within the next couple of years. That's
16 expected anyway. So at least four more intersections
17 including Lualualei Naval Road.

18 The other one is Helelua. There's one at Au
19 Young Road. And a third, I'm not quite sure the name
20 of the road. It's some shopping center supermarket.

21 Q But going in the northbound direction from
22 Au Young up to Wai'anae Mall is it correct that all
23 signalized intersections on Farrington Highway have
24 left-turn storage lanes?

25 A I believe so.

1 Q Where is DOT planning to construct
2 additional left-turn storage lanes?

3 A At Nanakuli Avenue and Haleakala Avenue.

4 MR. YUEN: Thank you. No further questions.

5 VICE CHAIR JUDGE: City and County, do you
6 have questions?

7 MS. TAKEUCHI-APUNA: Actually I do.

8 CROSS-EXAMINATION

9 BY MS. TAKEUCHI-APUNA:

10 Q Mr. Okaneku, you mentioned that Lualualei
11 Naval Road is the primary access route from Farrington
12 Highway to the Project site?

13 A Yes.

14 Q Are there other access routes other than
15 Lualualei Naval Road to the site connecting to
16 Farrington?

17 A The current -- there's one connecting
18 roadway that is gated between Hakimo Road and
19 Lualualei Naval Road. I'm not sure of the status of
20 that roadway. It was gated during the field
21 investigation, but it's about midway between the
22 Project access and the naval base so it's further
23 mauka.

24 Q And do your studies analyze whether access,
25 more than one access would be necessary or would be

1 suggested?

2 A I did not analyze any alternative access to
3 the Project.

4 Q And what kind of improvements are needed for
5 Lualualei Naval Access Road for this Project?

6 A The only improvements I'm recommending are
7 at the intersection of Farrington Highway where we
8 widen the roadway basically for one additional lane so
9 we can get 2 left-turn lanes going toward town.

10 MS. TAKEUCHI-APUNA: Thank you.

11 VICE CHAIR JUDGE: State?

12 CROSS-EXAMINATION

13 BY MR. YEE:

14 Q The TIAR assumes that the access to the
15 Petition Area is through Lualualei Naval Access Road,
16 correct?

17 A Yes.

18 Q So you didn't analyze, you didn't conduct
19 the TIAR based on the use of Hakimo Road as primary
20 access?

21 A No.

22 Q Do you know what the status is of an
23 agreement with respect to the ability to use Lualualei
24 as the primary access to the Petition Area?

25 A No, I don't know the current status.

1 Q You used the term -- it's going to become
2 more important in a different context. I just want to
3 make sure I have your testimony. You used the term
4 that of "commercial/industrial uses." In your mind
5 does the term commercial/industrial mean the same
6 thing?

7 A No.

8 Q By commercial are you referring to retail?

9 A Yes.

10 Q So is it your understanding that there's
11 anticipated a significant retail aspect to this
12 Petition Area?

13 A No. The commercial activity I'm referring
14 to is the Wai'anae Shopping Mall -- excuse me, the
15 Nanakuli Shopping Center.

16 Q But not to the Petition Area?

17 A Not to my knowledge. No, not to my
18 knowledge.

19 Q Okay. Are you familiar with the
20 configuration and size of Hakimo Road?

21 A Yes.

22 Q Would it be fair to say that the Petition
23 Area will generate a fair amount of truck traffic?

24 A Yes.

25 Q And would you agree that Hakimo Road would

1 be inappropriate for truck traffic?

2 A Yes.

3 Q Part of that is because of the turn radiuses
4 and size.

5 A And the residential nature of the roadway,
6 yeah.

7 Q Would make Hakimo Road inappropriate for
8 certainly large-scale use of truck traffic?

9 A Yes.

10 Q You have in your recommended TIAR, I think,
11 at least three particular improvements that are needed
12 for the Project, correct?

13 A Mm-hmm. Yes.

14 Q I take it, then, these improvements would
15 need to be done prior to occupancy of the Petition
16 Area?

17 A The analysis is based upon full buildout of
18 the Project. So that's the snapshot I took.

19 Q So it would be needed before full buildout
20 of the Project.

21 A Yes.

22 Q Abd presumably it would probably be needed
23 sometime before full buildout but your analysis didn't
24 figure out when.

25 A Correct.

1 Q The Department of Transportation has no
2 particular plans to add a left-turn storage lane at
3 the Lualualei intersection, correct?

4 A Not that I'm aware of.

5 Q So if there are no plans to improve the
6 Lualualei Naval Access Road, and the Department of
7 Transportation is not going to make those
8 improvements, then your recommendations could not be
9 implemented without someone else making those
10 improvements.

11 A That's correct.

12 Q And are you aware -- I know you said you
13 object to the Petitioner being the only person paying
14 for this. But regardless of who pays for it those
15 improvements need to be made at least before full
16 buildout?

17 A Yes. Actually some of the improvements need
18 to be made today.

19 Q So the approval by this Commission -- well,
20 do you have an opinion as to whether we need to know
21 who's going to make those improvements or whether
22 those improvements are going to be made before this
23 Petition Area is approved?

24 A Um, well, again, in the past -- in my past
25 experience DOT has determined a fair-share of its, of

1 the project's responsibility to any regional
2 improvement. And has selected a particular
3 improvement that the developer will implement so that
4 at least they put something on the ground rather than
5 handing over money or a promise to pay. So at least
6 some improvement is done, a partial improvement is
7 done, but not the entire list of recommendations.

8 Q But if that results, then, in having fewer
9 improvements made than you recommended, then what
10 happens?

11 A Well, the intersection will improve slightly
12 but not to the degree that it would if it had all the
13 improvements implemented.

14 Q If you added the storage lane on Lualualei
15 Naval Access Road but not the one on Farrington
16 Highway you're fine in the PM but not in the AM.

17 A Well, both conditions should improve,
18 basically will reduce the green time on the side
19 street and allocate more green time on the Farrington
20 Highway. But again it will be a marginal improvement.

21 Q So isn't it important to know whether or not
22 those improvements are actually going to be made?

23 A Um, yes, sure.

24 MR. YEE: That's all my questions. Thank
25 you.

1 VICE CHAIR JUDGE: Intervenor.

2 CROSS-EXAMINATION

3 BY MS. TOWNSEND:

4 Q Hi. I'd like to focus on or at least begin
5 with the scope of your report just to better
6 understand. I think the county asked some questions
7 about whether you considered Hakimo Road and things
8 like that.

9 Let's start first with which intersections
10 did you consider. Just the driveway and Farrington
11 Lualualei.

12 A Yes.

13 Q So you did not consider any of the
14 intersections leading up to Farrington and Lualualei
15 Naval Road.

16 A No.

17 Q Why not?

18 A Because those intersections are stop
19 controlled generally so they yield to Lualualei Naval
20 Road. So they're not impacted as far as they're not
21 signals, for example, or 4-way stops.

22 Q Are there private driveways that open up
23 onto Farrington Highway?

24 A On Farrington Highway, yes.

25 Q Did you consider impacts of the increased

1 traffic from the Project on the access in and out of
2 those private driveways?

3 A No.

4 Q Why not?

5 A My opinion the volume of traffic generated
6 by the community baseyard is a relatively small
7 percentage when you compare it with the volumes on
8 Farrington Highway.

9 Q But based on your report even, you know, the
10 Level of Service is low and the increase in traffic
11 proposed by the Project actually pushes the Level of
12 Service on Farrington Highway over the straw that
13 breaks the camel's back it appears from your report.

14 A Well, my analysis, again, is the
15 intersection not necessarily on Farrington Highway
16 itself. It's an intersection itself. So beyond
17 Farrington Highway, I did not analyze anything beyond
18 Farrington Highway beyond the 4-lane highway itself.

19 Q Okay. So then would it be fair to say that
20 we don't know what the impact would be to those other
21 intersections and the private driveways along
22 Farrington Highway?

23 A The impact of the community baseyard on
24 those private driveways in my opinion is not
25 significant.

1 Q But you didn't actually look at it.

2 A I followed the scope, the scale of the
3 impact but not, no, I didn't analyze each and every
4 driveway.

5 Q Thank you. Okay. So the amount of traffic
6 that's anticipated or that you estimate is based on
7 the Institute of Transportation Engineers.

8 A Yes.

9 Q And is that a local -- is it a local
10 institution?

11 A They have a local district but, no. It's a
12 worldwide organization.

13 Q So do they develop traffic numbers for
14 Hawai'i?

15 A Not specifically, no.

16 Q So the amount of traffic that you estimated
17 would be created by the Project Area was based on the
18 methodology that's not specific to Hawai'i.

19 A That's correct.

20 Q Okay. In your expert opinion is this
21 number, this methodology that they use, is it -- does
22 it accurately reflect traffic in Hawai'i?

23 A It's, it's -- industrial baseyards generally
24 have kind of a wide range in my experience locally.
25 But there again the ITD tends to be within that range.

1 Q Let me ask you the question slightly
2 different. In Hawai'i do we have those large double,
3 you know, where they have the two trailers attached to
4 one Mac truck and they drive tandems?

5 MR. YUEN: If you know.

6 THE WITNESS: I've only seen agricultural
7 trucks like that. I'm not real familiar with the
8 double trailers.

9 Q (By Ms. Townsend): Okay. Thank you. So
10 I've seen them on the mainland. Went to school on the
11 mainland. And it would seem they carry more on these
12 tandem trucks, right, so you would need to make less
13 trips 'cause you can carry more at one time. Yes?

14 A Okay. Yes.

15 Q And in Hawai'i since we don't have those, we
16 have the smaller trucks, then it's reasonable to say
17 maybe we would have to make more trips because we
18 can't carry as much at one time?

19 A All right.

20 Q Based on this national number here it's
21 possible that actually the number of trips could be
22 higher then?

23 A It may be higher on a 24-hour basis. But,
24 again, my analysis is based on peak hours. The peak
25 hours are generally employee trips. Unless they're

1 taking home, traffic trailers back home to and from on
2 their own they're probably going to park it there.

3 You may have some returning trucks in the
4 afternoon or departing trucks in the morning. But
5 those generally off peak direction with the peak
6 direction the mass of employees coming and going.

7 Q I'm a little confused by that. Because it's
8 my understanding from what I've read of the EIS that
9 the sort of vision that the Petitioner has in their
10 mind is that someone living in Wai'anae and owns a
11 business that hauls construction material, debris, so
12 they live in Wai'anae, they drive from their home in
13 Wai'anae to the Nanakuli Community Baseyard. They
14 pick up their truck and they drive out to wherever the
15 project site is.

16 A Right.

17 Q We are expecting lots of construction coming
18 up soon with rail and buildings being knocked down in
19 Waikiki. So they're going to do whatever it is they
20 do, pick up construction debris, for example. And
21 they're going to come back at the end of their work
22 day on this large truck carrying their truck debris
23 probably at the end of the day. Right?

24 A Right.

25 Q With everybody else is going home to

1 Wai'anae.

2 A Okay.

3 MR. YUEN: I'm going to object to that line
4 of questioning because there's been no testimony that
5 the Nanakuli Community Baseyard includes a dumpsite
6 for construction debris.

7 MS. TOWNSEND: I didn't mean to imply that.

8 VICE CHAIR JUDGE: Do you want to rephrase
9 your question?

10 MS. TOWNSEND: Yeah. It's not really a
11 question.

12 Q So just to clarify. So PVT is a
13 construction/demolition/waste construction landfill.
14 It's on Lualualei Naval Access Road.

15 A Okay.

16 Q Right. So construction debris, construction
17 would go from, say the hotels that are being knocked
18 down in Waikiki to PVT.

19 A If that's their disposal site, yes.

20 Q That's the only disposal site in all of
21 Hawai'i. So then they would go from PVT up the hill
22 to Lualualei, to the Nanakuli Community Baseyard.

23 A Right.

24 Q So then it is possible that the trucks --
25 and sitting in traffic at the end of the day would be

1 these construction waste-bearing trucks delivering it
2 to PVT on their way to the Nanakuli Community
3 Baseyard?

4 A Okay. It's possible.

5 Q All right. Thank you. Okay. So we kind of
6 have gone over this a little bit with the other
7 questioners, but I wanted to just clarify. Is the
8 Navy's road the illegal access?

9 A The illegal access?

10 Q The legal access.

11 A I'm not sure. I'm not real clear on the
12 legal access at this point because my understanding
13 it's in negotiation.

14 Q Let me just be clear. The Petitioner needs
15 to get permission from the Navy to use the Navy road?

16 A That's my understanding.

17 Q So it is possible that the Navy may not give
18 permission?

19 A I guess, yes.

20 Q It's also possible that they may give
21 permission and then revoke it?

22 A Suppose, yeah.

23 Q Like in 10 years.

24 A Yeah.

25 Q So it's important that -- so then they would

1 need another access.

2 A Correct.

3 Q What would the other access be?

4 A The only other access out of the valley
5 would be Hakimo Road.

6 Q Hakimo Road. And did your report look at
7 Hakimo Road?

8 A No, it did not.

9 Q Why not?

10 A It was not part of the scope. The access
11 for the Project was, on my scope was Lualualei Naval
12 Road.

13 Q But you just admitted that there's a
14 possibility they may not be able to use the Navy road.
15 So it's important that we know -- so they have to use
16 another road.

17 MR. YUEN: I'm going to object to that
18 question. The witness -- I mean the Intervenor's
19 counsel made a statement and asked the witness to
20 speculate based on that statement.

21 Now she's trying to attempt to impeach the
22 witness based on the statement that she's made.

23 VICE CHAIR JUDGE: Well, I'm going to have
24 to agree with Mr. Yuen in that you need to ask
25 questions, not make a statement and then ask him to --

1 you have to ask him direct questions.

2 MS. TOWNSEND: Okay. Thank you. I'll try.

3 So do I need to do that all again or just keep going?

4 VICE CHAIR JUDGE: Well, restate your
5 question for him.

6 MS. TOWNSEND: Okay.

7 Q What is the other access to -- other than
8 the Navy road to the Petitioner's site?

9 A At the current time I don't think there is
10 an actual public roadway because, like I said, the
11 only connected roadway that I saw on the site was the
12 gated roadway that tells me it's a private road.

13 Q So do you know who owns the private road?

14 A No, I don't.

15 Q If the private road were owned by the
16 Petitioner, the Petitioner could open the gate?

17 A Yes.

18 Q And if the gates were opened, then the
19 petition side would be connected through this private
20 road to Hakimo Road.

21 A They would have access, yes, from Hakimo to
22 Lualualei.

23 Q So if for whatever reason now or in the
24 future the Petitioner was not allowed to use the Navy
25 road they could use Hakimo Road.

1 A That I'm not sure of. Like I said you're
2 speculating that roadway is owned by -- and it will be
3 owned forever by the current owner and it's another
4 property to be sold.

5 The answer to your original question, I
6 guess is, should that happen what would happen is an
7 update of the report would occur, would be required
8 because now you're changing conditions of the Project.

9 Q When would that get triggered?

10 A Whenever access was denied on Lualualei
11 Naval Road. Because they're not going to do it like
12 we're closing it tomorrow. They're not going to say
13 in the next six months, "We're going to shut you down
14 so look for another access." So that kind of thing
15 would happen.

16 Q What is a good Level of Service?

17 A A.

18 Q A. For the Commission -- I'm not sure if
19 this is something the Commission normally discusses.
20 So can we talk about the differences between A and D?

21 A Okay. Let's see, A through C generally is
22 considered satisfactory Level of Service. Level of
23 Service D it's a minimal acceptable Level of Service
24 by most agencies anyway. Basically all it is if
25 there's a breakdown in traffic the roadway will

1 recover. Whereas if you're at Level of Service E the
2 breakdown in traffic will go to F. It won't recover.
3 That's basically the difference between the two. D is
4 like a maximum, I guess, reasonable Level of Service
5 under our conditions. Of course E is the closer to
6 capacity. F is pretty much unstable condition.

7 Q What do you mean when you say "breakdown in
8 service"?

9 A Any kind of a stalled vehicle, accident,
10 something that shuts down a lane.

11 Q So you proposed improvements to Farrington
12 Highway in order to raise the Level of Service if the
13 Project is approved?

14 A Yes.

15 Q And what Level of Service after improvements
16 would we see?

17 A The morning would be Level of Service C.
18 The afternoon would be Level of Service D.

19 Q And so it's still on that verge of being
20 service that's not -- I'm worried about that PM peak
21 hour.

22 MR. YUEN: I'm going to object to that.
23 That's a statement not a question.

24 Q (By Ms. Townsend): Okay. Let's talk about
25 the improvements. It's lane widening, yes?

1 A Yes.

2 Q How are lanes widened?

3 A Okay. The entire roadway cross-section has
4 to be widened to five lanes. Right now it's four
5 lanes.

6 Q Okay. So...

7 A So at some point north of Lualualei you're
8 going to be tapering the roadway out to five-lane
9 section. As you cross the intersection there will be
10 five lanes of road pavement.

11 Q How wide is that?

12 A It'd be probably eleven to 12 feet. Then at
13 some point south of the intersection it will taper
14 back down to the existing four-lane roadway.

15 Q Okay. Did your report consider the railway
16 that's along Farrington Highway?

17 A I'm aware of the railway.

18 Q Are you aware it's a federal registered,
19 it's a federal historic place?

20 A Yes.

21 Q How close is it to Farrington Highway?

22 A It's close enough to be impacted by the
23 widening.

24 Q What modifi -- how do I ask this? What
25 additional steps would be needed to be taken to widen

1 the road given the railroad?

2 A There would probably be negotiations between
3 the State and the Railway Association to relocate the
4 railway.

5 Q Even -- because it is national historic
6 site?

7 A Hmm-mmm.

8 Q Is Congress involved in the protection?

9 A I'm not sure.

10 Q Just to get some more final clarification on
11 these directions of traffic and who's coming when and
12 where. You said -- in your testimony you said that
13 the majority of traffic would be coming from Honolulu
14 in the AM hours. Is that right? Am I getting that
15 correct?

16 A Yes.

17 Q Why is that?

18 A I based that upon the 2020 published
19 projections for Wai'anae and 'Ewa comparing the two
20 employee pools, if you will. It's pretty much a 3 to
21 1 ratio between the 'Ewa Plain and Wai'anae. So I
22 assumed that 3/4 of the employees will be coming from
23 'Ewa.

24 Q Okay. So it's going to be people living in
25 'Ewa driving to the Nanakuli Community Baseyard.

1 A Yes.

2 MS. TOWNSEND: Okay. Thank you. I have no
3 further questions.

4 VICE CHAIR JUDGE: Commissioners?
5 Commissioner JenCks.

6 COMMISSIONER JENCKS: 'Morning, Randy.

7 THE WITNESS: Morning.

8 COMMISSIONER JENCKS: Couple questions. And
9 I'm not quite sure maybe this should go to the City
10 and County first. I just want to have an
11 understanding what kind of uses are allowed in the
12 light industrial district, if there's any percentage
13 or allocation for commercial uses in that district.
14 Or is it just a plain pyramid type approach with
15 regard to commercial and warehousing, et cetera. Just
16 a brief description would be helpful.

17 VICE CHAIR JUDGE: Is the City and County
18 prepared to answer that question for Commissioner
19 Jencks right now? Or do you need to defer that 'til
20 your testimony?

21 MR. WATKINS: We have just been handed the
22 master use table which, if you wish the County to
23 respond, we can tell you what commercial uses are
24 allowed under the I-1 Industrial District.

25 VICE CHAIR JUDGE: How long would that take?

1 MR. WATKINS: Two or three minutes.

2 COMMISSIONER JENCKS: Sure. Just a quick
3 summary would be fine.

4 COMMISSIONER HELLER: Maybe while they're
5 looking for that I could ask just a quick question.
6 You raised the issue of whether the Petitioner should
7 bear the full cost of the lane widening and traffic
8 improvements or just a fair share.

9 Are you expressing any opinion on what a
10 fair-share is or how to determine a fair-share?

11 THE WITNESS: In the past the DOT has
12 determined it by volume, project's volume versus the
13 background traffic. That percentage is its
14 fair-share.

15 COMMISSIONER HELLER: Are you expressing any
16 opinion as to what should be done in this case?

17 THE WITNESS: Yes. My estimate based on
18 that criteria the Project would generate about
19 15 percent additional traffic into this.

20 COMMISSIONER HELLER: I'm sorry. What
21 percent?

22 THE WITNESS: Fifteen. One five.

23 COMMISSIONER HELLER: So you're suggesting
24 then the Petitioner would bear approximately
25 15 percent of the traffic improvement costs.

1 THE WITNESS: Yes.

2 COMMISSIONER HELLER: Thank you.

3 VICE CHAIR JUDGE: City?

4 MR. WATKINS: Okay. The City and County is
5 ready to answer in a summary form: Restaurants and
6 banks are probably the most common allowed use in
7 industrial districts. But there are a few minor
8 retail uses that could go in: amusement facilities,
9 bars, nightclubs, taverns. And let me see. Most of
10 the other allowed -- oh, and neighborhood grocery
11 stores.

12 And most of the other allowed commercial
13 uses fall under the broad category of business
14 services. Services to the industrial businesses on
15 the site rather than commercial type services. So
16 that's probably a quick summary.

17 MR. YEE: Commissioner Jencks, if I could
18 just note the Office of Planning Exhibit 16 contains
19 the master use table. There is a list of commercial
20 activities allowed in the industrial district.

21 COMMISSIONER JENCKS: I'm going to follow up
22 on that, ask Randy a question. Randy, there was some
23 discussion yesterday about the types of uses for this
24 light industrial area. In your traffic report what
25 percentage of the trips generated related to those

1 types of commercial uses?

2 THE WITNESS: There's no breakoff
3 specifically of commercial uses. It's basically a
4 light industrial designation. So it's assumed there
5 is a mix of office, commercial and warehousing.

6 COMMISSIONER JENCKS: So some component of
7 the trips generated relate to commercial types of
8 uses.

9 THE WITNESS: Yes. That's the assumption.

10 COMMISSIONER JENCKS: So if you took out of
11 those types of uses and you focused on more of a pure
12 light industrial use and eliminated those that would
13 attract traffic like a bank, restaurant, bar, tavern,
14 what have you, so you reduce those uses out of that
15 traffic count and then you recalculate the trips
16 generated, would that change materially the Level of
17 Service results at the intersections?

18 THE WITNESS: I can't say. I expect the
19 trips to decrease. It would be more like a
20 warehousing type operation rather than light
21 industrial use, more specific uses. But I don't know
22 the impact on the Level of Service. But I would
23 expect, like I said, the traffic would decrease by
24 roughly -- enough to impact the Level of Service.

25 COMMISSIONER JENCKS: Sure. But it would

1 affect it.

2 THE WITNESS: It would.

3 COMMISSIONER JENCKS: In a positive way.

4 THE WITNESS: Yeah. It will make it from a
5 D- to a D, that kind of thing. But it may not change
6 the Level of Service.

7 COMMISSIONER JENCKS: Okay. It may not
8 change the Level of Service.

9 THE WITNESS: May not change. Certainly
10 improve the situation.

11 COMMISSIONER JENCKS: Question for you. On
12 the intersection improvements at the Naval Access Road
13 and Farrington Highway, given the scope of that type
14 of improvement would you say given your experience
15 that would be a rather lengthy process?

16 THE WITNESS: On Farrington Highway it would
17 be, yes.

18 COMMISSIONER JENCKS: Because of the federal
19 requirements and coordination with other agencies?

20 THE WITNESS: Yeah. Primarily the rail
21 issue.

22 COMMISSIONER JENCKS: Are you aware of any
23 requirements -- this demolition landfill that's closer
24 to Farrington Highway, that's accessed off of Naval
25 Access Road, correct?

1 THE WITNESS: Mmm-hmm.

2 COMMISSIONER JENCKS: Does the State impose
3 any improvement requirements or request any
4 improvement requirements at that intersection as a
5 result of that permit?

6 THE WITNESS: Not to my knowledge.

7 COMMISSIONER JENCKS: So these folks are
8 coming in. And now your coordination with the state
9 is saying all these improvements have to be done at
10 this intersection. Even though it would seem to me a
11 significant amount of truck traffic makes that turning
12 movement at that intersection because of that
13 activity.

14 THE WITNESS: Right, yes.

15 COMMISSIONER JENCKS: Okay. Is there
16 adequate right-of-way on the Naval Access Road to make
17 the improvements you're talking about?

18 THE WITNESS: I believe so.

19 COMMISSIONER JENCKS: Because I read a
20 comment from, I think it was from the Navy that they
21 were going to request that the Naval Access Road be
22 improved its length from Farrington as I recall up to
23 the access to the site.

24 THE WITNESS: Okay.

25 COMMISSIONER JENCKS: Could you make those

1 improvements on that Naval Access Road within that
2 right-of-way even if they require additional
3 improvements in the right-of-way like curb, gutter,
4 what have you?

5 THE WITNESS: Right at the intersection I
6 estimate about 60 foot right-of-way which is about a
7 four-lane roadway. So that would be adequate.
8 Basically it's three lanes one lane makai, one lane
9 mauka at the intersection.

10 COMMISSIONER JENCKS: Would account for that
11 left-turn lane.

12 THE WITNESS: Correct.

13 COMMISSIONER JENCKS: That's all I have.
14 Thank you.

15 VICE CHAIR JUDGE: Commissioner Lezy.

16 COMMISSIONER LEZY: Thank you for your
17 testimony, Mr. Okaneku. Your conclusions regarding
18 the peak flow on either side, did you make any
19 assumptions regarding the percentage of the vehicles
20 during the speak flow hour that would be commercial
21 trucks the three-axle or more type vehicles?

22 THE WITNESS: My level of analysis either
23 determines whether it's a heavy vehicle or a passenger
24 type vehicle. It doesn't determine 3, 4, 5, 6 axles.
25 No, it doesn't go that far.

1 COMMISSIONER LEZY: Okay. The heavy vehicle
2 would be the type, for instance, the Petitioners
3 anticipate that their baseyard will house trucks,
4 commercial trucks.

5 THE WITNESS: Mm-hmm.

6 COMMISSIONER LEZY: That would be a heavy
7 vehicle.

8 THE WITNESS: Yes.

9 COMMISSIONER LEZY: And that was your
10 assumption as far as what percentage of the peak flow
11 would be made up of those types of vehicles, heavy
12 vehicles.

13 THE WITNESS: The percentages I used were
14 based upon the data I take from the Department of
15 Transportation on Farrington Highway. So they
16 regularly do vehicle classification at various
17 locations. That's what my data was based upon.

18 COMMISSIONER LEZY: Were you provided any
19 information from the Petitioner as to what they
20 anticipate the heavy vehicle storage would be at the
21 petition site?

22 THE WITNESS: No.

23 COMMISSIONER LEZY: Thank you.

24 VICE CHAIR JUDGE: Mr. Yuen, any redirect?

25 MR. YUEN: No redirect.

1 MR. YEE: Could I just have a clarification
2 on a Commission question about the DOT data?

3 VICE CHAIR JUDGE: Okay. Then we will give
4 you another chance to redirect.

5 RECROSS-EXAMINATION

6 BY MR. YEE:

7 Q Can you just explain to me. You said you
8 based the assumptions on heavy traffic from DOT data.
9 If I go back to DOT can you give me any further
10 clarification about what's that piece of information
11 you're talking about?

12 A It's called BVTC Big Vehicle Truck
13 Classification. They take it at certain periods,
14 certain locations on Farrington Highway. It's a
15 24-hour count basically. You see rubber hoses, a pair
16 of rubber hoses on Farrington Highway that basically
17 counts axles. From that they stratify into 13
18 different classifications. So various types of
19 motorcycles all the way up to your tractor trailers.

20 Q So you're taking the average traffic on
21 Farrington Highway and assuming that's the kind of
22 traffic that will go, that will be generated to the
23 Petition Area.

24 A At the peak hour traffic and apply that to
25 the intersection analysis. The peak hour truck

1 traffic percentages and apply that to the intersection
2 analysis, yes.

3 Q Does your calculation make any distinction
4 based upon the particular type of use in the Petition
5 Area?

6 A No.

7 MR. YEE: Okay. Thank you.

8 VICE CHAIR JUDGE: Redirect?

9 MR. YUEN: No.

10 VICE CHAIR JUDGE: Okay. Thank you, sir.

11 MR. YUEN: Next witness is Ricky Minn.

12 VICE CHAIR JUDGE: Morning, Mr. Minn. May I
13 swear you in?

14 THE WITNESS: Yes.

15 RICKY MINN

16 being first duly sworn to tell the truth, was examined
17 and testified as follows:

18 THE WITNESS: Yes.

19 VICE CHAIR JUDGE: Thank you.

20 DIRECT EXAMINATION

21 BY MR. YUEN:

22 Q Please state your name and address for the
23 record.

24 A My name is Ricky Minn. My business address
25 is 737 Bishop Street, Suite No. 1420, Honolulu,

1 Hawai'i 96813.

2 Q What's your business affiliation?

3 A I'm a senior vice president with the firm of
4 Hastings, Conboy, Braig and Associates, Ltd. The firm
5 is a, specializes in commercial real estate appraisal
6 and consulting.

7 MR. YUEN: Based on Mr. Minn's resumé, which
8 has been submitted as Exhibit No. 55, we request that
9 the Commission qualify Mr. Minn as an expert in real
10 estate economics.

11 VICE CHAIR JUDGE: Do the parties have any
12 objection?

13 MS. TAKEUCHI-APUNA: No objection.

14 MR. YEE: No objection.

15 MS. TOWNSEND: No objection.

16 VICE CHAIR JUDGE: Commissioners? Okay.

17 MR. YUEN: Thank you.

18 Q Mr. Minn, could you please describe your
19 analysis for the need for industrial land in the
20 Wai'anae/Nanakuli area.

21 A For this portion of our analysis the initial
22 focus was to highlight that there exists a
23 disproportionate relationship between the Wai'anae
24 district's resident population and associated labor
25 force and the existing extent of developed industrial

1 land within the Wai'anae district. So that's just as
2 a baseline. That's part of the analysis that was the
3 initial focus.

4 Our research indicated that the large
5 majority of developed industrial square footage is
6 located in the Primary Urban Center, 'Ewa and Central
7 O'ahu, with less than 3 percent of the less developed
8 building area located in the remainder of the island.

9 In terms of the disproportionate
10 relationship between the population and job
11 opportunities, the Wai'anae SEP area accounts for
12 roughly 5 percent of the Oahu's total resident
13 population. But it also represents less than
14 1.5 percent of the total job count, and less than 1.2
15 percent of the island's total industrial job count.

16 So our analysis at this point indicates that
17 there is a geographic disconnect, disproportionate
18 relationship between the resident population and
19 associated labor force and the job opportunities
20 within the Wai'anae SEP.

21 Q Please describe your forecast of demand for
22 industrial land on the Wai'anae Coast.

23 A The point of this analysis was to illustrate
24 that if the capture a further Wai'anae SEP area the
25 capture rate of the Wai'anae total were to increase

1 slightly, there would be enough market demand to
2 support the absorption of the proposed subject
3 development.

4 So what we have done in this analysis -- and
5 I believe at some point there will be a table up
6 there -- but the Wai'anae district's capture rate of
7 islandwide industrial jobs, if we had forecast an
8 increase to range between 1.5 and 2 percent. Again,
9 it's currently less than 1.2 percent.

10 But if we had projected or forecasted that
11 the capture rate for Wai'anae would increase to 1.5 to
12 2 percent over the next, well, this analysis goes to
13 year 2030, that there would be additional demand for,
14 sufficient additional demand for land, industrial
15 zoned land in the Wai'anae area to successfully absorb
16 the proposed subject development.

17 Q Could you please describe the employment
18 impacts that would flow to the Wai'anae Coast as a
19 result of the development and buildout of the Nanakuli
20 Community Baseyard?

21 A Okay. Now, this portion of our analysis is
22 based on the assumption that the proposed development
23 is approved and eventually developed. So at that
24 point based on that assumption, we have done some
25 forecasting for the employment impact associated with

1 the development if it were to be implemented both
2 during construction period and following construction
3 on a more stabilized occupancy basis.

4 So during the construction period we
5 estimated employment to be roughly one employee, one
6 job per acre of gross land area. It was roughly in
7 the area of 80 to a hundred onsite jobs during
8 construction.

9 When we were doing the analysis we were
10 given the parameters that the construction period
11 would last 18 months. So that one employee per acre
12 figure related to one year's worth of employment.

13 So it had to be adjusted to terms of man
14 years for the extra six months of employment period.
15 So that's the figure that shows up as 100 to 125
16 person years of employment during the construction
17 period on site.

18 There's also -- there's also additional
19 offsite employment that would be generated by a
20 multiplier effect, if you will. And that's been
21 estimated at another 20 to 25 people. Actually it's
22 20 to 25 person years.

23 Then the final component of our analysis was
24 the job forecast under buildout occupancy of the
25 proposed development. We projected, we forecasted

1 onsite employment to range between 560 to 840 jobs
2 under stabilized operation.

3 Again, given the multiplier effect that
4 would have ended up with a forecast of 840 to 1,260
5 jobs total onsite and offsite.

6 Q Please describe the benefits that
7 development of the Nanakuli Community Baseyard will
8 bring to the state of State of Hawai'i.

9 A Okay. This portion of our analysis was
10 focused on the fiscal impacts at the public sector
11 level for both the State government and the City and
12 County of Honolulu.

13 What we had done again was estimate
14 forecasts based on the assumption that the Project is
15 approved and is operating under stabilized occupancy
16 similar to our previous analysis.

17 We forecasted what the projected revenues
18 would be versus the projected costs that would be
19 associated with this increase in employment, et
20 cetera.

21 So at the state levels incoming general
22 excise tax revenue during the buildout period would
23 exceed \$1.5 million. Following buildout, again,
24 stabilized occupancy the forecasts for state revenue
25 is 1.82 million annually.

1 In terms of the cost to the state during the
2 buildout our understanding it would be relatively
3 negligible. After buildout the estimated cost was
4 slightly more than \$1 million per year.

5 Q Please describe the benefits that
6 development of the Nanakuli Community Baseyard would
7 bring to the City and County of Honolulu.

8 A At the county level, again, during buildout
9 we estimated revenue increase on the order of
10 \$145,000. Permit fees would also be estimated at
11 \$160,000.

12 During the construction period we
13 estimated -- excuse me, I'm jumping ahead. During the
14 construction period the costs again would be
15 negligible. On a long-term operational basis the real
16 property tax revenue to the city and county would be
17 estimated at basically 1.25 million annually. The
18 cost on operational basis was estimated at \$320,000
19 annually.

20 Q So is it a fair statement to conclude that
21 development of the Nanakuli Community Baseyard will
22 have significant financial benefits to both the State
23 of Hawai'i and the City and County of Honolulu?

24 A Yes, that's a fair statement based on our
25 analysis. The projected revenues were significantly

1 greater than the associated costs during both the
2 construction period and following completion and
3 development.

4 MR. YUEN: Thank you. I have no further
5 direct questions.

6 VICE CHAIR JUDGE: City and county?

7 MS. TAKEUCHI-APUNA: No questions.

8 VICE CHAIR JUDGE: Mr. Yee? State?

9 CROSS-EXAMINATION

10 BY MR. YEE:

11 Q You analyzed, if I understand correctly, the
12 impact on industrial -- well, your assumption is the
13 Petition Area will be used for industrial purposes,
14 correct?

15 A Yes.

16 Q You concluded, if I understand this
17 correctly, there is a differential or disparity
18 between the industrial labor force from the Wai'anae
19 Coast versus the number of industrial jobs that are
20 available in the Wai'anae Coast.

21 A Yes.

22 Q So you concluded, therefore, that there's a
23 need for more industrial jobs in the Wai'anae Coast
24 based on that.

25 A Um, not exactly.

1 Q Okay.

2 A It's not -- again, that first portion of the
3 analysis what we are trying to do is just see if not
4 so much to prove a need for the industrial development
5 in the Wai'anae district. Okay? What we are trying
6 to highlight again is there is, under current
7 conditions, there is a disproportional relationship
8 between where the employment labor force is versus
9 where the jobs are located and the development.

10 So I'm not concluding that that implies that
11 there has to be more industrial development in
12 Wai'anae. I'm just stating that if there's, if
13 there's a decision or policy or if the market, you
14 know, moves in such a manner that disparity is closed,
15 there would be enough demand to support the Project.

16 Q The demands -- you're looking at the demand,
17 the industrial labor force not throughout the state
18 but specifically at the Wai'anae Coast.

19 A I'm sorry, repeat that.

20 Q Your review of the industrial labor force --

21 A Yes.

22 Q -- was not with respect to the entire state
23 but specifically with respect to the Wai'anae Coast as
24 I read the exhibit.

25 A Yes. The percentage of capture rate in

1 Wai'ananae was an islandwide percentage capture rate.

2 Q When you use the term "industrial jobs" what
3 do you mean by that?

4 A Can I refer him to the -- I think our report
5 was like Exhibit B Appendix B?

6 Q Can you summarize?

7 A Yes. In table -- just a minute. I'm
8 looking for table 4-1. I apologize. I'm sorry. It's
9 table 3-8, the footnote there at the bottom. It
10 reads, "The industrial sector jobs include all jobs
11 within the following DPB, DPP employment categories."
12 So those categories are transportation, communication,
13 utilities. There's a category of industrial and
14 there's a category of construction.

15 Q Did you include commercial --

16 A No.

17 Q -- in that? Okay. Although I understand
18 that particular projects can have different fact
19 scenarios, as a general matter is it true that retail
20 rents generally exceed light industrial rents?

21 A Yes.

22 Q And are you aware of the concern that
23 without some type of limitation or protection of the
24 concern that retail uses can crowd out light
25 industrial uses?

1 A Am I aware in the context of our assignment?

2 Q Generically first. Are you aware of the
3 general concern that retail uses can over time crowd
4 out light industrial uses without some type of
5 limitation?

6 A Yes.

7 Q And in this particular case are you aware of
8 any limitations to ensure that this Petition Area was
9 used for light industrial purposes?

10 A No, I'm not.

11 Q Okay. Moving on. You know, your slide
12 reference \$320,000 county, I think it's a per capita
13 cost? Oh. "Negligible during buildout and
14 approximately \$320,000 annually," the last slide?

15 A Are you referencing the city and county?

16 Q Yes.

17 A Yes. It's \$320,000 per year annual basis.

18 Q Is that a per capita cost?

19 A No. The per capita cost came out to \$2,000
20 per employee.

21 Q That's what I wanted to find out. As I read
22 the slide it's \$320,000 per person.

23 A No. I apologize. I can't see the slide
24 behind me. I can refer you to a table that we
25 prepared but I'm not sure -- I'd have to check with

1 the attorney -- I'm not sure -- this document on the
2 state fiscal, state and county fiscal impacts was a
3 separate cover letter that we prepared and submitted.
4 And I'm not sure, I'm not sure where it appears in the
5 EIS statement.

6 MR. YUEN: It's part of the EIS. It's
7 together with your report in the EIS.

8 THE WITNESS: But it looks like this. It's
9 table 2.

10 Q (By Mr. Yee): Okay. I just wanted to
11 clarify what I read on the slide.

12 A What we did on the per capita cost was we
13 took the entire operating budget, divided by the total
14 resident population.

15 Q Operating budget for what?

16 A City and county. At the city and county
17 level it's the City and County of Honolulu.

18 Q And you divided it by the total number of
19 people in the City and County of Honolulu.

20 A Resident population.

21 Q How did you come out with -- that's how you
22 came up with \$2,000 per capita?

23 A Yes, roughly.

24 Q What did you multiply to get \$320,000
25 annually?

1 A 160.

2 Q Which represents what?

3 A It's the resident population increase that
4 we would forecast as being associated with the
5 proposed development.

6 MR. YEE: Okay. Thank you. I have nothing
7 further.

8 VICE CHAIR JUDGE: Intervenor?

9 CROSS-EXAMINATION

10 BY MS. TOWNSEND:

11 Q Hi. Thank you for your testimony. In
12 reviewing your report, um, is it accurate to say that
13 it's based on economic analysis, economic data from
14 2007?

15 A Yes. It actually, yes.

16 Q I'm trying to figure out how to word the
17 question. Sorry. I'm trying to make sure I ask
18 questions. There has been a recent economic downturn,
19 yes?

20 A Yes.

21 Q Has there been. How would your analysis be
22 altered if it was based on data post economic
23 downturn?

24 A Okay, let me just present this. It's a fair
25 question. Our effective date of analysis for the, for

1 our initial report I think goes back to March of 2008.
2 I think it's stated in the cover letter. The basis
3 for the analysis it's primarily a macroeconomic
4 analysis that's taken down to a micro level based on a
5 series of capture rates.

6 So it starts at the state -- it starts
7 really at the statewide level, and goes to the county
8 level. It just jets whittled down.

9 The basis there was the series 2035 DBEDT,
10 projections at the time. Now, I'm not sure -- I'm not
11 sure whether the series 2035 is still the current one
12 for planning purposes or whether that's been updated.
13 But based on that it's a long-term forecast. We
14 carried it out to the year 2030.

15 Our baseline was the year 2005 even though
16 the report was produced in March of 2008 because for
17 forecasting purposes that was the baseline for the
18 series 2035.

19 It's possible -- I'm not sure what's been
20 done in the interim -- but for our purposes were that
21 baseline analysis not to have changed dramatically,
22 I'm not saying there would be substantial changes to
23 our report. There would be, in the near term there
24 would be some short-term changes if we were to update
25 the analysis. But I can't, I can't comment as to how

1 significant they might be.

2 Q Thank you. Has commercial real estate fell
3 since 2009?

4 A There's been declines recently.

5 Q Can you quantify how much it's declined,
6 quantify a number?

7 MR. YUEN: I'm going to object. That goes
8 beyond the scope of this report.

9 MS. TOWNSEND: Okay.

10 VICE CHAIR JUDGE: Can you just ask another
11 question.

12 Q (By Ms. Townsend): Okay. Since your report
13 has O'ahu continued to add industrial space to its
14 inventory?

15 A There's been a net increase.

16 Q How much?

17 A I couldn't tell you exactly.

18 Q Based on the increase and the economic
19 downturn is it still your opinion that there is
20 sufficient demand for industrial space?

21 A That's kind of a loaded question.

22 Q Sorry.

23 A But the answer is I cannot quantify. Yeah?
24 If we were to update the analysis today I can't
25 quantify for you how much of a change may be reflected

1 in our conclusions. Does that help answer the
2 question?

3 Q Okay. Would it be fair to say it would be
4 reduced?

5 A Over the long term it's not fair to say
6 that. There may be short-term adjustments but over
7 the long term I can't represent that those numbers
8 would change.

9 Q So your report is based on numbers supplied
10 by DBEDT?

11 A That's the baseline.

12 Q The baseline. Okay. And the DBEDT numbers
13 expected a 1 percent capture rate for industrial
14 sector, right?

15 A No, that's not accurate.

16 Q Oh, okay. Help me. I'll try to ask a
17 series of questions. We'll see if we can get to the
18 right answer.

19 A I think what you're trying to get at is the
20 DPP projections, I think, show a 1 percent capture
21 rate for Wai'anae.

22 Q Sorry. Wrong department. So there is a
23 1 percent capture rate anticipated by them. But in
24 your analysis you doubled the capture rate to
25 2 percent, correct?

1 A In our analysis we illustrated that if the,
2 if the capture rate were to increase as much as 1.5
3 and to 2 so it could on the top end be doubled, there
4 would be sufficient market demand to absorb the
5 Project.

6 Q Can you explain what factors did you
7 consider in -- how do I word this question? Basically
8 what is that 2 percent based on? What kinds of things
9 did you consider to say -- why did you pick 2 percent
10 as opposed to any other number?

11 A I picked 1.5, 2 percent because I wanted to
12 stay within a reasonable range, yeah, of what it would
13 probably increase. I'm not forecasting an increase
14 from 1 percent to 5 percent. And I'm not even
15 forecasting an increase to 1 and-a-half to 2 percent.
16 That's not what I'm saying in the study.

17 What I'm saying in the analysis is if this
18 were -- if the capture rate were to somehow be
19 increased to 1.2 or 2 percent, there would be
20 sufficient market demand to absorb the Project.

21 Q Okay. So what would it take to increase the
22 capture rate to 1.5 or 2 percent?

23 A It would be -- there would have to be some
24 incentive for either businesses to relocate to
25 Wai'anae or there would have to be -- or Wai'anae

1 would have to grow the industrial development in
2 Wai'anae. Vis-a-vis the rest of the island would have
3 to grow faster for that capture to be realized.

4 Q Thank you. I was struck by one of the last
5 things that you said while Mr. Yee was questioning.
6 You talked about how 160 people would be coming to
7 Wai'anae.

8 A It's not so much coming to Wai'anae.

9 Q Okay.

10 A I have to refer you back. I don't want to
11 go through the whole analysis. But it's basically
12 what we have tried, what we have tried to forecast is
13 in terms of the cost of government services we would
14 have to somehow relate the proposed development to a
15 net increase in resident population. Okay?

16 And so the 160 people, it's a number there.
17 There's nothing, it's not fixed in concrete. But the
18 160 new residents to the City and County of Honolulu
19 would have had to have represented people coming from
20 outside the city and county either for employment
21 purposes somehow related to the proposed development
22 or if -- another scenario might have been with
23 increased job opportunities and so forth, there may
24 be -- just as a hypothetical -- there may be a family
25 decision to have a bigger family size or something

1 like that. Okay.

2 So anyway, you know, whatever works there is
3 a myriad of possibilities. We had forecast the number
4 at 160.

5 Q I'm just going to ask a few laymen
6 questions, make sure I understand what you just said.
7 For the industrial park to be successful -- back up.
8 Scratch that.

9 So your analysis is based on the idea that
10 at least 160 new people in one form or another would
11 come to O'ahu, come to the City and County of Honolulu
12 and would go to Wai'anae for the industrial park. Is
13 that accurate?

14 A No, that's not accurate.

15 Q Sorry.

16 A Let me try this.

17 Q Sorry.

18 A No, no, no. Let me try this. What we're
19 saying is -- and it's really kind of a hypothetical
20 situation 'case we're to isolate the effect of the one
21 project within the context of the whole economy.

22 But anyway, what we're trying to say is if
23 this development were to be -- were to be approved,
24 were to be built out and were to follow along the
25 lines, and I refer you back to the initial report

1 where we had employment forecasts, et cetera. Yeah?

2 Q Yes.

3 A If they were all to be, come to fruition the
4 way we have forecasted it, then what we're saying is
5 this Project would have somehow in a number of ways,
6 shapes and forms it would have somehow resulted in a
7 net increase of 160 new residents to the City and
8 County of Honolulu. So that's what we are trying to
9 say is the measurable impact for fiscal purposes,
10 yeah, on the city and county's bottom line.

11 Q Thank you. In your analysis you also looked
12 at current Wai'anae businesses using the industrial
13 park. Is that accurate?

14 A No.

15 Q No?

16 A No.

17 Q Are you aware in the EIS that there are 21
18 businesses that are interested in the industrial park?
19 Did you consider that information?

20 A Within the context of our report, no. I'm
21 aware of that now. It was brought to my attention, I
22 believe within the last two weeks.

23 Q Okay. So, but that it wasn't factored in
24 your economic analysis?

25 A No, it was not.

1 Q All right. So let me just try to wrap up
2 the DPP numbers and the capture rate. So you
3 estimated, you looked at the analysis, increased the
4 capture rate from 1.5 and 2 percent and looked at what
5 would be the need for industrial space.

6 My question to you is if you kept the number
7 it at DPP's current rate and didn't use the 1.5 or
8 2 percent, would there be demand for industrial space
9 in Wai'anae?

10 A No. I think we stated that in the report.

11 Q Can we take out -- I'd like to ask you about
12 some of the, what it would take to fill the industrial
13 park for tenants. Is that a fair game question?

14 A You can ask. It may be outside the scope of
15 my --

16 Q Let me ask. So it's a condominium setup.
17 Right? So businesses will have to purchase a lot as
18 opposed to rent, correct?

19 A The initial buyer would have to purchase,
20 yes.

21 Q In your economic analysis are businesses in
22 a position to buy these lots?

23 MR. YUEN: I'm going to object. That goes
24 beyond the scope of his analysis.

25 VICE CHAIR JUDGE: Well, the witness if he

1 doesn't know the answer is free to say, "I don't
2 know."

3 THE WITNESS: That was going to be my
4 response. That really fell outside the scope of our
5 work. We didn't address it. I apologize. We just
6 didn't address that part, that part, that question.

7 Q (By Ms. Townsend) Okay. So just to be
8 clear. So you didn't look at whether there's anybody,
9 any current businesses that would be able to purchase
10 the condos that would be up for sale.

11 A There was no price point analysis, no.

12 MS. TOWNSEND: Okay. Thank you.

13 THE WITNESS: Thank you.

14 VICE CHAIR JUDGE: Commissioners, any
15 questions for this witness? Commissioner Lezy.

16 COMMISSIONER LEZY: Thank you for your
17 testimony Mr. Minn. One question for you. As part of
18 the preparation of your report did you do any sort of
19 analysis of the usage at the time of existing
20 industrial space on the Wai'anae Coast?

21 THE WITNESS: No.

22 COMMISSIONER LEZY: Thank you.

23 VICE CHAIR JUDGE: Commissioners, any other
24 questions? Seeing none, any redirect?

25 MR. YUEN: Yes.

1 xx

2 REDIRECT EXAMINATION

3 BY MR. YUEN:

4 Q Yes. Mr. Minn, you were asked a number of
5 questions about the capture rate and why you selected
6 the range of, the range of 1.5 to 2 percent. Is one
7 of the factors in the present capture rate the lack of
8 industrial zoned land along the Wai'anae Coast?

9 A Yes. I think we highlighted some of that in
10 the report; that there's a lack of, you know,
11 development opportunities in Wai'anae at the present
12 time.

13 MR. YUEN: Thank you.

14 VICE CHAIR JUDGE: Okay. Thank you.

15 THE WITNESS: Thank you.

16 MR. YUEN: I have asked my next witness to
17 come at 12:45.

18 VICE CHAIR JUDGE: Well, that settles our
19 question. We'll just break then now for lunch and be
20 back at as close to 12:45 as we can.

21 (Recess was held.)

22 VICE CHAIR JUDGE: Okay. We'll go back on
23 the record and recommence with Mr. Hida. May I swear
24 you in, sir?

25 HARVEY HIDA,

1 being first duly sworn to tell the truth, was examined
2 and testified as follows:

3 THE WITNESS: Yes.

4 DIRECT EXAMINATION

5 BY MR. YUEN:

6 Q Please state your name and address for the
7 record.

8 A My name is Harvey Hida. I'm the president
9 of Hida, Okamoto and Associates, Inc. We're civil
10 engineers. My address is 1440 Kapiolani, Suite 1120,
11 Honolulu, Hawai'i, 96814.

12 MR. YUEN: Based on Mr. Hida's resumé, which
13 has been marked as Exhibit No. 43, we request that the
14 Commission qualify Mr. Hida as an expert in civil
15 engineering.

16 VICE CHAIR JUDGE: Do the parties have any
17 objection?

18 MS. TAKEUCHI-APUNA: No objections.

19 MR. YEE: No objection.

20 MS. TOWNSEND: No objection.

21 VICE CHAIR JUDGE: Commissioners? Hearing
22 none, then Mr. Hida will be qualified as an expert in
23 civil engineering.

24 Q (By Mr. Yuen): Thank you. Mr. Hida, please
25 describe the drainage plan for the Nanakuli Community

1 Baseyard.

2 A The drainage plan will be based on City and
3 County of Honolulu drainage standard. And any
4 stormwater increase by this Project will be retained
5 on site. And whatever is running off from the site
6 will be discharged into the same location in the same
7 way. So there's no impact on the downstream side of
8 this Project.

9 Q And is the standard a 10-year, 1-hour storm
10 event?

11 A Yes.

12 Q To what standard have you designed the
13 drainage improvements?

14 A We are designing for 50-year storm.

15 Q Can you please describe exactly what the
16 main drainage improvements consists of.

17 A We are planing to construct the 100-foot
18 swale on the mauka side of the Project area so we can
19 intercept all the water coming down from the hillside
20 or mountainside will be intercepted and directed
21 around the Project site and be draining into Ulehawa
22 Stream on the downside.

23 Q Will the 100-feet wide swale also serve
24 another purpose?

25 A Yes. The swale has a dual purpose and other

1 purposes for catching the rockfall from the hillside
2 in case there is a rockfall. So the swale is also
3 mitigation for the rockfall prevention and protection
4 for the Project.

5 Q Did you consider other methods of rockfall
6 mitigation?

7 A Well, there is a different method for
8 rockfall such as fence and like some kind of
9 mechanical barriers. But we think the swale is the
10 best way to protect or control the rockfall.

11 Q Did you prepare a formal rockfall hazard and
12 slope stability analysis for this Project?

13 A Yes. We will -- right now the Project is
14 very preliminary stage so we're not doing that detail
15 yet. But when we apply for the grading permit and
16 also for the property for the zoning, we will do the
17 detail study for the rockfall.

18 Q Thank you. Can you please describe measures
19 that you are recommending to minimize soil erosion
20 from the Petition Area.

21 A We probably -- during the construction
22 that's the most critical period for the erosion. And
23 we probably gonna have a silt fence and also soil
24 detention basin. But eventually when the Project is
25 completed the road and most parking and those area is

1 covered by pavement. Therefore we are expecting less
2 erosion than present conditions.

3 Q Thank you. Could you please describe the
4 water source for the Project?

5 A The water, the potable water gonna come from
6 Board of Water Supply. We already checked with them.
7 And we have to make some improvement for the Board of
8 Water Supply system. But we agreed to do whatever the
9 improvement we have to do. And Board of Water Supply
10 has sufficient, they indicated, sufficient water for
11 this Project.

12 Q How does the Tropic Land propose to treat
13 wastewater generated from the Project?

14 A We are planning to have the private
15 treatment plant onsite to treat the water and use the
16 effluent water from the treatment plant is used for
17 the irrigation purpose. And when the Project is 100
18 percent complete we will have sufficient 100 percent
19 irrigation water from the plant.

20 Q How will construction waste due to clearing
21 and grubbing of the site be disposed of?

22 A It's probably disposed by private, private
23 company to dispose maybe Wai'anae Gulch or somewhere.
24 But it's gonna be very minimum. We try to use
25 whatever the material for recycling purpose. We will

1 do that.

2 Q How about the treatment of solid waste
3 following buildout of the Project?

4 A The solid waste will be collected by private
5 refuse company. And they probably take it to
6 Waimanalo Gulch.

7 Q Do you expect to recommend recycling
8 measures for this Project?

9 A Yes. This Project is like a, it's gonna be
10 condominium-like Project. So we can enforce the
11 recycling by CC&R. And I think we can really
12 emphasize that.

13 Q Will utility services be available to the
14 Project?

15 A Yes. We already checked with Hawaiian
16 Electric, Hawaiian Telcom and also cable TV. They all
17 said they had sufficient resources to serve this
18 Project.

19 Q And within the Project area will utility
20 lines be placed underground?

21 A Yes. We will strictly follow the city and
22 county standard and all the utility underground.

23 Q That's within the Project boundaries.

24 A Within the Project boundaries, yes.

25 Q Finally, will Tropic Land encourage the use

1 of solar water heating and photovoltaic generation of
2 electricity in the Project?

3 A Yes. We are emphasizing that photovoltaic
4 and also recycling the green waste and kinds,
5 whichever we can, we can be like green Project.
6 That's what we are trying to emphasize.

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

9 VICE CHAIR JUDGE: Does the City and County
10 have questions for this witness?

11 MS. TAKEUCHI-APUNA: Yes, we have one
12 question.

13 CROSS-EXAMINATION

14 BY MS. TAKEUCHI-APUNA:

15 Q Mr. Hida, what are the dangers of hazardous
16 waste from industrial operations?

17 A Well, we are not expecting any kind of
18 hazardous material because, as I said, this Project is
19 a condominium. We have developer and association has
20 the control who's gonna be the tenant. And so we can
21 control what kind of business gonna be here.
22 Therefore we are not expecting any hazardous material
23 to be on site.

24 MS. TAKEUCHI-APUNA: Thank you.

25 VICE CHAIR JUDGE: Mr. Yee, does the State

1 have questions?

2 MR. YEE: Thank you.

3 xx

4 xx

5 CROSS-EXAMINATION

6 BY MR. YEE:

7 Q Mr. Hida, let me represent to you that in
8 Petitioner's Exhibit 1, the environmental impact
9 statement preparation notice, there's a figure 3 with
10 a site plan. Are you familiar with that? It's not in
11 your slides.

12 A Site plan?

13 Q Yes.

14 A I don't know.

15 Q If you don't know that it's okay. I'll just
16 move on. Were you aware that there was a change
17 between the site plans -- in the site plans between
18 the EIS preparation notice and the Final EIS?

19 MR. YUEN: If you know.

20 Q (By Mr. Yee): If you know.

21 A I don't know.

22 Q So you didn't work on the site plan or you
23 didn't work on making any changes to the site plan?

24 A Any -- I just don't remember there was any
25 changes or not.

1 Q You did work on the swale, though, correct?

2 A Yes.

3 Q Are you familiar or are you aware that the
4 Navy has asked that the swale be maintained also as a
5 fire break?

6 A I don't know but it's gonna, it's gonna work
7 as a fire protection as well because we have a hundred
8 feet wide. That's what we are planning to.

9 Q How will the swale be maintained?

10 A Association will be maintaining that.

11 Q Would that be a mandatory requirement of the
12 association?

13 A We can do it.

14 Q Did you work at all on the landscaping
15 issues or the type of...?

16 A I think that's too preliminary to answer
17 that question because we still -- this is very
18 preliminary stage.

19 Q Let me direct you to a particular issue.
20 Let me ask if you've looked at the question. Are you
21 aware that the Navy has asked that -- or are you aware
22 that there are native species on the Navy property?

23 A I don't know.

24 Q You don't know. So you're also then not
25 aware if the Navy has asked that the landscaping near

1 the Navy property either be either set back or
2 otherwise avoid the introduction of alien species that
3 would cross from the Petition Area to the Navy
4 property? Is that part of your analysis?

5 A No.

6 Q Is it fair to say that in order for the
7 swale -- it's important that the swale is maintained,
8 though, to ensure that it's effective, correct?

9 A Well, it's a swale gonna be like one side
10 gonna have a bank. So even though it's very minimum
11 maintenance, you know, overgrown bushes, trees,
12 whatever, it's gonna still work as a swale unless pile
13 of rocks pile up in the swale. Then it's not going to
14 serve the purpose. But by then we should know the
15 rock is already falling. So, you know, it served the
16 purpose.

17 Q So the important part about maintaining a
18 swale is to ensure it's not blocked.

19 A Exactly.

20 Q Is there an intent to assure that the swale
21 is kept free of underbrush or trees or shrubbery or
22 any type of plant growth?

23 A Well, yes. Yes.

24 Q That's also an important part to maintain in
25 a swale.

1 A Yeah.

2 Q Okay. That also contributes to ensure it is
3 also useful as a fire break.

4 A Yes.

5 Q And is that going to be done for this
6 Project?

7 A Hmm?

8 Q Is that going to be done -- is the swale --

9 A Oh, yes, yes.

10 Q -- going to be maintained?

11 A Yes, yes. It's a part of this Project.

12 Q You talked about the rockfall mitigation.
13 Was there a change, if you know, between the buffer
14 area for rockfall between the EISPN and the Final EIS?

15 A Is there?

16 Q Well, that's the question I'm asking. If
17 you don't know --

18 A I don't know. I don't think so.

19 Q What is the appropriate rockfall buffer
20 area?

21 A We don't know. We don't know until we do
22 the detailed studies. But I feel, I feel confident
23 that a hundred foot wide swale would work, through my
24 past experience.

25 Q So you're saying you still need to do a

1 slope stability analysis to make that determination.

2 A Yes.

3 Q And do you know when that's going to be
4 done? Not necessarily by date but by where in the
5 process is that going to be done?

6 A When we apply for grading permit, yes.

7 Q Who approves that?

8 A City and County.

9 Q So the City, you're saying the City's going
10 to look at your rockfall hazard and slope stability
11 analysis and make a determination, yes, they approve
12 this. And after they make that decision then they're
13 going to issue the mass grading permit?

14 A Yes. So that's a part of the mass grading
15 permit process. But the mitigation measure or study
16 could be triggered for the zoning changes. I'm not
17 sure. But we will do it before the Project is
18 physically started, you know. Before that we would do
19 that.

20 Q And I just wanted to make sure there is
21 going to be a City approval of this document, not just
22 that you're going to do the analysis.

23 A Yes. It is a part of the approval process,
24 yes.

25 Q Okay. You talked about drainage and erosion

1 control. Are you aware that there's an intermittent
2 stream on the side of property?

3 A Yes.

4 Q Have you had any discussions as to the
5 importance of ensuring that waters do not drain into
6 the intermittent stream from the light industrial
7 area?

8 A We will, we will do that. Yeah, we are sure
9 we will do it to prevent any kind of intermittent
10 or -- actually there's a swale at the corner of the
11 property, Ulehawa Stream. Part of the Ulehawa Stream
12 is crossing the corners of the Project and we are
13 staying away from that area for the Project.

14 And any other stream, small stream I think
15 we can handle by piping or intercepting by ditches or
16 whatever, yes.

17 Q Can you explain why it's important to avoid
18 drainage from the light industrial area into the
19 stream?

20 A Otherwise you gonna get flooded.

21 Q Well, that's a good point. Is it also true
22 that the intermittent stream eventually leads to the
23 ocean?

24 A Yes.

25 Q And so the pollutants that would be

1 accumulating in the light industrial area that would
2 flow into the intermittent stream, but then eventually
3 flow into the ecosystems including the ocean.

4 MR. YUEN: Excuse me. I'm going to object.
5 That's a statement. That's not a question.

6 MR. YEE: I thought I had started with "is
7 it true" but if I didn't I will add: Is it true
8 that -- well, let me backtrack.

9 There are pollutants in the water that flows
10 off that light industrial area, fair? Fair enough to
11 say?

12 A Well, you know, I have to ask you what, what
13 type of pollutants you're talking about.

14 Q Okay.

15 A You know, I mean, you're driving the --
16 well, issue -- there's pollutant all over that's going
17 to drain into the ocean. If you consider that as a
18 pollutant, yes, we will have pollutant. But not
19 hazardous thing that somebody dumped oil on the
20 pavement and rainwater gonna wash that to the ocean.
21 That's considered as a pollutant.

22 But in natural, you know, normal case I
23 think we will have but it's not that, you know -- I
24 shouldn't say it's a big deal, but it's already there.

25 Q Okay. Well, among the types of things you

1 will find in a light industrial area will be oil and
2 grease.

3 A Yes.

4 Q And the various kinds of manufacturing
5 byproducts that just sort of naturally come off that
6 industrial activity, correct?

7 A Yes.

8 Q And some of this will be on the ground. And
9 during a rain has or during, you know, has the
10 potential of washing off the property and going
11 somewhere?

12 A Yeah, yes.

13 Q And the purpose of the drainage is to make
14 sure that it flows into the swale, which was kept on
15 property --

16 MR. YUEN: He's making a statement. He's
17 not asking a question.

18 MR. YEE: Well, my "is it true part" was
19 going to come at the end of the sentence.

20 (Laughter)

21 Q Let me start with it in the beginning. Is
22 it true that it's important that you direct it away
23 from the stream so that those pollutants go into the
24 swale rather than the stream?

25 A I don't -- well, I think, you know, we

1 planning to put the landscape area between the
2 pavement and also around the property. So usually
3 landscape area is kinda buffered, kinda cut off the
4 pollutant flowing into the stream or the swale. Then
5 also, you know, you can see the construction site the
6 drain in they have, like, an orange thing. Have you
7 seen that?

8 Q I can't actually answer questions. But go
9 ahead referring to the orange thing.

10 A Those kind of thing is protecting the
11 hazardous material, whatever consider you are thinking
12 is gonna be intercepted.

13 Q And that's going to be intercepted more than
14 simply reducing the amount of water that drains off
15 the property?

16 A Yes.

17 Q And my understanding is industrial
18 wastewater cannot go directly into a private
19 wastewater treatment plant, is that true?

20 A True.

21 Q What has to happen first?

22 A Has to be treated on the site. But as I
23 said we can control the type of business going to the
24 site. So, you know, if they are using any kind of
25 hazardous material, we're not going to accept those

1 kinda tenants. So... you know, I... I....

2 that's...that's my answer.

3 Q Is there going to be a requirement in the
4 CC&R's for pretreatment before sending it into their
5 private wastewater treatment plant?

6 A Yes.

7 Q And you had mentioned something about
8 hazardous waste. Was there something in the CC&R's
9 that would prohibit hazardous waste?

10 A I don't know. It's so, you know it's so far
11 away. I mean, you know, we still have couple more
12 years before we can finalize this Project. I think we
13 will do.

14 Q So are you saying you could prevent
15 hazardous waste, but you don't yet know whether you're
16 going to prevent hazardous waste from entering the
17 site?

18 A We could.

19 Q But you don't whether you're going to, is
20 that right?

21 A We're going to --

22 MR. YUEN: I'm going to object. He's
23 already answered that question.

24 VICE CHAIR JUDGE: This is drainage too.
25 He's talking about CC&R's. I think there's probably

1 another witness that you can ask that question to
2 regarding the CC&R's.

3 MR. YEE: Okay. I only asked if he knew.
4 But I can move on. Just to be clear the only reason I
5 was asking is I thought I had heard him say two
6 different things. In my mind I needed to clarify.

7 Q In the slide you indicate that the CC&R's,
8 and that's your slide, will require the owners'
9 association to implement recycling and reuse of green
10 waste. Do you remember that?

11 A Yes.

12 Q How's that going to happen? What are they
13 going to do?

14 MR. YUEN: If you know.

15 A Just emphasize recycle the paper waste,
16 green waste, whatever the waste that we can, whatever
17 we can recycle we will recycle. That's what we are
18 saying.

19 Q (By Mr. Yee) And is that going to be a
20 particular -- what is going to be required by the
21 CC&R's, if you know?

22 A We don't know. I don't know.

23 Q You said something similar would be done
24 regarding photovoltaics and solar water heating. Do
25 you remember that?

1 A Yes.

2 Q Do you know how that's going to be acquired
3 or provided for?

4 A We are emphasizing to use those method. And
5 we can state that in the CC&R's whoever developer or
6 tenant, have, you know, tenant to be if possible use
7 those method.

8 Q What do you mean by the word "emphasize"?

9 A Recommend. Strongly recommend.

10 Q Is that then something less than "require"?

11 MR. YUEN: Again I'm going to object because
12 I think the State is inquiring as to the CC&R's. This
13 witness has already testified that he's not going to
14 prepare the CC&R's for the Project.

15 MR. YEE: Well, I guess the reason I'm
16 asking is that the witness has represented something
17 that's going to be in the CC&R's. So I think I'm
18 entitled to find out what his understanding is of his
19 testimony. So since he said it's going to be in the
20 CC&R's, I want to know what he thinks is going to be
21 in there. If he doesn't know he can just say he
22 doesn't know.

23 A I don't know.

24 Q Do you know whether something similar would
25 be done with respect to reducing water usage?

1 A Yes.

2 Q And will something be done with respect to
3 water usage?

4 A Yes.

5 Q What will be done with respect to water
6 usage?

7 A Well, use different type of flushing, you
8 know. And I don't think the Project gonna be using
9 that much water. I don't think the Project gonna have
10 or tenant -- we are not expecting any kind of tenant
11 that gonna use lots of water.

12 Q Is there going to be a requirement for
13 low-flow fixtures?

14 A Say again. Beg your pardon?

15 Q Do you know whether there's going to be a
16 requirement for low-flow fixtures?

17 A We can. We can require for that.

18 Q Do you know if that's going to be done?

19 A It's not my call.

20 Q Okay. Is there going to be enough water for
21 agricultural processing uses in the Petition Area?

22 A I don't know. I don't know.

23 Q You don't know because you don't know how
24 much water's available or you don't know how much
25 water's needed?

1 A We don't know how much water gonna be used.
2 I already assumed the potable water to be
3 22,550 gallons per day. And within that capacity if
4 that's enough, then, yes, it will be okay. But if not
5 we have to think other method.

6 Q The 22,000 gallons per day, is that the
7 amount available or the amount anticipated to be used?

8 A Anticipated to use.

9 Q So how did you come up with that calculation
10 if you don't know whether or not agricultural
11 processing --

12 A Board of Water Supply has a standard for
13 planning. Based on the area we can, we can use that
14 formula and came up to this number.

15 So if you have question I think you have to
16 ask the Board of Water Supply how they came up with
17 that number.

18 Q So you didn't look at the particular,
19 something particular like an agricultural processing
20 use?

21 A No. No.

22 Q Okay.

23 A We cannot -- I keep telling you this is
24 still very preliminary stage. We don't know what kind
25 of tenant. We may have all warehouses, we don't use

1 any water. You know, we don't know.

2 Q Okay. And that's fine. As long as I know
3 the limit of your knowledge that's fine. Do you know
4 whether -- was it part of your analysis regarding
5 wells on property?

6 A Well, it's not, we didn't -- we know there's
7 wells.

8 Q Do you know whether those wells are planned
9 for future use?

10 A I don't know. I don't think so.

11 Q Do you know whether or not there's an intent
12 to formally abandon the wells and close it up?

13 A We don't know. I don't know.

14 Q Do you know who would know that question?

15 A Owner of the property.

16 MR. YEE: Okay. Thank you. I have nothing
17 further. Thank you.

18 COMMISSIONER JUDGE: Ms. Townsend, do you
19 have any questions for this witness?

20 CROSS-EXAMINATION

21 BY MS. TOWNSEND:

22 Q Hi.

23 A Hello.

24 Q I recognize that this Project is in very
25 preliminary stages.

1 A Yes.

2 Q But we have some questions just about the
3 possible impact from the Project. So would it be
4 possible for you to answer with, like, a best guess,
5 like, based on your experience?

6 A Yes. Okay.

7 Q Okay. So I'll start where he left off with
8 the potable water. Okay. So the Board of Water
9 Supply standard, their matrix, is it specific to the
10 kind of proposed use on the property? Or is it
11 more -- what is it based on? Sorry.

12 A It's based on light industrial area.

13 Q The kinds of activities included in light
14 industrial area are those described?

15 A Yes.

16 Q Can you tell us what is expected?

17 A Well, we expect a light industrial area.
18 So, you know, it's not the heavy industrial like
19 factories or manufacturing, you know, heavy. We
20 expecting like warehouses, you know, maybe like a T
21 shirts manufacturing or printing company or something
22 like, it's very, um -- those type of business I'm
23 expecting.

24 Q Okay. Thank you. Included in the
25 Petitioner's exhibits is a list of prospective

1 tenants.

2 A Yes.

3 Q And 12 of them are truck companies?

4 A Yes.

5 Q I'm wondering if knowing that there is a
6 likelihood that there will be large truck --

7 A Yes.

8 Q -- usage of this industrial park, does that
9 at all change --

10 A No.

11 Q -- the analysis?

12 A No, no.

13 Q Okay. Moving to drainage. I have to
14 clarify. So that there's the swale that's towards the
15 back, the mountainside.

16 A Yes, yes.

17 Q And then there's the wastewater treatment
18 facility that's on the roadside.

19 A Yes.

20 Q Okay. So the swale, correct me if I'm
21 wrong, drains, collects the water coming down the
22 hill --

23 A Yes.

24 Q -- and goes out under the road and into the
25 stream. Is that right?

1 A No. The swale itself is, it's gonna be like
2 a detained, keep the water in the swale. Whatever the
3 overflow is going to the stream, the pipe. Yeah, yes.
4 So it's gonna like -- we're gonna create like a lake.
5 It's not really a lake. It's going to detain the
6 water in the swale.

7 Q Okay. So a temporary pond?

8 A Yeah, yes, yes.

9 Q Is the expectation that the water will
10 evaporate and it will be dry?

11 A No. It's going to be seep through the
12 ground type. I think the rocks formation on that
13 higher elevation, I think we have enough percolation
14 into the ground.

15 Q So the water will run off the mountain.

16 A Yeah.

17 Q And will kind of settle in the swale?

18 A Yes.

19 Q And whatever is more than the swale can
20 handle will overflow into a drain --

21 A Yes.

22 Q -- into the stream?

23 A Yes.

24 Q Okay. Then let's say there's a heavy rain?

25 A Yes.

1 Q And there's rain on the actual industrial,
2 the paved part of the industrial park.

3 A Yes.

4 Q And so will that water run off or does that
5 go into the wastewater treatment?

6 A No. It's going to be done off on the pipe
7 into the Ulehawa Stream eventually.

8 Q Okay. So is it the same pipe as the swale
9 or a different pipe?

10 A It's the same pipe.

11 Q The only water going into the wastewater
12 treatment facility is stuff that people down the
13 drain, that they use in the --

14 A Toilet.

15 Q -- toilet, sink. Wash the truck.

16 A Wash the truck is probably they're gonna
17 have, we gonna ask them to build their own recycling
18 system so the new water or no water going to any
19 places. You know, car washes is like a recycling,
20 they use recycling system.

21 Q Okay.

22 A They don't use always freshwater. They use
23 the used water. Otherwise you use too many, too much
24 water.

25 Q Okay. So just to clarify what you said. So

1 for the 12 large trucks companies, if they were going
2 to engage in truck washing --

3 A Yes.

4 Q -- they would have a special facility that
5 drive your truck in, shower?

6 A Well, we're not sure but we may be able to
7 have a centralized car wash area, truck wash area.
8 But that always have a recycling system. So we're not
9 using extra water for just washing down the truck.

10 Q Okay. Then it also catches the water from
11 the truck.

12 A Yes.

13 Q The dirty water.

14 A Yeah.

15 Q Okay. I recognize that it's extremely
16 preliminary. But there's a lot of the slides that you
17 present talk about "at full buildout."

18 A Yes.

19 Q I was wondering if you could describe what
20 your expectations are in your expert mind what full
21 buildout is.

22 A Probably 10 years from now I think.

23 Q Sorry. I meant like the structures. Like
24 how big? How wide?

25 A I don't know. I don't know. The full

1 development is like all the sub -- you know, the lot
2 is occupied. That's what I mean the full development.

3 Q So we don't know, like, how many stories,
4 for example?

5 A No, I don't know.

6 Q Are you familiar with the terminology -- let
7 me back up a little bit. Forgive my ignorance, but I
8 don't know. Does a civil engineer deal with
9 construction like the building construction?

10 A No.

11 Q No. Okay. I'm going to ask a question and
12 I realize it might be out of the scope, so just stop
13 me if you don't know.

14 Are you familiar with shrink/swell rates of
15 soil?

16 A Yes.

17 Q Are you familiar with the shrink/swell rate
18 of the soil on this property?

19 A Yes. We call Doby, Doby materials. It's
20 typical for this area.

21 Q Is there any concern about the ability to
22 construct a building on soil that as a high shrink/
23 swell rate?

24 A Yes. There is a way to do it. That's why
25 you need an engineer to do it. (Laughter).

1 Q Can you explain what it would take? Maybe
2 compare a little bit the difference between building a
3 regular building with no shrink/swell issue and one
4 that has.

5 A Okay. I don't know how's your house is
6 built. Usually if regular type soil you can build
7 like a slab on grade which mean you just pour the
8 concrete on the ground, then you build it over.

9 But this type of soil you usually dig out
10 maybe 2 feet, sometime 4 feet into the ground and put
11 the good material back into this hole and put it on,
12 then build on that. We can do that.

13 Q Oh.

14 A Other method we always keep the moisture
15 constant which mean you water that. So always the
16 factor of the shrinkage is constant there. So we can
17 do that way too. If this type, normally clay when
18 it's wet it's mishy and mushy. But when it's dry it's
19 all crack. Right? So if you want to build something
20 you can keep always wet by sprinkling the water. If
21 you can keep that same condition all the time then you
22 build over that. Then you don't have that shrinkage
23 factors.

24 Q So let me ask a few clarifying questions.
25 You build the structure and you try to keep it wet.

1 That means, like, you have, like, a little, like, pipe
2 underneath that's supplying water?

3 A No. When you build it over all the soil
4 underneath the slab is not going to be dry because
5 you're not contacting the air. So only area is around
6 it, right? So then you sprinkle the water around
7 that.

8 Q So I realize it's a preliminary Project
9 still. Have you decided which way you would do the
10 dig out or water?

11 A No. Don't know yet.

12 Q If you used the watering method --

13 A Yeah.

14 Q -- would that increase the amount of water
15 consumed by the Project?

16 A Might. But it's gonna be very small.

17 Q Can you give us an estimation?

18 A It's like, you know, irrigating the ground.
19 That always, I mean couple gallons per day, per yard,
20 you know. It's not that much.

21 Q Okay. I have a hypothetical. As previous
22 witnesses have testified, we're on a 2-year, the
23 second year of a drought. If it gets more extreme and
24 we are directed to no longer water our lawns, for
25 example, would there be a time where water shortages

1 in Hawai'i would limit your ability to water to
2 protect the shrink/swell?

3 A Well, if that's the case we're not going to
4 recommend that method. We recommend other method of
5 constructing the structure on the site.

6 Q Let's talk about the other method. So the
7 other method you dig down and you take out the dirt.

8 A Yeah.

9 Q And you put in different dirt you got from
10 somewhere else.

11 A Yes.

12 Q Okay. And where does the dirt that's taken
13 out go?

14 A Waimanalo Gulch.

15 Q Okay.

16 A Or landfill nearby.

17 Q Yeah, yeah. Okay. Take the dirt out. Has
18 the cost of that form of construction been factored
19 into the cost of this Project?

20 A Well, I'm working for the developer. I'm
21 not working for individual tenant. The individual
22 tenant gonna do that. We are just building the
23 infrastructure which mean road, underground utility,
24 those kind of thing we building.

25 But each tenant has their own people, own

1 contractor, own engineering to develop per site. So I
2 don't know what they, what they gonna do.

3 Q So now I get a little more clarification.
4 Thank you very much. So in the Petitioner's EIS
5 there's a reference to, I think it says owners would
6 expend \$29 million.

7 A Yes.

8 Q So that's the kind of costs that they would
9 be spending.

10 A Yes. But not the individual lot. We're
11 just talking about the road, the wastewater system,
12 swale, underground electrical system, potable water
13 system from Board of Water Supply. Those kinds of
14 things are under the 29 million but not the individual
15 lot.

16 Q So I'm a tenant. I just signed the deal.

17 A Yes.

18 Q And bought a 2-acre thing. I rolled in with
19 my truck and there's dirt.

20 A Yes.

21 Q Okay. So I have to put up the money to put
22 down my truck wash or my whatever, my T shirt
23 making...

24 A Yes. You have to make your own building.

25 Q Build my warehouse?

1 A Yes.

2 Q Can you, in your expert mind, estimate how
3 much an average tenant would expend to do that kind of
4 buildout?

5 A It would depend on the size of the lot, and,
6 you know, the size of warehouse, the size of the
7 parking area. That's all the factors. I don't know.

8 Q I understand there's a lot of factors. But
9 I'm looking for a ballpark because it will be
10 important in another part of the discussion. Just
11 standard, looks like they're 2-acre lots, right, kind
12 of standard?

13 MR. YUEN: I'm going to object. The witness
14 has already said he doesn't know and can't speculate
15 based on the individual needs of individual tenants.

16 MS. TOWNSEND: Is there someone else that
17 could testify to what the individual tenants would be?

18 VICE CHAIR JUDGE: I'm going to have to
19 agree with the Petitioner because who knows -- there's
20 24 lots. Like you said your truck guy coming in may
21 do nothing as opposed to someone else. The plans are
22 just hard to speculate on what someone would be doing,
23 24 different tenants.

24 MS. TOWNSEND: Thank you. Okay. I'm done.
25 Thank you.

1 VICE CHAIR JUDGE: Commissioners, any
2 questions for this witness? Commissioner Jencks.

3 COMMISSIONER JENCKS: Mr. Hida.

4 THE WITNESS: Yes.

5 COMMISSIONER JENCKS: How are you doing
6 today?

7 THE WITNESS: Fine, thank you.

8 COMMISSIONER JENCKS: Couple of questions.
9 I looked at the preliminary engineering report that
10 you did.

11 THE WITNESS: Yes.

12 COMMISSIONER JENCKS: And you're proposing a
13 private wastewater treatment facility for this
14 Project.

15 THE WITNESS: Yes.

16 COMMISSIONER JENCKS: And you're projecting
17 around 22,000 gallons a day at buildout of water that
18 needs to be treated.

19 THE WITNESS: Yes.

20 COMMISSIONER JENCKS: Which is, I think,
21 your average daily flow of domestic water supply.

22 THE WITNESS: Yes, that's what we're
23 looking, yes.

24 COMMISSIONER JENCKS: You want to reuse this
25 water on the property for irrigation purposes?

1 THE WITNESS: Yes.

2 COMMISSIONER JENCKS: I didn't see in your
3 report how you would address rainy day flows. The
4 Department of Health is probably going to require you
5 to deal with a situation where you have a rainy day,
6 even though it doesn't rain that often here, you're
7 going to have to deal with the water. And I'm just
8 curious. I didn't see an injection well. I didn't
9 see a tank. What's your plan?

10 THE WITNESS: Probably we're gonna use a
11 tank in that case.

12 COMMISSIONER JENCKS: A tank.

13 THE WITNESS: Yeah.

14 COMMISSIONER JENCKS: So you'd have to have
15 a tank of about 7-days supply to deal with -- that's
16 generally what they use 7-days -- flow into a 140,000
17 gallon tank.

18 THE WITNESS: Based on what? Storage for --

19 COMMISSIONER JENCKS: Yes.

20 THE WITNESS: -- I mean I don't think, well,
21 they're not going to rain 7 days out there.

22 COMMISSIONER JENCKS: That may very well be.
23 I'm just saying I didn't see any provision for that
24 in your report. So is that how you're going to deal
25 with it?

1 THE WITNESS: Yes, probably we're gonna
2 have a tank.

3 COMMISSIONER JENCKS: Okay. All right.
4 Next question. The drainage analyses you did -- when
5 I went out to the Project site, did the site tour, I
6 asked about the drainage, how you would deal with it.
7 I heard you say earlier that you're projecting no net
8 increase based upon the design storm.

9 THE WITNESS: Yes.

10 COMMISSIONER JENCKS: Okay. And I also -- I
11 think I also heard you say that a portion of the flows
12 would go into this swale that's on the mauka side of
13 the property.

14 THE WITNESS: Right.

15 COMMISSIONER JENCKS: When I was on the site
16 visit I thought I heard someone say that some of the
17 additional flow would be detained in underground
18 facilities. Is that still part of the plan?

19 THE WITNESS: No. No underground storage.

20 COMMISSIONER JENCKS: Okay. So what you're
21 saying then is all of the flow will go to the swale?

22 THE WITNESS: No, no. We have underground
23 piping, drainage piping system.

24 COMMISSIONER JENCKS: So you do have
25 underground.

1 THE WITNESS: Yes. Not the storage.

2 COMMISSIONER JENCKS: But a part of your
3 drainage plan is an underground system to detain
4 water?

5 THE WITNESS: No. No.

6 COMMISSIONER JENCKS: It's not.

7 THE WITNESS: The underground system is
8 strictly drainage system that flow from one point to
9 another.

10 COMMISSIONER JENCKS: To route water from
11 the roads, the driveways to the swale.

12 THE WITNESS: Yes.

13 COMMISSIONER JENCKS: So all of the drainage
14 water then that's created will go to the swale?

15 THE WITNESS: Yes.

16 COMMISSIONER JENCKS: And the swale will be
17 designed to detain that water?

18 THE WITNESS: The swale that we talking
19 about, the mauka one, is intercepting the water from
20 the hillside.

21 COMMISSIONER JENCKS: Okay.

22 THE WITNESS: So we are talking about net
23 increase. So the detention probably minus all the
24 water coming from the hillside which presently going
25 to that Ulehawa Stream gonna be minus. So whatever

1 the increase from the Project site we still gonna
2 drain into Ulehawa Stream so net is gonna be zero.
3 That's what I'm saying.

4 COMMISSIONER JENCKS: So no net increase to
5 the stream.

6 THE WITNESS: No. The City would not allow
7 a net increase. No increase.

8 COMMISSIONER JENCKS: Do they ever require a
9 net reduction?

10 THE WITNESS: They don't require net
11 reduction.

12 COMMISSIONER JENCKS: No net increase.

13 THE WITNESS: No net increase, yes.

14 COMMISSIONER JENCKS: My last question.

15 There is some communications in the file relating to
16 the Naval Access Road.

17 THE WITNESS: Yes.

18 COMMISSIONER JENCKS: And the possible need
19 to improve that road to gain a long-term agreement to
20 use the road. And I would suspect that those
21 improvements would probably require some additional
22 drainage facilities if the road is widened for the
23 length of the road.

24 Did you do any analyses on those types of
25 improvements?

1 THE WITNESS: No.

2 COMMISSIONER JENCKS: You did not.

3 THE WITNESS: No.

4 COMMISSIONER JENCKS: Thank you.

5 VICE CHAIR JUDGE: Commissioner Heller.

6 COMMISSIONER HELLER: Yes. I think in
7 response to another question you said that the
8 developer would have the option of writing the CC&R's
9 in such a way as to prevent uses that would involve
10 any kind of hazardous materials.

11 THE WITNESS: Yes.

12 COMMISSIONER HELLER: When you say that are
13 you using any particular definition of the term
14 "hazardous materials"?

15 THE WITNESS: No.

16 COMMISSIONER HELLER: So have you done any
17 kind of study or analysis of how much impact it would
18 have on the range of proposed users to have that kind
19 of exclusion of anybody who uses quote unquote
20 "hazardous materials"?

21 THE WITNESS: No.

22 COMMISSIONER HELLER: Okay. Thank you.

23 VICE CHAIR JUDGE: I have just a couple
24 follow up questions. I'm a bit confused. I've
25 listened to your testimony. And I understand that all

1 the rainwater coming down from the slope will go into
2 this hundred foot swale that you're going to create
3 along the mauka.

4 THE WITNESS: Yes.

5 VICE CHAIR JUDGE: Then there's two other
6 sources of wastewater that I see is that roadways, all
7 of those.

8 THE WITNESS: Yes.

9 VICE CHAIR JUDGE: Those you're saying there
10 will be underground pipes.

11 THE WITNESS: Yes.

12 VICE CHAIR JUDGE: And those underground
13 pipes will go to the stream? Or they'll go to the
14 swale?

15 THE WITNESS: No. It's going to -- it's
16 going to the stream.

17 VICE CHAIR JUDGE: So they'll be directed
18 straight to the stream. They won't be directed to the
19 swale.

20 THE WITNESS: No.

21 VICE CHAIR JUDGE: Okay. Will there be any
22 kind of filtering of that water before to goes to the
23 swale?

24 THE WITNESS: No.

25 VICE CHAIR JUDGE: It's just going to go

1 straight to the stream.

2 THE WITNESS: Yes.

3 VICE CHAIR JUDGE: The runoff from the
4 streets?

5 THE WITNESS: Yes.

6 VICE CHAIR JUDGE: Okay. And then the
7 wastewater generated within each individual lot,
8 whatever wastewater is generated in buildings that
9 will be piped and go to an on-site...

10 THE WITNESS: Treatment plant.

11 VICE CHAIR JUDGE: Treatment plant.

12 THE WITNESS: Yes.

13 VICE CHAIR JUDGE: And now the water, say
14 somebody doesn't build something and they still have
15 their -- they just pour a concrete slab and they start
16 doing a washing down trucks or cars or whatever, that
17 water that will just run off into the street and go
18 into the stream?

19 THE WITNESS: Well, if you don't prevent it
20 yes, it will.

21 VICE CHAIR JUDGE: Or will they be required
22 to capture --

23 THE WITNESS: No, we will be required. The
24 truck wash area is going to be required for recycling.
25 We have to contain the water within the site.

1 VICE CHAIR JUDGE: I guess I don't want to
2 continue calling it truck wash because it could be
3 anything. It could be anything any buyer who buys the
4 lot. Will they be required to keep their own
5 wastewater, deal with it, not letting it run off,
6 let's say, letting it run off into the streets then
7 directly into the swale?

8 Will there be anything that prevents them --
9 requires them, rather, to treat their own water or
10 send it to the treatment, send it somehow to the
11 treatment plant?

12 THE WITNESS: We can put that statement
13 "this water goes in the ocean" you know, just like the
14 one you see on the street. That's the best we can do.
15 People have to know that if you wash the truck the
16 water going to the drain and drain leads into the
17 Ulehawa Stream. Ulehawa Stream end up in the ocean.

18 People just gotta -- we just have to educate
19 them. It's gonna happen. So any other, like, as I
20 said truck washdown we have to tell them, "okay, if
21 you're going to have a truck wash area then we have to
22 contain the water within the site."

23 That's all we can do. You know, the
24 treating the water from the street and parking lot and
25 all that I mean if we have to treat all that water

1 it's, economically it's not feasible.

2 VICE CHAIR JUDGE: Okay.

3 THE WITNESS: And, you know, what we say the
4 wastewater is one that you use in flushing the toilet
5 or washdown, taking the shower, those kinds of water
6 is going to the wastewater system.

7 VICE CHAIR JUDGE: No, right. I understand
8 that. I guess I'm just in my head going 20 years down
9 the road or however long the road. Because as I
10 understand it this is a condominiumized project and
11 the developer is going to sell it once and then
12 they're gone. Then it's going to be up to that owner
13 who can then resell it or he can lease it.

14 So, you know, let's just say three
15 generations down they're not going to know about these
16 discussions. So where is it going to be that the end
17 user knows what the restrictions are and what he can
18 and cannot do, and how the water is treated and things
19 like that?

20 So I guess that comes to CC&R's or things
21 like that. But that's just the basis behind my
22 questioning because I understand. I guess my concern
23 is, you know, you don't want somebody doing bad things
24 on a lot that now runs into a drain that goes straight
25 to the ocean. We can educate people all we want. I

1 understand that. But still some people are going to
2 go "Boo, who cares about fish." And off it goes into
3 the stream.

4 THE WITNESS: So I think the association
5 have to be really strict on this kind of issues I
6 think.

7 VICE CHAIR JUDGE: So those are issues that
8 you think should go into the CC&R's.

9 THE WITNESS: Yes. Definitely it will.

10 VICE CHAIR JUDGE: Okay. Thank you.

11 COMMISSIONER TEVES: I have a question.

12 VICE CHAIR JUDGE: Commissioner Teves.

13 COMMISSIONER TEVES: Hi, Mr. Hida. You're
14 probably more familiar with industrial properties than
15 I am, although I do own a piece of industrial
16 property. I built my property 15 years ago. And at
17 that time the law said the only water I can discharge
18 on the street from my driveway was rainwater.
19 Anything else I have to handle myself.

20 THE WITNESS: Yeah.

21 COMMISSIONER TEVES: Has the law changed
22 since then?

23 THE WITNESS: No.

24 COMMISSIONER TEVES: So any water generated
25 besides rainwater has to be treated, by law.

1 THE WITNESS: Yes, right.

2 COMMISSIONER TEVES: Thank you.

3 VICE CHAIR JUDGE: I'm just curious after
4 that follow up treatment who treats that water?

5 THE WITNESS: Owner.

6 VICE CHAIR JUDGE: Is that the owner's
7 responsibility to treat the water?

8 COMMISSIONER TEVES: Yes.

9 THE WITNESS: Yes.

10 COMMISSIONER TEVES: And they'll come after
11 you.

12 VICE CHAIR JUDGE: And that's a State or a
13 City requirement?

14 COMMISSIONER TEVES: My neighbor was washing
15 equipment and they came and made him install a system
16 to recycle that water.

17 COMMISSIONER JUDGE: Who's "they"? I'm just
18 curious.

19 COMMISSIONER TEVES: Board of Health I
20 think.

21 THE WITNESS: Department of Health, yes.

22 VICE CHAIR JUDGE: Department of Health.

23 COMMISSIONER TEVES: Yes.

24 VICE CHAIR JUDGE: So it's a Department of
25 Health requirement.

1 COMMISSIONER TEVES: You only can discharge
2 rainwater off of your property.

3 VICE CHAIR JUDGE: Okay. All right. Thank
4 you, Commissioner Teves for that enlightening...
5 Commissioner Jencks.

6 COMMISSIONER JENCKS: Just one more
7 question. So as I understand this conversation the
8 water that's collected by the onsite drainage
9 inlets --

10 THE WITNESS: Yes.

11 COMMISSIONER JENCKS: -- in the parking
12 lots, on the roadways would go to the stream?

13 THE WITNESS: It's eventually it's ended up
14 in the stream, yes.

15 COMMISSIONER JENCKS: Would it be possible
16 given the size of the drainage swale on the mauka side
17 to put that water in that swale?

18 THE WITNESS: In that case we have to pump
19 it because swale is higher elevation than the stream.

20 COMMISSIONER JENCKS: That's a good point.
21 Okay. I got it. Thank you.

22 VICE CHAIR JUDGE: Any re--

23 MR. YUEN: No redirect. You covered it all.
24 Thank you, Mr. Hida. We appreciate your testimony
25 today.

1 THE WITNESS: Thank you very much.

2 MR. YUEN: Perhaps it would be appropriate
3 to take a short break before I call Arick Yanagihara.

4 VICE CHAIR JUDGE: Sounds good to us. How
5 about five minutes? Ten minutes? Five minutes.

6 (Recess was held.)

7 VICE CHAIR JUDGE: (Gavel) We'll go back on
8 the record. And I'd just like to remind everybody we
9 plan to break around 3:30 today if possible. Actually
10 we have to because we have Commissioners that have
11 planes to catch.

12 MR. YUEN: Thank you. My next witness is
13 Arick B. Yanagihara.

14 ARICK YANAGIHARA
15 being first duly sworn to tell the truth, was examined
16 and testified as follows:

17 THE WITNESS: I do.

18 DIRECT EXAMINATION

19 BY MR. YUEN:

20 Q Please state your name and address for the
21 record.

22 A My name is Arick Yanagihara. My business
23 address is 1001 Bishop Street, American Savings Bank
24 Tower, Suite 2690, Honolulu, 96813.

25 Q Please describe your position with Tropic

1 Land and your responsibilities with respect to the
2 Nanakuli Community Baseyard Project.

3 A My title is I'm designated as the project
4 manager. My responsibility is I'm responsible for
5 overseeing and coordinating the entitlement process
6 for the Project and the subsequent development of the
7 Project.

8 Q I'd first like you to describe the location
9 of the Nanakuli Community Baseyard. And you can use
10 what's been marked as map No. 1 that's immediately
11 behind you.

12 A The primary site we're talking about is
13 96 acres which is part of the 236-acre parcel that's
14 identified as tax map key 8-7-009 parcel 2. Like I
15 mentioned 96 acres of the 236 acres will be designated
16 as a light industrial park.

17 Tropic Land also owns two pieces of property
18 right across Lualualei Naval Road that consist of one,
19 21.38 acres designated tax map key parcel 8-7-010
20 parcel 6 and 8-7-010 parcel 10. That's approximately
21 2.75 acres. These two parcels are currently zoned P2
22 as part of the original golf course development and
23 they were originally Ag-2.

24 The properties are located on Lualualei
25 Naval Base Access Road, approximately two and-a-half

1 miles from Farrington Highway. And along the
2 Lualualei Naval Road we have some other designations:
3 Pacific Mall at the entrance of the intersection
4 followed by the PVT construction debris landfill.
5 Further up the road you have the Pineridge Farm which
6 is a designated 25-acre I-2 industrial zoned property.

7 Across from that is the Leeward land
8 properties that was originally designated the
9 so-called Nanakuli B Landfill that the City has made a
10 move to create a community park with. And we are
11 located right at the main base to the naval base. And
12 the property is contiguous to the naval base.

13 Q Could you, while you are on that map, just
14 point out the location of the emergency access road
15 that you've placed between Lualualei Naval Road and
16 Hakimo Road?

17 A Probably this map is better. This is the
18 Project site. This is Hakimo. We have an easement
19 across one of our properties that I believe, what's
20 his name, Mr. Okaneku mentioned as a gated road.

21 Q Right.

22 A Through some of the independent truckers we
23 improved the road and we made it available to the city
24 and county and the community for emergency access
25 purposes, if it's needed will access between Lualualei

1 Road and Hakimo Road.

2 MR. YUEN: Let the record reflect that
3 Mr. Yanagihara has referred to figure 3, which is the
4 site plan of the property that is contained in
5 Exhibit 13.

6 Q Going back to figure 3, Mr. Yanagihara,
7 could you please describe the Project site plan.

8 A As I mentioned the proposed Project will
9 consist of 96 acres designed as a light industrial
10 park I-1, which I'll describe later. The remaining
11 acreages will remain in conservation and preservation
12 zone. We will have approximately 41 industrial lots,
13 approximately 2 to 3 acres in size.

14 And right here people talked about Ulehawa
15 Stream. We'll have a setback there that will be not
16 part of the primary Project. We also have mentioned
17 in the testimony yesterday, incubator site. We have
18 two lots designated for the proposed incubator
19 facility located here. That's approximately
20 three acres in size.

21 The Project will be planned as a gated and
22 secured facility. The price range, we want to make it
23 affordable to the Leeward community. So we're
24 targeting hopefully a price around under twenty
25 dollars a square foot.

1 Q Could you also point out the location of the
2 hundred feet-wide swale that Mr. Higa had described?

3 A Right along here throughout the length of
4 the Project there is the hundred foot-wide rock form
5 mitigation barrier and drainage swale.

6 Q And that swale is located between the
7 Project and the mountain or the pali above the
8 Project, is that correct?

9 A Correct, yes.

10 Q And the price range that you just mentioned
11 of under twenty dollars a square foot, do you intend
12 to offer that or attempt to offer that price range to
13 Nanakuli and Wai'anae, Leeward O'ahu businesses? Or
14 is that a general range you're talking about?

15 A Well, ultimately we're gonna kind of trying
16 to balance off the Project that's affordable to the
17 community who needs the industrial park versus all the
18 bells and whistles that people want just to build into
19 the park.

20 We want to make the Project affordable. But
21 the more constraints, requirements that are put on the
22 Project all involve cost. Time involves cost. But
23 based on our preliminary estimates we hope to get it
24 under twenty dollars a square foot.

25 Q Thank you. Mr. Yanagihara could you please

1 describe the difference between the I-1 light
2 industrial zoning that you proposed for the Project
3 and the I-2 intensive industrial zoning that you
4 pointed is applicable to the Pineridge Farms project.

5 A I think this is a very, very important
6 designation, distinction to be made because everyone's
7 talking about industrial. The Project we are going
8 for is I-1. The City described it as a limited
9 industrial project versus I-2 which is intensive.
10 There aren't very many I-1 projects on this island.
11 The predominant industrial zoning on this island is
12 I-2, for example, which is Campbell Industrial Park.

13 To quote the City's land use ordinance it
14 describes an I-1 as quote "A limited industrial
15 district to provide areas for some of the industrial
16 employment and service needs of rural and suburban
17 communities. It is intended to accommodate light
18 manufacturing including handcrafted goods, high
19 technology industries such as telecommunication,
20 computer parts, manufacturing, research and
21 development. Uses in this district are limited to
22 those which have few environmental impacts and those
23 which complement the development skill of the
24 community they serve." Unquote.

25 This is directly from the City's land use

1 ordinance.

2 Now, some of the proposed uses we envision
3 are trucking baseyard operations, wholesaler
4 distributors, light manufactures, high tech companies,
5 motion picture and television production, equipment
6 sales and rentals, repair establishments and
7 vocational and trade schools.

8 Among the key users we hope to encourage
9 because everyone's talked about the conversion of ag
10 properties to urban, what we have been told in our
11 discussions with the Leeward community that we don't
12 have a facility in the Leeward community that
13 facilitates ag production.

14 Among the uses allowed in the I-1 are
15 agricultural processing business; storage and
16 collection, distribution of ag products for wholesale
17 and retail markets; sales and service of machinery in
18 ag production, and storage and sale of seed,
19 fertilizer and other products essential to ag
20 production.

21 We are trying to encourage -- we will try
22 and encourage businesses within the industries to be
23 part of this light industrial park.

24 I would also like to point out and emphasize
25 that in accordance with the master use table that we

1 described previously, waste disposal and processing is
2 not an allowable use in the I-1 district. Neither is
3 retail establishments.

4 What we are trying to do is also, like I
5 mentioned, work with Joe Lapalilo and his incubator
6 group to develop an incubator facility which is
7 designated as a digital media center for movie and
8 television production.

9 Q What's your estimate of the Project cost for
10 this Project?

11 A Mr. Hida mentioned that our Project cost at
12 this time, which is very preliminary roughly, we're
13 talking about the hard costs approximately
14 \$29 million. The soft costs, engineering, interest
15 cost, interest carried probably another \$5 to
16 \$7 million.

17 Q How did Tropic Land finance acquisition of
18 the Project?

19 A Tropic Land originally purchased the
20 property through a combination of bank financing and
21 members' equity.

22 Q Do you intend to use the same combination of
23 bank financing and members' equity to finance
24 construction of the infrastructure?

25 A Most definitely. You know, not many people

1 have 30 something million dollars sitting around in
2 their pockets. So we do intend to use conventional
3 bank financing or construction financing to develop
4 this Project.

5 Q Do Tropic's members have sufficient assets
6 an development expertise to --

7 A Yes they do.

8 Q -- to obtain the financing.

9 A Yes, they do. And that has been supported
10 in the EIS.

11 Q Now, Mr. Yanagihara, although you
12 contemplate developing the property in phases, will
13 Tropic Land complete the development of the property
14 within 10 years of the Land Use Commission approval?

15 A Tropic Land will -- and would like to
16 emphasize-- will develop Nanakuli Community Baseyard
17 within a 10-year period. What we intend to sell and
18 Mr. Hida mentioned, is rough graded finished lots with
19 all the offsite improvements in. And we expect those
20 lots to be completed within 10 years.

21 We also expect the market demand will be
22 there to allow for sufficient absorption of the
23 Project well within the 10-year period.

24 Q Now, when did Tropic Land purchase the
25 property?

1 A Tropic Land originally closed the
2 acquisition of the property in December 2005. They
3 bought it from a company call Kabushiki Kaisha Oban,
4 which is a Japanese corporation that originally was
5 designated as the developer and the golf course for
6 this Project.

7 I believe in September 1996 they obtained a
8 unilateral agreement from the City and County which
9 changed the zoning from Ag-2 to P-2 to allow the use
10 of -- to allow the development of the golf course on
11 the property.

12 Q What did Tropic originally contemplate doing
13 with the property?

14 A Well, when the owners or members originally
15 acquired the property they looked at some various
16 alternatives as to what uses they could do to get a
17 return on their investments. Among the initial uses
18 was an ag subdivision.

19 However, upon further research it was
20 determined there was neither a market demand nor were
21 the soils conducive to development of an ag
22 subdivision on the property.

23 Q Did Tropic consult with the City Department
24 of Planning and Permitting as to what options might be
25 available to Tropic for the property?

1 A Yeah. I was originally brought on as a
2 consultant with Tropic in 2007. At that point we
3 started initial discussions with the City Department
4 of Planning and Permitting. They talked about -- we
5 talked about proposed uses for the Project.

6 However, their primary recommendation for us
7 is that we needed to go out to the community, get
8 their input, and get their support for any type of
9 project we wanted to develop.

10 We therefore started discussions with
11 community's leaders. And commencing in September 2007
12 we made an initial presentation to the full Wai'anae
13 Neighborhood Board. At that meeting we just presented
14 that we have a property; we're looking at development
15 options and we need input from the community.

16 This then followed by two separate meetings
17 with their planning and zoning committee. And we
18 asked them, "What do you want to see on this property?
19 Give us some ideas, give us some suggestions." The
20 predominant response that we got was, "We need a light
21 industrial park or project for the community to
22 generate jobs."

23 Q Please describe Tropic's support from the
24 Nanakuli Maili Neighborhood Board.

25 A As I mentioned we started the process with

1 the Wai'anāe Neighborhood Board, and their planning
2 and zoning committee. We went back to their full
3 board in December with very, very preliminary plans
4 for a proposed light industrial park.

5 I believe at that time they referred us to
6 what they call a PIG report, Permitted Interactive
7 Group for us to work with group, developing more
8 specific details about this Project. This was again
9 in December 2008.

10 We then, however, were told that there, it
11 was in the process of being formed a separate Nanakuli
12 Maili Neighborhood Board. And because our Project was
13 located in their jurisdiction we were then required to
14 start working with the Nanakuli Maili Neighborhood
15 Board, which we did so in May 2008.

16 We made an initial presentation a little
17 more Project details in May. We followed it up with a
18 subsequent meeting with the planning and zoning
19 committee.

20 And in July 2008 we had a formal fullout
21 meeting with the Nanakuli Neighborhood Board. And
22 they passed a resolution unanimously signed by all
23 nine members fully supporting the development of a
24 light industrial park in Nanakuli.

25 Now, one of the things that evolved from the

1 approval of the Nanakuli Maili Board was the fact that
2 we made 10 promises to the community in terms of how
3 we would proceed with the development of a light
4 industrial park.

5 Q I've blown up as a slide what has been
6 marked as Petitioner's Exhibit 7, which is the
7 resolution in support by Nanakuli Neighborhood Board
8 No. 36. And I'll turn to the Exhibit A in order that
9 you may describe to the Commission the agreements you
10 reached with Nanakuli Maili Neighborhood Board.

11 A Well, among the key promises that we made to
12 the members of the Nanakuli Maili Neighborhood Board
13 and the Nanakuli community, that there will be no
14 landfill, golf course, housing, nightclubs, alcohol
15 establishments, strip bars, pornographic stores, will
16 be allowed on the Project.

17 We will be sensitive to cultural practices
18 and will work with Leeward cultural monitors.

19 We will establish a \$1 million community
20 benefit program derived from sales proceeds from the
21 Project that will benefit the Nanakuli and Maili
22 communities.

23 We will seek community involvement for a
24 permanent project name and theme.

25 We will also apply for Enterprise Zone

1 designation for the Project. I would like to expand
2 on the Enterprise Zone thing. I think it started in
3 the year 2000 where certain areas of the Leeward
4 community were designated as an Enterprise Zone. We
5 don't have an Enterprise Zone map in front of us.

6 But if you look at the current Enterprise
7 Zone possibly 80 percent of the Leeward community is
8 designated as Enterprise Zone.

9 However, since the year 2000 according to
10 what we were told, there has not been one business
11 that has applied for and obtained a designation as an
12 Enterprise Zone company. So we asked the DBEDT why?
13 Because there really isn't space or areas within the
14 community that will allow for development of
15 Enterprise Zone companies.

16 So hence the promise to the community that
17 we will apply for this Project upon zoning for also a
18 concurrent designation as an Enterprise Zone.

19 Q Finally, the name of the Project is the
20 Nanakuli Community Baseyard. Notwithstanding that the
21 Project is not located in the Nanakuli ahupua'a, can
22 you explain what the last condition is regarding the
23 name of the Project?

24 A Well, the name of the Project was derived
25 from members of the Nanakuli Neighborhood Board. And

1 we were told by several members of the community that
2 "Hey, your Project is not in Nanakuli. It's in
3 Lualualei." So we were kinda caught between a rock
4 and a hard place in terms of how we were going to name
5 the Project.

6 Just for temporary purposes for
7 identification we agreed that we will call it the
8 Nanakuli Community Baseyard. The Nanakuli Board still
9 wants us to keep the name "Nanakuli" in it. So
10 ultimately it's going to be up to the community and
11 the Neighborhood Board to determine what will be the
12 proper name for the Project.

13 Q Next, could you describe to the Commission
14 what Tropic has done with the property physically
15 since the acquisition?

16 A At the initial outset when Tropic first
17 purchased the property it identified several potential
18 problems, one of which is wildfires. The area is
19 notorious for a series of wildfires that have come and
20 gone throughout that Lualualei area.

21 So in April we applied for and obtained a
22 grubbing permit for approximately 60 acres of the
23 property primarily as a fire mitigation exercise and
24 to create a firebreak for the Project.

25 In the course of applying for that 60-acre

1 grubbing permit, one, we got approval from SHPD, the
2 State Historic Preservation Division, due to the fact
3 that the 60 acres will not affect any archaeological
4 sites.

5 We also had to apply to get approval from
6 the State Health Department for any drainage issues.
7 I think they call it the NPDES permit.

8 And one of the things that we also did was
9 the fact that we tried to build along -- excuse me.
10 Let me backtrack a little. Do you have the map of the
11 Project?

12 What we have here along the Project is we
13 have a 30-foot buffer setback along Lualualei, the
14 Naval Road and also a 15-foot setback from the Navy.
15 What we started to do there is to plan a, what we call
16 a linear tree farm or a landscaping buffer.

17 Approximately three, four years ago the site
18 manager planted palm trees. They were irrigated with
19 drip irrigation, fertilized. These palm trees are
20 built along the so-called prime or B lands of this
21 Project.

22 After three or four years -- and you were
23 all at the site -- these palm trees are no taller than
24 4 feet. That's a factor of land, the drainage. And
25 I'm not an ag expert. But I know palm trees are very

1 easy to grow.

2 The fact that after three or four years
3 they're only three to four feet in height tells you
4 something about the harsh conditions for growing crops
5 on this land.

6 Now, there's also kiawe trees behind there.
7 You look at all the kiawe trees. They're all stunted.
8 There's a reason why the kiawe trees are stunted.
9 Again because of the harsh condition that's conducive
10 to this area.

11 Q Thank you. Tropic has been accused of
12 harvesting pohaku or taking rocks from, rocks and
13 stones from the property and selling it for use
14 elsewhere throughout the island.

15 Can you describe what really happened with
16 regard to pohaku on the property?

17 A What had happened through our previous site
18 manager Herbert Naoni, he was asked by Billy Fields
19 for the donation of rock for several projects that
20 Mr. Fields was working on. Among these were the
21 burial vault, which is at the entrance to the
22 Kamehameha Schools.

23 That is the picture of the burial vault at
24 the Wal-Mart Ke'eaumoku site. That particular vault
25 is at the corner of Ke'eaumoku and Makaloa Streets.

1 And we also have the Princess Pauahi statue
2 at the Royal Hawaiian Shopping Center. Now, that's
3 the Princess Pauahi statue for which the pohaku was
4 used at the Royal Hawaiian Shopping Center. Mr. Billy
5 Fields is a noted and highly recognized. Awarded
6 cultural practitioner. And he personally selected the
7 stones. And he supervised the removal of the stones.
8 And he also participated in asking permission of the
9 stones to be used.

10 Apparently I think he uses a so-called dry
11 stack technique of building burial vaults. And the
12 one at Kamehameha Schools was done in conjunction with
13 educating the students there about his cultural
14 techniques of building burial vaults.

15 At the time the rocks were used they were
16 also blessed by the Reverend Kaupu. And everything
17 was done with the proper protocol. And he also
18 blessed the personnel who assisted in the removal of
19 the stones. So we didn't sell the stones. We were
20 asked to donate it, which we did.

21 Q I'm just looking for the exhibit number of
22 the photographs. I believe they are -- I'll have to
23 come back to this.

24 Mr. Yanagihara, at the hearing on the
25 acceptance of Tropic Land's EIS, Tropic Land was also

1 accused of desecrating archaeological and cultural
2 sites on the Petition Area. Can you explain what
3 happened?

4 A I had previously sent to the Commission a
5 letter dated August 3rd, 2008 which somewhat explained
6 our action. At the hearing where we were accused of
7 desecrating so called he'iaus or Hawaiian platforms,
8 it came as kind of a surprise to us.

9 As Mr. Shideler previously noted, we had
10 gotten in a prior archaeological inventory survey that
11 was approved by the SHPD. To our knowledge -- and
12 previously also obtained SHPD approval when we
13 obtained the grubbing permit for the 60 acres.

14 So it was kind of a surprise to us that we
15 were accused of desecrating sacred sites on the
16 property.

17 Our attorney, Mr. Yuen, did some further
18 investigation with SHPD. And they reported to him
19 that there was an actual site visit with the SHPD and
20 DOCARE officers several days before the hearing. The
21 reports of that findings I think were distributed to
22 you and we were found that there was no desecration of
23 any archaeological or cultural sites.

24 The rocks that were supposedly designated as
25 a he'iau of what I think David Shideler mentioned as a

1 talus, which is an accumulation of rocks falling down
2 the mountainside over the centuries which is a common
3 occurrence throughout the whole Lualualei Valley.

4 Q The SHPD report and letter are listed as
5 Exhibit 19. And the photographs regarding the pohaku
6 are Exhibit 20.

7 Next I'd like you to describe the community
8 interest that you received in purchasing units at the
9 Nanakuli Community Baseyard. And a summary of this
10 information is on Petitioner's Exhibit 17.

11 A As I pointed out previously in accordance
12 with the allowable uses in master use table as an I-1
13 light industrial park, we went out to the community
14 and we said, "We're going to develop this light
15 industrial park. Is anyone interested in either
16 acquiring or leasing sites on this property"?

17 At this point we're not allowed to take any
18 binding reservation or sales contracts. However, what
19 we have obtained is a list of around 22 prospective
20 buyers who had expressed an interest in the property.

21 Our intent is to go out first to the Leeward
22 community and give them the first community to buy
23 lots within this Project.

24 Among these interested buyers are Tampos
25 Trucking. Alii's employees are all from the Wai'anae

1 Coast. There is a company called D2 Welding. He's
2 running his business from his home in Nanakuli. And
3 he needs a place in the area. Hawaiian Steam,
4 Mr. Benson Lee, he has over 30 employees; 90 percent
5 of his employees live in the Wai'anae zip code.

6 There's a company called Trashman. He's
7 located on the Kalaeloa Hawaiian Home Lands. He wants
8 to relocate to Nanakuli because all of his business is
9 in the Nanakuli/Wai'anae area.

10 Aiohi Brothers. Mark Aiohi has 25 trucks.
11 And all his workers and drivers live on the coast.
12 Right now he's running his business out of his home on
13 Hakimo Road.

14 There's a company called Kane, Inc. Kane
15 has a trucking business running out of his dad's home.
16 And he needs a site to put his truck on the Leeward
17 Coast.

18 All of the 22 or so parties that are
19 interested either have businesses or they live on the
20 Leeward Coast or they have employees who reside on the
21 Leeward Coast.

22 And that's why they want to have a site
23 close to home where their employees don't have to make
24 that long commute either to town or to Campbell
25 Industrial Park or wherever the job sites are.

1 We have been in this process for three or
2 four years going through this entitlement process.
3 And I've been going back and forth driving to and from
4 Wai'anae.

5 I really give those people a lot of credit
6 for what they have to put up going back and forth and
7 fighting that traffic every day morning, noon and
8 night.

9 Q Tropic Land has been accused of using its
10 Petition Area for a baseyard and for truck storage.
11 Again, can you please explain to the Commission what
12 happened.

13 A Unfortunately, we were cited. It's no
14 secret that the Wai'anae Coast is a home, as has been
15 mentioned yesterday, to a lot of independent truckers.
16 Many of these truckers really have no place to legally
17 park their trucks. And we were asked from time to
18 time initially by these tuckers if they could use our
19 property to store their trucks on a temporary basis.

20 We allowed several of these companies to
21 park their trucks there in return for which they
22 provided services to us. A lot of these were
23 community services. I'm not sure if -- lot of times
24 if you go along Lualualei Road it's used as a dumping
25 ground for many of the residents. There's

1 refrigerators, there's mattresses, there's furniture,
2 there's old trucks. The independent truckers assisted
3 us and the Navy in clearing up Lualualei Naval Road.

4 They also put in the temporary road between
5 Lualualei Naval Road and Hakimo Road at their cost in
6 return for allowing us to put their trucks on the
7 site.

8 We have also had incidents of vandalism. So
9 having someone on site prevented vandalism. Probably
10 a little over a year ago probably one fourth of our
11 chain-link fence was stolen every night. It's a fact
12 of life there. Having someone on site was a means of
13 securing the site.

14 Unfortunately, yeah there was a baseyard
15 there. The truckers were parking there. The truckers
16 themselves received a notice of violation which was
17 the result of a complaint made or complaints made to
18 the City and County Department of Planning and
19 Permitting. Since then all of the trucks have been
20 removed and the violations have been cleared.

21 Q What about the grading and stockpiling
22 violations?

23 A We did previously apply for and we obtained
24 a stockpiling permit to stockpile some excess or some
25 additional grading material. Unfortunately the same

1 independent truckers who did the stockpiling had the
2 stockpile 50 yards from where it should have been.

3 So the violation was made not because we did
4 not have a stockpiling permit but it was because the
5 stockpiling was in the wrong place.

6 Now, the grading permit. About a year and a
7 half ago there was a huge wildfire that occurred on
8 the neighboring Leeward land site. At that time
9 Honolulu Fire Department came to our site and they
10 used our site as a staging area to help fight the
11 wildfire. They recommended to our site manager that
12 the back portion of our property be graded, cleared so
13 their fire trucks could go up to fight fires. Out of
14 ignorance he did some grading.

15 Again, because a complaint was filed we were
16 cited for illegal grading. Right now we are in the
17 process of restoring that area back to where it was,
18 notwithstanding the fact that we can't access for fire
19 mitigation purposes. But it will be restored. And I
20 believe the inspector has gone out or is going out
21 from time to time to monitor our work. Once that work
22 is done then they said the grading violation will be
23 removed.

24 Q Please describe the status of Tropic Land's
25 discussions with the Navy to obtain access over

1 Lualualei Naval Road.

2 A Originally when the concept of this light
3 industrial park was developed, which was in 2007, I
4 had contacted my contact at the City Department of
5 Transportation Services. They told us "No problem. We
6 have an agreement with the Navy for the city to take
7 over Lualualei Road.

8 It was just a matter of time. The previous
9 administration had approved it. The documents were
10 drafted and we're just waiting for review by the
11 attorneys to be signed."

12 We therefore went ahead with the planning
13 process for our Project. Right around spring, March
14 2008 we were told "time out." The current
15 administration had decided that they would no longer
16 pursue obtaining conveyance of the Lualualei Naval
17 Road. That forced us to then start negotiations with
18 the U.S. Navy for a long-term easement for the road.

19 We did some further research and we found
20 that all the other -- no one else had actual legal
21 access supposedly to Lualualei Naval Road.

22 All the other users, Pacific Mall, PVT,
23 Pineridge supposedly have alternately uses, legal
24 access to their properties.

25 What these people had, however, were

1 renewable license agreement that had been going on for
2 years and years. The Navy offered us an initial
3 5-year license agreement which we are in the process
4 of consummating. But we also asked them for a
5 long-term easement to maintain Lualualei Naval Road.

6 As part of our taking over the easement we
7 told the Navy we will maintain the road. We will
8 manage the road and we are securing the road. As I
9 mentioned the road is a dumping ground.

10 But what a lot of people don't know and our
11 project manager has told us, a lot of times when the
12 Navy base closes down after 6, people have parties on
13 the road.

14 There's drinking, there's drag racing.
15 There really is no security along the road. If you
16 just drive along the road you can see the skid marks
17 of people drag racing.

18 That's why I offered to the Navy, "We will
19 manage the road. We will maintain the road at our
20 expense and you can continue to use it."

21 What they told us is -- and we signed a
22 letter of interest and intent -- "You form a user
23 group of the primary users of the road. These include
24 Pacific Mall, PVT, Pineridge, and Leeward Land. And
25 we will work on a long-term easement for you to manage

1 and maintain the road."

2 Now, the people we're dealing with at local
3 NAFAC, they told us that all the centralized property
4 decisions for the Navy are now based in Washington.
5 We probably will have to wait over a year.

6 Several months ago we did get a formal
7 letter from them back giving them the green light to
8 consummate a long-terms easement with us and the user
9 group for the road.

10 There are several terms and conditions
11 contained in that agreement that we are still
12 negotiating with the Navy.

13 Q The Office of Planning is recommending that
14 the Land Use Commission require Tropic Land to pay the
15 full cost of all the intersection improvements
16 recommended by Mr. Okaneku for that intersection.

17 What is Tropic's position regarding the
18 State's recommendation?

19 A As Mr. Okaneku said we are willing to pay
20 our fair-share for the improvements. We are not the
21 primary user of traffic on the road. There's other
22 users. When I looked at it the majority of the
23 traffic comes from residents going to and from Pacific
24 Mall.

25 I mean those are the majority of the cars

1 turning left and majority of the cars turning right.
2 Of course there's also the PVT construction debris
3 landfill heavy trucks there.

4 Now, we did some further research. So from
5 Au Young Road all the way up to Wai'anae every single
6 road that has a stop light has a left-turn lane put in
7 by the state.

8 Through Wai'anae Town there are several key
9 roads that don't have a left-turn lane. However,
10 these are constrained by the lack of space on both
11 sides of Farrington Highway that goes to Wai'anae
12 Town.

13 After Wai'anae Town all the way up all of
14 the street lights have left-turn lanes. For some
15 reason they stopped at Au Young Road. And now they
16 propose to continue by Haleakala and Hele -- I'm not
17 sure Nanakuli Avenue. But they're bypassing Lualualei
18 Naval Road and two or three other roads.

19 We don't have a sound answer as to why they
20 are bypassing these roads with stoplights.

21 Q The Office of Planning is also suggesting
22 that Tropic Land dedicate to agricultural use an area
23 of land outside the Petition Area classified with a B
24 overall productivity rating with the Land Study Bureau
25 equivalent in area to the B productivity rated land in

1 the Petition Area.

2 What is your position with regard to this
3 recommendation?

4 A Well, supposedly that area of B zoned, I
5 mean B designated land is 40 acres. We don't have an
6 alternate site that has 40 acres of B zoned land.

7 We do have, however, as I mentioned have
8 approximately 24 acres located on the other side of
9 Lualualei Naval Road. These properties originally
10 were Ag-2.

11 And when and if we get the I-1 zoning we
12 intend to revert these properties back to Ag-2 and
13 allow, put them back into active ag production. We
14 don't have specific plans as to how we expect to do
15 this. But it is our intent to put it back to Ag-2.

16 I believe we got an offer from a lady who
17 want to graze some horses on one and wants to purchase
18 a 10-acre parcel for putting her horses there. I
19 think that right now she's trying to get some
20 clarification of the zoning on whether or not she can
21 graze horses on the property.

22 MR. YUEN: No further questions of this
23 witness.

24 VICE CHAIR JUDGE: City and county?

25 MS. TAKEUCHI-APUNA: Yes.

1 CROSS-EXAMINATION

2 BY MS. TAKEUCHI-APUNA:

3 Q Mr. Yanagihara, we have a few questions.

4 A I have one request. I have a hearing aid
5 that I just got because I have a high frequency
6 deficiency. And my ear doctor told me, "I bet you
7 can't hear your wife and daughter." I said, Yes." So
8 can you speak up slowly?

9 Q Sure. You mentioned the emergency access
10 road?

11 A Mm-hmm.

12 Q What was also referred to by Mr. Okaneku.
13 That road we understand is gated and will be available
14 in emergency purposes. Is that road -- does Tropic
15 Land have any rights to it? Do they own that road or
16 do they have an easement?

17 A It's an easement on property owned by Tropic
18 Land.

19 Q So it's owned -- the actual land is owned by
20 Tropic Land.

21 A Yes, it is.

22 Q And there's an easement for a road.

23 A Yeah. The road is rough graded and is
24 gated. That easement is all on Tropic Land. If you
25 recall -- were you there at the site visit?

1 Q No.

2 A Well, there is an existing road that doesn't
3 go straight through. It kind of curves. Half of that
4 road is already on Tropic Land property. The other
5 portion of it is on the McCandless property.

6 Q And that's where the easement --

7 A Well, our easement goes straight through our
8 property. We have improved that portion that's on our
9 property.

10 Q And as you stated that's for emergency
11 access that would be in lots --

12 A Yes, yes.

13 Q -- in cases shut down, further down the
14 Naval Access Road.

15 A I think not too long ago the city unveiled
16 its Emergency Bypass Road System. Part of that system
17 does include Lualualei Naval Access Road. Part of
18 that system includes using Pa'akea Road, which is also
19 a privately owned road. But that's also gated.
20 Apparently there's a dispute with the current owner to
21 allow the city to use that as an emergency bypass
22 road.

23 So we, therefore, finished our road and told
24 the city, "If you have to use it let us know because
25 it's available for emergency purposes."

1 Now, in our discussions with the Navy that
2 emergency bypass road system uses Lualualei Naval
3 Road. They told us that they haven't finalized or
4 told the city that that road can be used in fact for
5 that emergency bypass system. But they still haven't
6 resolved the identification and liability issues.

7 Q Okay. But for this emergency access road,
8 the gated one, if the Commission were to require as a
9 condition that it remain -- that it be used as an
10 emergency access road, would Tropic Land be agreeable
11 to that condition?

12 A Yes.

13 Q As far as the affordability of the lots you
14 mentioned \$20 or under \$20 per square foot. And you
15 say that that's affordable for residents or potential
16 buyers in that area. How did you come up with that
17 figure and determine that it was affordable?

18 A Well, if you look at -- well, right now
19 we're in kind of a recessionary period in terms of
20 demand for industrial lots. However, the most recent
21 figures among those three land reports says that the
22 trend of increasing vacancies for industrial lots has
23 stopped.

24 It was a negative trend that occurred for
25 the past two-and-a-half years. The most recent report

1 that they issued says the trend of negative absorption
2 has now stopped.

3 If you understand, real estate is always a
4 cycle, up and down, supply and demand. At the time we
5 did our research most of the property in Campbell
6 Industrial Park was selling at \$25+ a square foot.
7 Our goal and the figure we came out, be probably 18,
8 \$19 a square foot. But like I mentioned it would be
9 subject to the ultimate cost of developing this
10 Project, how much bells and whistles we attach to the
11 Project in terms of improvements, infrastructure, and
12 some of the other things that Mr. Hida mentioned.

13 Our definite goal is to make it affordable.
14 We're in this to make a small profit. You recognize
15 that.

16 Q Okay. So moving on to the Lualualei Naval
17 Road and the negotiations that are ongoing with the
18 Navy. What is the anticipated time to acquire the
19 license or the easement? It's under a license at the
20 time, is that correct?

21 A One thing I want to make clear is the
22 easement that we have is along our whole property. We
23 already have an easement that covers Lualualei Road
24 through the full -- we don't have a map -- the full
25 frontage of our property.

1 We have -- working with NAFAC -- I've worked
2 with the city, I have worked with the state -- working
3 with NAFAC is much more difficult in terms of the
4 bureaucracy they have to go through. The fact that
5 they finally got permission from Washington to move
6 ahead was a milestone event for us.

7 Right now we're in the process of agreeing
8 to and negotiating some of the terms and conditions
9 that were imposed by Washington. Hopefully we can
10 consummate the negotiation within the next six months
11 hopefully. If it was up to us we'd do it next month.

12 MR. YUEN: You might want to point out the
13 location of the road where we have the easement.

14 THE WITNESS: Well, as I mentioned, the
15 easement that we actually have covers the whole
16 frontage of the road. We have an existing recorded
17 easement to use that front, that whole portion of
18 Lualualei Naval Road.

19 Q (By Ms. Takeuchi-Apuna): Okay. But I
20 understand that, you know, they're coming along with
21 an agreement. But should that fall through for some
22 reason, what would be the alternative if Lualualei
23 Naval Access Road was not available to Tropic Land to
24 use? Is there an alternative?

25 A Maybe the Project doesn't go through.

1 Because I mean Hakimo is not feasible to use as an
2 access road. We have to use Lualualei Naval Road.
3 There's no ifs, ands or buts.

4 MS. TAKEUCHI-APUNA: Thank you.

5 VICE CHAIR JUDGE: Mr. Yee, the State?

6 CROSS-EXAMINATION

7 BY MR. YEE:

8 Q Just a follow-up on the Lualualei Naval
9 Access Road. Are you aware the Office of Planning has
10 proposed a condition requiring that that easement be
11 executed prior to the filing of an application for
12 zone change?

13 A Can you repeat that question or speak into
14 the mic.

15 Q Are you aware that the Office of Planning
16 has recommended that there be a condition requiring
17 the execution of the easement prior to the final
18 filing of an application for a zone change?

19 A Specifically I may have heard about it but I
20 can't attest to the fact I know that for a fact.

21 Q Do you have an objection to -- you said -- I
22 understood your testimony saying you've got to get
23 access to Lualualei Naval Access Road, right?

24 A Yes.

25 Q Can you commit to getting that access prior

1 to getting your application for a zone change?

2 A That's a hard question. I mean it's out of
3 our hands. Like I said if we could get it tomorrow we
4 would. We have applied. We have a letter from the
5 Navy headquarters agreeing to a long-term easement.
6 We now have to work out the details. Once the details
7 are worked out we still have to get formal approval
8 from Washington.

9 Q Well, since you said you have to get it at
10 some point, when can you get it? Either in terms of a
11 stage in the process or a date. Is there -- when?

12 A I don't have an answer. That will be out of
13 our hands. It will be up to Washington and the Navy
14 to accede to our request. We can get within the
15 timeframe a formal 5-year license agreement.

16 Q If you do not get the easement is it your
17 intention to proceed with your zone change application
18 without the easement?

19 A When and if we are told we will not get an
20 easement we will probably -- I will probably have to
21 sit down with the owners and make an assessment of our
22 future direction.

23 Q But if you don't know are you going to
24 proceed with the zone change application even if you
25 don't know?

1 A Wachu mean by "don't know"?

2 Q Like you do not have an executed easement.

3 A We don't have a formal approval. We haven't
4 reached an agreement. I still don't quite understand
5 what it is you're asking me.

6 Q I moved onto the zone change process before
7 the county.

8 A Okay.

9 Q Do you intend to move forward with your
10 zoning change application even if you do not have a
11 formal executed easement with the Navy?

12 A Yes. Yes. On the expectation that we will
13 get a formal approval eventually.

14 Q I need to clarify in my mind regarding the
15 emergency road. It sounded like there are three
16 owners: Tropic Land, McCandless and the Navy, is that
17 right?

18 A Can you repeat that question?

19 Q As I heard your testimony are there three
20 owners of the emergency road along the various length
21 of the emergency road: Tropic Land, McCandless and
22 the Navy?

23 A No.

24 Q How many owners are there?

25 A One.

1 Q What's the owner?

2 A Tropic Land.

3 Q So Tropic Land owns the entire length of the
4 emergency access road?

5 A Yes.

6 Q And Tropic Land is willing to condition the
7 petition upon making that road available for emergency
8 use.

9 A Yes. We have already told the city that.

10 Q With respect to -- you heard my questions
11 regarding the CC&R's and photovoltaics, water, et
12 cetera.

13 A If you can refresh my memory a little bit so
14 I can answer you specifically.

15 Q What are the CC&R's that you will require
16 with respect to recycling?

17 A Well, if you're asking me if we have a set
18 of CC&R's right now in terms of all the requirement
19 the answer is no. As I mentioned an I-1 zoned
20 industrial park is kind of a new animal. We have -- I
21 have looked at the CC&R's -- let me backtrack: I-1
22 condominium zoned industrial park is a relatively new
23 animal.

24 The CC&R's in terms of the conditions and
25 requirements still has to be developed. We do have a

1 template in the form of the Gentry Industrial Park
2 that we have taken a look at. But this will be an
3 evolving process in terms of what are the specific
4 rules -- excuse me.

5 You not only have the CC&R's you have rules,
6 you have regulations, you have guidelines. All these
7 documents go into governing the operation of a
8 so-called light industrial park.

9 But there is intent to put in certain
10 conditions as to uses, use limitations, rules and
11 regulations as to washing your trucks as we will
12 discuss not allowing excess runoffs onto the street
13 and so forth, so on.

14 Q Are you aware that one of the criteria or
15 issues that this Commission needs to look at is the
16 impact of this proposal or this Project on the natural
17 resources of the state?

18 A Can you be more specific?

19 Q I'm going to but I need to know do you know
20 generally there's a criterion?

21 A Yes.

22 Q That this Commission has to look at the
23 impact of your Project on the natural resources of the
24 state.

25 A Yes. That I'm aware of.

1 Q So it's a fair question then to ask what is
2 going to be the impact of this Project on the natural
3 resources, correct?

4 A That's a pretty broad question.

5 Q Well, it's a fair subject matter to inquire
6 into?

7 A Yes, it is.

8 Q So one of the questions -- one of the
9 subject matters that it'd be fair to inquire into
10 would be: What are the mitigation efforts you're going
11 to engage in to ensure that there is either no impact
12 or a minimal impact upon the natural resources,
13 correct?

14 A Yes.

15 Q So with respect to the impact on natural
16 resources without necessarily saying the particular
17 language, do you know the substance of the CC&R's that
18 will be applied in this Project?

19 A Not at this point.

20 Q So you don't know the substance of the
21 requirements for recycling.

22 A Pardon?

23 Q You do not yet know what is the substance of
24 the requirements that will be imposed for recycling.

25 A Not specifically at this point in time.

1 Q You also don't know what the substance of
2 the requirements would be for either reductions for
3 water usage or electrical usage.

4 A Not substantive. But there is the intent to
5 do so.

6 Q There will be a requirement for pretreatment
7 of water generated on the site, correct?

8 A Yes.

9 Q 'Cause you know that --

10 A That's our intent, but we don't have a
11 document that specifies all the terms and conditions
12 and the requirements for doing so. I believe, as we
13 looked, there are several other industrial parks,
14 Kaloko, for example, that has some rules and
15 regulations promulgated into the document that cover
16 the washing of trucks and the runoffs of the
17 industrial products into the streets and the drainage
18 facilities there.

19 Q And again I'm not asking for the particular
20 language. I'm just asking for the substance of what
21 will be required. There's going to be a requirement
22 that each individual condo owner pretreat the water
23 that they generate before discharging it into the
24 wastewater system.

25 A They intend to put that into the CC&R's,

1 yes.

2 Q Is that a representation? I mean are you
3 prepared to change your mind later on this?

4 A Not necessarily. I mean you have to
5 understand like Harvey said a lot of it -- we're still
6 in the very preliminary planning stages. And when we
7 get into specifics we will be developing specific
8 guidelines and requirements. But if you're asking me
9 if I know what these are right now my answer is no,
10 not really.

11 Q You know at this point I've done a fair
12 number of these district boundary amendments.

13 A What?

14 Q At this point I've done a fair number of
15 district boundary amendment cases. So I guess my
16 question to you is that although I understand the lack
17 of precision and detail, are you telling me that you
18 do not yet know for sure that there's going to be a
19 requirement for pretreatment of water by each condo
20 tenant before that water leaves into the wastewater
21 system?

22 A Well, I think it's already a law that
23 Mr. Teves said you're only allowed to put rainwater.
24 It's already a law, right?

25 Q Well, I guess that's part of my question.

1 Because it seems like you weren't even sure that you
2 were going to follow the law.

3 A When did I say that?

4 Q When you -- well, are you unwilling to
5 commit to following the law?

6 A I didn't say that.

7 Q Okay. Are you willing to commit to
8 following the law?

9 A We have to.

10 Q Are you willing to require that each condo
11 owner that they follow the law?

12 A I would think so.

13 Q And isn't it the law that each condo owner
14 has to pretreat their water before discharge?

15 A I haven't seen the law specific. I haven't
16 reviewed it recently. But I presume if that's the law
17 we will incorporate that into the CC&R's.

18 Q So you haven't done sufficient research into
19 what the law requires to know whether or not it will
20 be a requirement of the CC&R's?

21 A If you ask me that specifically, not at this
22 point in time.

23 Q Are you familiar with the Navy's concerns
24 over the development of this Petition Area?

25 A To some degree, yes.

1 Q Are you aware that one of their concerns was
2 the control of feral cats?

3 A Yes.

4 Q What will you do to ensure that feral cats
5 are controlled?

6 A I don't have a specific answer. But that's
7 something we will research and look into and come up
8 with rules and regulations to control feral cats in
9 the area. I mean that's something I'm not -- we're
10 not experts in how do you control feral cats.

11 We probably will have to check with the
12 Humane Society, or, you know, whatever experts there
13 are in terms of how do you control feral cats, and
14 incorporate that into the rules, regulations or CC&R's
15 for the Project. Again, if you're asking me how we
16 going to do it specific, I don't know.

17 Q But are you going to control feral cats?

18 A We'll try. I can't say. Cats are cats.
19 What's that phrase: How do you herd cats?

20 Q Are you aware that the Navy's concerns
21 regarding the location of invasive species next to
22 their property?

23 A Yes, I am.

24 Q Will you be doing anything about that?

25 A We will incorporate it into the CC&R's in

1 terms -- I've seen other documents in terms of
2 landscaping you have a list of types of plants that
3 are allowed or not allowed. Is that what you're
4 driving at?

5 Q Well, you can tell me. What are you going
6 is to do to ensure that invasive species from your
7 property do not --

8 A Well, like a similar answer to my cats. I'm
9 not an expert. We're not experts in that. We will
10 have to consult with certain experts in terms of what
11 kind of terms and conditions we need to incorporate
12 within the CC&R's, the rules and regulations to
13 control invasive species.

14 MR. YEE: Can I take a 2-minute break to
15 consult with my client?

16 VICE CHAIR JUDGE: We'll take 2 minutes here
17 in place.

18 (Off the record. Recess in place)

19 VICE CHAIR JUDGE: In light of the time
20 we're going to finish with your questioning and then
21 some Commissioners have to leave. So we'll start at
22 the next hearing with your questioning of
23 Mr. Yanagihara and then the Commissioners. So we're
24 going to complete today after Bryan Yee finishes. We
25 hope. Bryan? (Laughter)

1 Q (By Mr. Yee): Are you familiar with the
2 Navy's concern regarding the wildfire break?

3 A They probably are. Yes, I am.

4 Q You're aware that they want you to create a
5 100-foot buffer, a 100-foot fire break?

6 A Pardon?

7 Q Are you aware that they want you to create a
8 100-foot fire break?

9 A I don't recall that specifically but -- at
10 this point in time -- but I do recall something to
11 that effect.

12 Q Do you recall the discussion that the swale
13 could be used as the fire break? Today. You don't
14 recall that.

15 A Well, I do recall that, yeah. But that
16 swale is between the mountain and our property. It's
17 not between the Navy's property and ours.

18 Q Okay. You're familiar with the EIS, I
19 assume.

20 A Yes, I am. Not -- I mean if you're going to
21 ask me to quote passages and phrases within that it's
22 almost impossible on something this thick.

23 Q Okay. Are you familiar -- you're aware that
24 various consultants review the impacts and make
25 recommendations to mitigate those impacts?

1 A Yes, I am.

2 Q I assume those consultants made those
3 recommendation in consultation with you or the owner,
4 correct?

5 A With our development team and the planning
6 consultants as a group, yes.

7 Q So is it your representation that you'll be
8 implementing the mitigation measures recommended by
9 your consultants?

10 A As much as possible. To the extent it's
11 practical and economically feasible to do so also.

12 Q Can you identify what EIS measure or
13 mitigation measure is not practical or feasible that
14 has not been recommended by the consultants?

15 A Not at this point in time.

16 Q So then at this point in time I could not
17 tell from the EIS whether you were going to implement
18 all of those mitigation measures contained in there.

19 A We intend to do as much as possible.

20 Q But intend is not a promise. Is that what I
21 take from your statement?

22 A What is the difference between intend and
23 promise?

24 Q An intent would be binding.

25 A We do intend to do it.

1 Q I'm sorry. I'm sorry. (Laughter)

2 Backtrack. Are you binding yourself, are you
3 promising --

4 A To do every single one?

5 Q To do the ones recommended by your
6 consultants?

7 A But there's a whole myriad of
8 recommendations.

9 Q Yes, there are.

10 A Yes, there are.

11 Q And are you going to be doing each one of
12 them?

13 A We're prepared to do it, yes. But like I
14 said I'm not going to promise at this point. I can go
15 back and review it again with my consultants and our
16 development team and come back to you with a more
17 specific answer.

18 Q So with respect to both these EIS mitigation
19 measures as well as the --

20 A Do you have one that's specific?

21 Q I'm focusing more generically on how useful
22 this document is and how useful your representations
23 are. So with respect to the mitigation measures set
24 forth in the EIS as well as your general descriptions
25 of the CC&R's without a substance, how can I figure

1 out what the impact your Project will have on the
2 natural resources of the state?

3 A That's a good question. Can you rephrase
4 that again?

5 Q No.

6 A Can you repeat it?

7 Q Given the fact that you're not willing to
8 bind yourself to the mitigation measures recommended
9 by your consultants in the EIS, as well as your
10 inability to give us the substance of the CC&R's that
11 will be implemented, how can this Commission determine
12 what the impacts your Project will have upon the
13 natural resources of the state?

14 MR. YUEN: I'm going to suggest that rather
15 than go round and round like this, counsel start to
16 ask the witness what, with respect to each
17 recommendation that he's concerned about, whether the
18 witness intends to perform that recommendation.

19 VICE CHAIR JUDGE: Mr. Yuen, I think in that
20 EIS document we'd be here for days if we were to go
21 through every single recommendation. I think it might
22 be smarter since we're nearing the end of the day,
23 Mr. Yanagihara did say that he would consult with his
24 consultants and also with his counsel and probably his
25 owner which of those, what they will promise to do.

1 And perhaps that's a better starting point
2 than us point by point by point through the EIS
3 document. Because Mr. Yanagihara is going to have to
4 come back

5 MR. YEE: Understood. I'll leave this line
6 of questioning and move on.

7 VICE CHAIR JUDGE: Thank you.

8 Q (By Mr. Yee): Mr. Yanagihara, as you know
9 this Petition Area was originally part of a planned
10 golf course, right?

11 A Yes, it was.

12 Q And as part of that original golf course
13 development a unilateral agreement was reached and
14 filed with the city, correct?

15 A Yes.

16 Q I take it this unilateral agreement is no
17 longer applicable. Is that right?

18 A We did pose the question to the city in
19 terms of whether or not the unilateral agreement is
20 still applicable and when and if it's no longer
21 applicable. And we didn't get a clear answer.
22 Correct, Bill?

23 Q Well, let me just ask you then. And this
24 time I'm asking about an intent. What is your intent
25 in proceeding with respect to this unilateral

1 agreement?

2 A For the golf course.

3 Q The existing unilateral agreement that was
4 reached in the original planning for the golf course.

5 A It is our understanding that once we get the
6 I-1 zoning that unilateral agreement as it pertains to
7 our property will no longer be applicable.

8 Q Do you intend to reach a different
9 unilateral agreement with the city?

10 A Yes. I mean to me that's common sense
11 because we're not going to play golf on the property
12 anymore.

13 Q Which leads me to my next question. With
14 respect to the lands outside of the Petition Area
15 owned by Tropic Land what is your intent with respect
16 to these lands?

17 A As I mentioned earlier in my testimony that
18 land, our intent is to go back to the original Ag-2
19 zoning.

20 Q So you do not intend to build a golf course
21 on these lands nextdoor.

22 A Not on 22 acres.

23 Q And that would include the lands that you
24 mentioned -- I'm sorry. Maybe I have been unclear.
25 The Tropic Land owns areas mauka of the Petition Area,

1 don't they?

2 A Yes.

3 Q And that's in preservation.

4 A The whole Project is 236 acres. The
5 proposed Project is 96 acres of that 236 acres.

6 Q I guess what I'm really asking the land
7 that's currently in preservation you do not intend to
8 develop, do you?

9 A No.

10 Q So this is not a preliminary plan to develop
11 this acreage and later develop other acreage, right?

12 A The steepness and grade of that land is not
13 conducive to any further development.

14 Q So you don't intend to develop it.

15 A No we don't.

16 Q You talked about various representations you
17 made to the community board. Do you remember that?

18 A Yes.

19 Q Is it your representation to this Commission
20 that you will comply with those representations?

21 A Yes, it is.

22 Q And that would include --

23 A Just to be clear, those are the 10
24 conditions or promises we made to the community.

25 That's what you're referring to?

1 Q Yes. Was there a list that you have given
2 us?

3 A Yes there was. And it was made part of
4 original resolution obtained by the Nanakuli Maili
5 Neighborhood Board.

6 Q That would include a limitation on the types
7 of uses in this Petition Area, correct?

8 A Yes.

9 Q Are you familiar with the allowable uses in
10 an I-1 zoned area?

11 A In accordance with the master use table, yes
12 I am.

13 Q You're aware that there are certain
14 commercial uses that are generally allowed in an I-1
15 area.

16 A Yes, there are.

17 Q Is it your representation that you will not
18 be allowing commercial uses within -- well, are you
19 going to be allowing commercial uses within the I-1
20 area that is otherwise --

21 A Commercial is a very, very broad term. Can
22 you be more specific?

23 Q In the master table there's a list of
24 different types of uses, one of which is commercial,
25 isn't it?

1 A Yes.

2 Q Okay. Those are the commercial uses I'm
3 referring to.

4 A Does that include data processing
5 facilities?

6 Q And that's my question. What commercial
7 uses will you be allowing in the I-1 area?

8 A We have said what we will not allow. We
9 will not allow bars, nightclubs, taverns, liquor
10 serving establishments.

11 Q Will you be allowing general retail?

12 A Contained in this it says retail
13 establishments are not an allowed use in the I-1
14 industrial.

15 Q What about restaurants?

16 A Eating establishments. Is that restaurants?
17 What is an eating establishment?

18 Q Will you be allowing either restaurants or
19 eating establishment in the I-1?

20 A Conceivably maybe. But, you know, along in
21 terms of those questions you're asking, probably what
22 we need to do is sit down with the community again and
23 get their further input beyond those promises in terms
24 of what type of uses they would further like to
25 restrict.

1 And we are agreeable to working and
2 listening further to the community in that regard.

3 Q Have you reviewed the Office of Planning's
4 concerns regarding the possibility that retail uses or
5 commercial uses could crowd out what are typically
6 considered to be industrial uses?

7 A Yes. I'm aware. But you're also aware that
8 retail establishments are not an allowable use in the
9 I-1 industrial zone. So I'm not specifically sure
10 what it is you're striving for.

11 Q Commercial uses, though are -- some
12 commercial uses are allowed in the I-1 zoned area,
13 correct?

14 A Depends how you define "commercial".

15 Q It's defined in the master table, isn't it?

16 A Okay. Well, yeah. It says "commerce and
17 business". It doesn't say "commercial". It says
18 "commerce and business". I just want to be clear on,
19 I'm providing proper answers to your questions.

20 Q Okay. And I appreciate that. With respect
21 to the community benefit fund has there been any
22 discussion about what the community benefit fund -- or
23 is it one option to use the community benefit fund to
24 assist either a small business, a small business
25 incubation project or an agricultural incubation

1 project?

2 A It hasn't specifically been determined but
3 among the discussion we had we will form a 501C.3
4 corporation.

5 The board will be made up consisting of
6 representatives from the community that will determine
7 how the funds are originally invested and how they're
8 used in terms of benefiting the Nanakuli Maili
9 community.

10 It could award scholarships. It could make
11 donation to other charitable organizations or
12 community organizations within the community. I'm
13 involved with several other similar groups. What we
14 have done we have invested the funds. From the income
15 and proceeds we create a long-term legacy for the
16 beneficiary of that fund. That's the intent to create
17 a long-term legacy for the community as a result of
18 this park.

19 Q The original community benefit fund that UA
20 agreement designed for the golf course, you're not
21 necessarily then applying that model to this community
22 benefit fund, correct?

23 A It was a variation of that model to my
24 understanding. But again that's something we would
25 like to work with the community, the Nanakuli Maili

1 Board and get their recommendation in how they think
2 that funds should be set up and governed.

3 Q You mentioned the 22 acres of land next to
4 the Petition Area. Do you remember that?

5 A Yes, I did.

6 Q I believe, if I'm correct, your testimony
7 was your intent was if this petition is approved that
8 you would then rezone that back into ag.

9 A As I mentioned in your earlier question we
10 intend to have that go back to Ag-2.

11 Q Would you agree to restrict those uses to
12 true agricultural uses as set forth in the Office of
13 Planning's testimony?

14 A Well, what are the requirements for Ag-2
15 uses? It's the same here. Define. If it goes back
16 to Ag-2 I would imagine the City's requirements for
17 Ag-2 would govern that.

18 Q So you would want to be able to put farm
19 dwellings on this property?

20 A What?

21 Q Would you want to put farm dwellings on this
22 property?

23 A If somebody has a 22-acre farm that has a
24 house on it I'm not going to tell them no.

25 Q Would you want to put on cellular telephone

1 antennas, you know, alternative energy windmills?

2 A Let me answer. In my discussions with the
3 owners we want that to be used for productive ag.
4 That is our desire.

5 Q Would you agree to an easement restricted to
6 productive agriculture?

7 A Can you repeat that question.

8 Q Would you agree to restrict that property to
9 productive agriculture?

10 A Depends how you define "productive
11 agriculture".

12 Q Well, it's a term you've given me so I'm
13 using your term.

14 A Okay. Well, I guess we probably have to
15 define that a little further and come to an agreement
16 about what productive agriculture is.

17 Q And we come to an agreement are you to
18 restrict the uses to productive agriculture?

19 A Yes.

20 Q What do you think productive agriculture
21 means?

22 A Well, it could be the form of many uses.
23 One of the things people have told me is that -- and
24 we are checking with the University of Hawai'i -- the
25 Leeward coast does not have a university extension

1 facility for ag. It has one, the nearest one is Pearl
2 City.

3 It's conceivable if the university wants to
4 take over that property they could use it for an ag
5 facility. We have had discussions along those lines.

6 Q With respect to the Department of
7 Transportation issues, I understand your position that
8 you want to pay your fair-share but you do not want to
9 construct or pay for all of the traffic improvements.
10 Am I correct?

11 A Correct.

12 Q What happens if no one else can be found to
13 fund the rest of the traffic improvements? What
14 happens to your Project? Do you move forward and
15 build it without it? Do you wait until it's done?
16 What happens?

17 A I think I'll probably have to sit down with
18 owners and assess the actual cost of improvement and
19 its impact on the overall cost of the Project and
20 determine whether it's feasible to move forward.

21 Q Whether it's feasible to move forward
22 meaning whether it's feasible for the Project to pay
23 for all the costs?

24 A Well, if ultimately the total cost exceeds
25 our ability to bring the Project below that target

1 price of \$20 a square foot, it may not be feasible
2 because there may not be a market above that.

3 Q So in that case the Project does not move
4 forward.

5 A I can't say if we're talking 5 years from
6 now and the market has changed it may be a different
7 scenario.

8 Q Well, the scenario I'm giving you is the
9 traffic improvements are not going to be made. Let's
10 assume you're not going to pay for it. No one else is
11 going to pay for it. It's just not going to be made.

12 What do you think happens to your Project?

13 A I can't give a correct -- definitive answer
14 at this point in time.

15 Q If your Project was -- sorry.

16 VICE CHAIR JUDGE: Bryan, it's 3:30. Can
17 you ask one last question and we'll come back. When
18 we come back and do the hearing you can start with
19 questioning.

20 MR. YEE: (Pausing) Trying to get one good
21 one. (Laughter).

22 COMMISSIONER LEZY: You can save it up.
23 (Laughter)

24 MR. YEE: Can we just stop here?

25 VICE CHAIR JUDGE: We can. Okay. We will

1 adjourn.

2 (The proceedings were adjourned at 3:35)

3

4 C E R T I F I C A T E

5

6 I, HOLLY HACKETT, CSR, RPR, in and for the State
7 of Hawai'i, do hereby certify;

8 That I was acting as court reporter in the
9 foregoing LUC matter on the 10th day of September
10 2010;

11 That the proceedings were taken down in
12 computerized machine shorthand by me and were
13 thereafter reduced to print by me;

14 That the foregoing represents, to the best
15 of my ability, a true and correct transcript of the
16 proceedings had in the foregoing matter.

17

18

19 DATED: This _____ day of _____ 2010

20

21

22

23

24 _____
25 HOLLY M. HACKETT, CSR #130, RPR
Certified Shorthand Reporter

