

LAND USE COMMISSION

STATE OF HAWAI'I

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TRANSCRIPT OF PROCEEDINGS

The above-entitled matters came on for a Public Hearing at Conference Room 405, 4th Floor, Leiopapa A Kamehameha, 235 S. Beretania Street, Honolulu, Hawai'i, commencing at 9:50 a.m. on December 2, 2010 pursuant to Notice.

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

A P P E A R A N C E S

COMMISSIONERS:

KYLE CHOCK

THOMAS CONTRADES

VLADIMIR DEVENS (Chairman)

RONALD HELLER

CHARLES JENCKS

DUANE KANUHA

NORMAND LEZY

NICHOLAS TEVES, JR.

EXECUTIVE OFFICER: ORLANDO DAVIDSON

ACTING CHIEF CLERK: RILEY HAKODA

STAFF PLANNERS: BERT SARUWATARI, SCOTT DERRICKSON

DEPUTY ATTORNEY GENERAL: DIANE ERICKSON, ESQ.

AUDIO TECHNICIAN: HOTAI ZERBA

Docket No. A07-774 'O'OMA Beachside Village, LLC

For the Petitioner:

STEVEN LIM, ESQ.

JENNIFER BENCK, ESQ.

DENNIS MORESCO, Petitioner

For the County of Hawaii:

WILLIAM BRILHANTE, EQ.

Deputy Corporation Counsel

For the State:

BRYAN YEE, ESQ.

Deputy Attorney General

ABE MITSUDA, RUBY EDWARDS

Office of Planning

National Park Service:

MELIA LANE-KAMAHELE

Management Assistant

1 A P P E A R A N C E S cont'd

2 Docket No. SP06-400 WILLIAM HORNEMAN on behalf of
3 Hawaiian Cement

4

5 For the Petitioner: KARLYNN FUKUDA
Munekiyo & Hiraga
6 DAVID GOMES, G.M.

7 For the County of Maui: MICHAEL HOPPER, ESQ.
Deputy Corporation Counsel
8 PAUL FASI, Dept. of Planning

9 For the State: BRYAN YEE, ESQ.
Deputy Attorney General
10 ABE MITSUDA Office of Planning

11

12 Docket No. A09-782 Tropic Land, LLC

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

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

17 For the State: BRYAN YEE, ESQ.
Deputy Attorney General
18 ABE MITSUDA
Office of Planning

19 For the Intervenor

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

22

23

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1 CHAIRMAN DEVENS: This meeting is called to
2 order. Apologize for the delay in starting this
3 morning. The first item on the agenda is the adoption
4 of the minutes. Anyone have any corrections or
5 changes? Hearing none, is there a motion to adopt?

6 COMMISSIONER HELLER: So moved.

7 COMMISSIONER JENCKS: Second.

8 CHAIRMAN DEVENS: Any discussion? Hearing
9 none, all those in favor say aye.

10 (Commissioners: Aye)

11 CHAIRMAN DEVENS: It's unanimous. Minutes
12 are adopted. Dan, if you can brief us on the
13 schedule.

14 MR. DAVIDSON: Thank you, Chair. You have
15 the schedule before you for the next couple meetings.
16 One thing that's not on the schedule, if you could
17 circle, is it looks very likely that the Bridge Aina
18 Le'a matter will be taken up again January 20 at
19 Waikoloa. We're just in the process of setting that
20 up.

21 And as always please contact Riley or me if
22 you have any conflicts or questions about the
23 schedule. Thank you.

24 xx

25 xx

1 CHAIRMAN DEVENS: Thank you, Dan. First
2 substantive item on the agenda is the O'oma Beachside
3 matter. This is an Action hearing meeting to
4 reconsider Petitioner's Motion for Reconsideration of
5 Findings of Fact, Conclusions, of Law, and Decision
6 and Order issued November 22, 2010, Motion to Extend
7 Time, Motion to Reopen Hearing in Docket No. A07-774
8 'O'oma Beachside Village, LLC.

9 Will the parties make their appearances
10 starting with the Petitioner.

11 MS. BENCK: Good morning, Commissioners.
12 This is Jennifer Benck representing Petitioner O'oma
13 Beachside Village. To my right is Steven Lim also
14 representing Petitioner. And behind us is Dennis
15 Moresco, Petitioner.

16 CHAIRMAN DEVENS: Good morning.

17 MS. BENCK: Good morning.

18 MR. BRILHANTE: Good morning, Mr. Chair,
19 William Brilhante, deputy corporation counsel on
20 behalf of the County of Hawai'i Planning Department.

21 CHAIRMAN DEVENS: Good morning.

22 MR. YEE: Good morning. Deputy Attorney
23 Bryan Yee on behalf of the Office of Planning. Behind
24 me is Abe Mitsuda and Ruby Edwards from the Office of
25 Planning.

1 MS. LANE-KAMAHELE: Good morning. Melia
2 Lane-Kamahele from the National Park Service.

3 CHAIRMAN DEVENS: Good morning to you. On
4 November 23rd, 2010 the Commission received
5 Petitioner's Motion for Reconsideration of Findings of
6 Fact, Conclusions of Law, and Decision and Order
7 issued November 22, 2010, Motion to Extend Time,
8 Motion to Reopen Hearing, Exhibits 1 through 3.

9 From November 3rd through December 2, 2010
10 the Commission received written correspondence e-mail
11 from 38 individuals. Those e-mails and correspondence
12 are available for review through our executive
13 director.

14 On November 30th the Commission received the
15 following: Office of Planning's state of Hawai'i's
16 response to Petitioner's Motion for Reconsideration of
17 Findings of Fact, Conclusions of Law, Decision and
18 Order issued November 22, 2010.

19 Also the National Park Service's response to
20 Petitioner's Motion for Reconsideration of Findings of
21 Fact, Conclusions of Law and Decision and Order.

22 On December 1st, 2010 the Commission
23 received County of Hawai'i Planning Department's
24 Statement of "no position" to 'O'oma Beachside
25 Villages, LLC's Motion for Reconsideration of Findings

1 of Fact, Conclusions of Law and Decision and Order
2 filed November 22, 2010.

3 We'll first take public testimony. I
4 understand there are a few witnesses that have signed
5 up to testify. If you wish to testify please let us
6 know, we'll give you an opportunity to give your
7 testimony. Dan, if you can call the first witness.

8 MR. DAVIDSON: First witness Michelle Tomas.

9 MICHELLE TOMAS,
10 being first duly sworn to tell the truth, was examined
11 and testified as follows:

12 THE WITNESS: Yes, sir.

13 CHAIRMAN DEVENS: If you can tell us your
14 name and address, please.

15 THE WITNESS: My name is Michelle K. Tomas,
16 P. O. Box 337 Kailua-Kona 96745.

17 CHAIRMAN DEVENS: Go ahead.

18 THE WITNESS: Okay. I flew all the way from
19 Kona this morning just to remind you guys I represent
20 countless amount of people, children, students,
21 kama'aina, visitors, everyone that your decision that
22 you made was the right decision.

23 And I'm not familiar with the law, finding
24 of fact, conclusions, all that stuff. But let me just
25 remind you I did testify previously regarding

1 Petitioner's expert witness Mr. Ebisu about the noise
2 levels from the airport. He did not take into
3 consideration the Aloha Air Cargo airplanes run
4 737-300 series airplanes that are illegal in the upper
5 48 because of noise pollution laws. We do use it at
6 Kona Airport at all hours of the day and night. I
7 know. I work there. I work at Kona Airport. So even
8 though you have expert testimony, he did not take into
9 consideration these loud airplanes.

10 So just think about that when you make your
11 decision and when they bring up the facts the noise
12 levels will be okay. It's not. I flew out this
13 morning. We flew right over 'O'oma. We weren't even
14 level yet and 'O'oma's right below us. So just think
15 about that when you decide.

16 I don't know much about the process again.
17 Going over the Land Use Commission website I was
18 reading something on the website. And I wanted to
19 read it to you guys just to kind of bring you back to
20 where you guys, you know, why we're doing this.

21 It says, "Conservation lands are comprised
22 primarily of lands in existing forest and water
23 reserve zones and include areas necessary for
24 protecting watersheds and water resources, scenic and
25 historic areas, parks, wilderness, open space,

1 recreational areas, habitats of endemic plants, fish
2 and wildlife, and all submerged lands seaward of the
3 shoreline."

4 I know some of you went on the site visit.
5 'O'oma represents most everything on here: The open
6 space, you know, the historic areas where Kamehameha
7 III was raised. Again, I'd just like you to don't
8 change your vote. And if you do change your vote,
9 vote against it again. That's all I have to say.

10 CHAIRMAN DEVENS: Let me see if the parties
11 have any questions for you. No questions from the
12 parties. Commissioners? Thank you very much. And
13 thank you for taking the time to fly over this
14 morning.

15 THE WITNESS: Thank you.

16 CHAIRMAN DEVENS: Next witness.

17 MR. DAVIDSON: Robert Harris followed by
18 Stuart Coleman.

19 ROBERT HARRIS
20 being first duly sworn to tell the truth, was examined
21 and testified as follows:

22 THE WITNESS: I do.

23 CHAIRMAN DEVENS: Tell us your name and
24 address, please.

25 THE WITNESS: Good morning. Happy holidays,

1 Commissioners. My name is Robert Harris. I'm the
2 director of the Sierra Club Hawai'i Chapter. My
3 address is P. O. Box 2377, Honolulu, Hawai'i 96803.

4 I'm going to limit my comments strictly to
5 the legal aspects of the motion. The past witness did
6 a wonderful job talking about the actual issues. I
7 won't readdress those. You spent quite a bit of time
8 hearing from numerous witnesses. You probably know
9 the facts of this far better than I do.

10 It appears that the Petitioner raises two
11 points. The first appears to argue that the Land Use
12 Commission acts somewhat in a ministerial manner in
13 that you simply have to review whether or not the
14 qualifications of the land use application have been
15 submitted; if so you must grant the application.

16 This is a ridiculous proposition. It's
17 clear that the Land Use Commission acts in a
18 discretionary manner. In fact it is charged with
19 preserving and protecting Hawai'i's lands and
20 encouraging those uses to which lands are best suited.

21 In turn, if you look at the directions on
22 conservation lands, the Land Use Commission is
23 required to preserve and protect conservation land
24 necessary for protecting scenic and historic areas,
25 wilderness and beach reserves. It's plain that you're

1 fulfilling your duty in considering all the evidence
2 and at the end of the day deciding this isn't an
3 appropriate development in an appropriate area. There
4 is no ministerial application here.

5 Second. There's an argument that perhaps
6 the Findings of Fact, Conclusions of Law and the
7 Decision and Order were perhaps not sufficient to
8 justify the end decision.

9 I have not reviewed this in detail, but I
10 might suggest to the extent that this is a concern you
11 might consider granting the Motion for Reconsideration
12 for the narrow purpose of reexamining the Findings of
13 Fact to see if you need to do something in more
14 detail.

15 I will keep my comments limited to those two
16 areas. If there's any questions I'd be happy to
17 answer them.

18 CHAIRMAN DEVENS: Any questions for this
19 witness? Hearing none, thank you very much.

20 THE WITNESS: Thank you.

21 MR. DAVIDSON: Next witness is Stuart
22 Coleman.

23 THE WITNESS: Morning.

24 STUART COLEMAN,
25 being first duly sworn to tell the truth, was examined

1 and testified as follows:

2 THE WITNESS: I do.

3 CHAIRMAN DEVENS: Tell us your name and
4 address.

5 THE WITNESS: Yes. My name is Stuart
6 Coleman. And my address 2121 Algaroba Street, and
7 that's Honolulu, 96826. And I am the Hawai'i
8 coordinator of the Surfrider Foundation. And this
9 effort in 'O'oma has been about a three and-a-half
10 year campaign that's been one of our highest
11 priorities. It has united us with many other groups
12 like the Kohanaiki 'ohana and many other groups that
13 we have worked with over the past three years.

14 And as you've seen and you know all too
15 well, it has become a very, very popular item. And
16 the majority of the people seem to be very opposed to,
17 and the polls indicate, are very opposed to this
18 development.

19 And I kind of want to focus on the appeal
20 that 'O'oma Beachside Village wants more time. And I
21 think you all know more than anybody how much time
22 that has been. This will be the third time that
23 they've rejected this development. And this is over
24 many, many years or -- excuse me, have rejected the
25 reclassification of the land at 'O'oma, and three

1 years, over three years for this particular case. So
2 I think they have had plenty of time. All the
3 arguments have been hashed out numerous times.

4 If I can quote from Hannah Springer, who is
5 one of our executive committee board members, "A 1993
6 application for reclassification from the conservation
7 designation was denied. The Findings of Fact and
8 Conclusion of Law rendered by the Commission then are
9 still germane."

10 We have also had a chance, as the first
11 testifier mentioned, even had a chance to bring in
12 many more considerations more recently, the airport
13 noise being one of the biggest concerns.

14 The other concern is the housing itself.
15 And as far as the people doing this we can understand
16 that. They are heavily invested in this. They've got
17 self interests they want to promote their project they
18 don't want to let die.

19 But when the land was bought it was
20 conservation land. They knew that all the arguments
21 like I said have been gone through. And the most, I
22 think, compelling argument even as a business side if
23 I was an investor in this is: Do we need this? Do we
24 need this development?

25 There are apparently up to 10,000 units that

1 have been approved for development or have been built
2 that are still not fulfilled in the greater Kona area.
3 So the compelling argument is really a financial one.
4 Do we need this?

5 When the land has already been designated
6 for conservation land, the people have spoken, you all
7 have ruled after very, very careful consideration. So
8 I would ask you guys to stick with your decision
9 because I think it was a good one. It was carefully
10 weighed and evaluated. And we really appreciate your
11 taking the time and making the decision you did. We
12 are just asking you to stick with that.

13 CHAIRMAN DEVENS: Are there any questions
14 for this witness? Hearing none, thank you very much
15 for your testimony. I believe that was the last
16 witness.

17 MR. DAVIDSON: Correct.

18 CHAIRMAN DEVENS: I'm going to move to go
19 into executive session, very short recess.

20 COMMISSIONER LEZY: Second.

21 CHAIRMAN DEVENS: All those in favor?
22 Unanimous. (10:05)

23 (Executive session)

24 CHAIRMAN DEVENS: (10:30) We're back on the
25 record. I'm sorry that it took longer than expected.

1 We will move directly into the arguments starting with
2 the Petitioner, arguments on the motions.

3 MS. BENCK: Good morning, again,
4 Commissioners. This is Jennifer Benck representing
5 Petitioner. And I want to start out by saying, before
6 anything else, we know that this Commission has been
7 presented with motions for reconsideration over the
8 past few years. And we know it's an extremely high
9 standard.

10 And we don't for one second think that
11 there's one Commissioner in this room, or the couple
12 who aren't here today, who didn't think long and hard
13 about their decisions, whether they voted for or
14 against the petition.

15 So please don't think we undertook this
16 motion lightly or that we in any way think that this
17 Commission is a ministerial body and you're simply
18 here to act as a rubber stamp or to check the box.
19 You've never acted that way and you certainly haven't
20 acted that way in our situation.

21 Having said that, however, we do sincerely
22 believe that the Decision and Order evidences
23 misunderstandings of law and possibly
24 misunderstandings of facts. And I'll start with the
25 misunderstandings of law.

1 Administrative agencies such as this
2 Commission are delegated authority by the Legislature
3 and that statutory authority is the parameters that an
4 administrative agency has to work within.

5 Administrative agencies are widely different
6 from legislative bodies. Legislative bodies are the
7 forum for the public to come, and there can be give
8 and take and horse trading and deals to be cut.
9 Administrative agencies have statutory authority and
10 statutory criteria that have to be applied.

11 In this Commission's situation that's
12 chapter 205. Under chapter 205-4, as you well know,
13 the requirements are for the Commission to determine
14 whether or not by a clear preponderance of the
15 evidence the petition that was presented is
16 reasonable, doesn't violate chapter 205 and is in
17 compliance with the Hawai'i State Plan and the Land
18 Use Commission decision-making criteria.

19 It's real clear. And as you all know those
20 are a lot of criteria. It's not a five or six or
21 seven-element test. I've got about 45 pages in 10
22 point font of all of the different criteria that you
23 had to apply. And that same criteria not only did we
24 have to apply in trying to convince you that we met
25 those legal tests, but that the State Office of

1 Planning and the County Planning Department also had
2 to apply.

3 And as you know those agencies also
4 determined by clear preponderance of the evidence to
5 the extent that those agencies can make that
6 determination, that this Petition was supportable and
7 that this Petition should be granted.

8 Again, that wasn't an overnight decision.
9 With the Office of Planning, as you remember, Director
10 Mayer spoke very strongly to say if those eight
11 conditions, those conditions that were, I believe, a
12 co-effort of the Office of Planning and the Department
13 of Transportation, if those eight conditions were not
14 adhered to, if there was any fudging, any fiddling
15 with those conditions his support and his agency's
16 support would go away like that. (snapping fingers)

17 With those conditions in place Office of
18 Planning's testimony said, yes, we can support this.
19 This meets the legal test. Those conditions are in
20 place.

21 I mean the Petitioner absolutely,
22 unequivocally agreed to those conditions. The county
23 Planning Department, the county is the agency -- the
24 county Planning Department is the agency that
25 determines whether or not a project, whether or not a

1 petition is in compliance with the county General Plan
2 and any relevant community development plan. Those
3 are requirements that this Commission is statutorily
4 obligated to consider in making your decision.

5 The county didn't equivocate on those
6 determinations. Absolutely, positively this land is
7 appropriate for urban reclassification. All of it?
8 Is all of it appropriate? The Kahala Capital
9 petition, that was before this Commission in the early
10 '90s, sought to reclassify all of it.

11 Project opponents would try to tell you that
12 we are really just Kahala Capital coming back in a
13 different coat. Well, that's just not true. Kahala
14 Capital's project was denied for a myriad of reasons
15 as is evidenced in the Decision and Order that the
16 Commission came out with at that time.

17 One of those reasons is because that
18 reclassification went all the way down to the
19 shoreline where they wanted to put a marine
20 exploratorium, where they wanted to put a luxury
21 hotel, things that this Petitioner hasn't suggested in
22 any way whatsoever.

23 This Project is not only leaving about a
24 third of it in open space, a third of the entire
25 Project Area, but as you all recall 38 acres of the

1 property we flat out aren't even asking for
2 reclassification on.

3 And we are also more than willing to grant a
4 conservation easement, something that will run with
5 the land in perpetuity, something that we cannot get
6 away from to ensure that the conservation resources
7 that this Commission has to consider, that all of the
8 people sitting on this side of the room have to
9 consider, and that the public is so concerned about
10 that those resources are going to be protected.

11 So in light of the record we truly believe
12 that there has been a misunderstanding of law. The
13 legal tests have been met. No credible evidence has
14 been presented otherwise. And the Commission hasn't
15 given us any reason to believe that we didn't meet the
16 legal test except to provide a Decision and Order
17 that, frankly, and again with all due respect, the
18 Decision and Order does not appear to meet the
19 statutory requirements under chapter 205 or chapter
20 91.

21 Keep in mind as stated administrative
22 agencies are delegated authority by the Legislature.
23 Administrative agencies that deny projects for reasons
24 that are outside of those statutory requirements are
25 acting outside of the scope of their authority. And

1 those kinds of decisions are reversible by courts.

2 Now, usually under chapter 91 and under the
3 Commission's own rules, Decision and Orders that this
4 Commission comes out with actually provide findings,
5 and conclusions that help the Petitioner understand
6 where they went offtrack, if in fact the Commission
7 determined that they went offtrack. There's very
8 practical reasons for doing that.

9 For one thing a solid Decision and Order is
10 going to facilitate judicial review. Judges can't
11 guess at what this Commission was thinking and
12 feeling. Solid Decision and Orders avoid judicial
13 usurpation. It assures careful, and again,
14 statutorily careful consideration of the matter, not a
15 legislative sort of body, but an actual careful
16 statutory careful consideration of the matter. It
17 helps parties plan their cases for rehearing and for
18 judicial review and it keeps agencies within their
19 jurisdiction.

20 So a Decision and Order that, objectively
21 speaking, doesn't meet the legal tests under chapter
22 91 violates not just Chapter 91 -- and chapter 91,
23 specifically section 14(g)(1) it's a Decision and
24 Order that's beyond the Commission's statutory
25 authority.

1 So we've got a situation where we do believe
2 the Commission made at least a couple of errors of
3 law.

4 Again, the Commission's granted certain
5 authority. No evidence was presented to suggest that
6 this Petition did not meet the legal criteria. The
7 agencies charged with the obligation to make those
8 determinations made those determinations that we do
9 meet those legal criteria.

10 And this Commission hasn't given us anything
11 to shoot at, anything to understand why we weren't
12 able to get 6 votes from an extremely thoughtful and
13 extremely patient Commission.

14 There was some discussion about noise and
15 there was some discussion about the purpose of the
16 conservation land. And that's where we think perhaps
17 there was some misunderstandings of fact. We know due
18 to the year end there's some new people on the
19 Commission. And I know that all of the Commissioners
20 read the transcripts and they're all familiar with the
21 record.

22 But perhaps an opportunity to have certain
23 experts come back so that those Commissioners can ask
24 their very pointed questions and know for themselves
25 whether they made the decisions and whether they want

1 to stick by that decision, maybe that would be a way
2 to unravel what we believe is a legally problematic
3 Decision and Order.

4 In terms of conservation lands in our motion
5 that, I think it was the third exhibit we presented,
6 what was the 1964 understanding of the two purposes of
7 the conservation land. I know I went over this during
8 closing arguments.

9 But it's important to keep in mind both
10 legally and factually conservation land was never
11 meant to be kept in this hallowed sacrosanct sort of
12 condition. Conservation land, originally you could
13 build resorts on conservation land. Okay? So let's
14 not perpetuate this misunderstanding of law and this
15 misunderstanding of fact.

16 Ultimately we do believe that there's been
17 misunderstandings here and that's why we're asking you
18 to reconsider your decision. The decision was made
19 after a lot of deliberation, after a lot of time. And
20 in no way are we suggesting that it was a cavalier or
21 emotional sort of decision.

22 However, we hope that through this motion we
23 pointed out certain elements legally and factually
24 that may give you pause. And if so, we ask that you
25 reconsider the decision.

1 And if there's anything we can do to help
2 the Commission come up with a stronger Decision and
3 Order and glean additional evidence and additional
4 facts to help you get there, we're very willing to do
5 that. Thank you.

6 CHAIRMAN DEVENS: Thank you. Mr. Brilhante.

7 MR. BRILHANTE: Thank you very much,
8 Mr. Chair. The county of Hawai'i has filed a response
9 to the Petitioner's Motion for Reconsideration in
10 which we took no position as it related to the
11 specific issues raised by the Petitioner.

12 That being said, however, the county just
13 wanted to place on the record again that the county's
14 position as it relates to this particular application
15 has been the Project does meet with the General Plan
16 requirements and it does meet as well with the Kona
17 Community Development Plan. And we've submitted
18 testimony by the planning director in support of the
19 application historically as that process has moved
20 forward. We know that your decision, the Commission's
21 decision, was not made as, which was referenced, to
22 any cavalier decision.

23 We know each and every individual
24 Commissioner is tasked with bringing their own skill
25 set and their own background to the Commission

1 hearings and applying that to their decisions. We
2 respect that. And the county respects that. And the
3 county respects the process.

4 That being said as well, however, and we
5 reviewed the Decision and Order and when we reviewed
6 the Findings of Fact there was some concern by the
7 county -- although it wasn't specifically stated in
8 our response to the present motion -- there was some
9 concern in the county, some uneasinesses that maybe
10 the Decision and Order did not satisfy the
11 requirements as far as specifically stating the
12 Findings of Fact and Conclusions of Law. So that
13 would be our only concern raised. Otherwise, as I
14 initially stated, we take no position on this
15 petition.

16 CHAIRMAN DEVENS: Mr. Brilhante, let me ask
17 you what do you think is lacking as far as the
18 findings are concerned?

19 MR. BRILHANTE: I think being new to the
20 process I've had the opportunity as I prepared for
21 these hearings to go back and to review and read some
22 of the decision and orders in other cases.

23 And I think what are the concerns that were
24 specifically raised to me is that maybe the specific
25 factual references as to -- and don't get me wrong,

1 I'm not trying to second guess the Commission --
2 however, I will note on the record the only real
3 factual basis that was specifically addressed in the
4 Decision and Order was codified in section or
5 paragraph 112 where it outlined briefly the concerns
6 that the Commissioners raised during the deliberative
7 process.

8 And I'm not sure if maybe that should have
9 been expounded or brought out in greater detail
10 throughout the recitation of the factual steps that
11 transpired in this case.

12 CHAIRMAN DEVENS: Thank you for your answer.
13 Mr. Yee.

14 MR. YEE: In many respects I agree with many
15 of the things that Petitioner has said today. I think
16 that's due in part, though, to the fact these were the
17 arguments that were raised during the case in chief.
18 The Office of Planning, as you know, supported the
19 Petition. At this time, however, the matter is in a
20 different procedural posture.

21 We're on a Motion for Reconsideration. So
22 when we looked at the motion we looked -- we first
23 began by looking over the past five years or so at the
24 two cases in which we were aware in which a Motion for
25 Reconsideration was submitted to you.

1 The first was Hawaiian Memorial. In that
2 case the Petitioner came back to you and said, "I
3 won't ask for the entire Petition Area. Just give me
4 this percentage of the Petition Area and let me at
5 least get my cemetery started and expand it to some
6 extent." And would you reconsider.

7 And the Office of Planning at that time,
8 even though we had supported in part the Petition, and
9 in fact supported exactly that kind of idea on the
10 case in chief, on the Motion for Reconsideration we
11 opposed it because we said, you know, that was really
12 what should have been submitted in the case in chief.

13 You can't ask for the entire Petition Area,
14 get denied, then come back and ask for less. You
15 really sort of need to make your choice during your
16 case in chief.

17 The second case involved McCully which was a
18 3-acre parcel, roughly, on the Big Island. And they
19 asked to have, I think, conservation land reclassified
20 to I can't remember if it was urban or ag. But they
21 asked for reclassification of a relatively small
22 parcel.

23 Again, the Office of Planning was in support
24 of the Petition. The vote by the Commission at that
25 time was either 5 to 2 or 5 to 3. But it lacked the 6

1 votes and not all Commission members were present.

2 So a Motion for Reconsideration was filed.
3 They essentially argued the same things that they had
4 argued before, but now, hopefully, before a larger set
5 of Commissioners hoping that they could get the six
6 votes.

7 At that point I distinctly remember some of
8 the Commission members who had voted for the Petition
9 of reclassification changed their minds -- well,
10 didn't change their minds but said that on the Motion
11 for Reconsideration they couldn't support it because
12 they viewed the case as having been completed.

13 They said, you know: We had a vote. The
14 vote was against you. Even though I was supportive of
15 the Petition I'm not going to support the Motion for
16 Reconsideration because the process is done and you're
17 not really submitting anything new to me which would
18 give me reason to overturn the prior decision.

19 It was the desire for finality, the
20 importance that decisions that are made are regarded
21 as being made and not subject to review just because
22 you want another bite at the apple.

23 So based upon those two cases the Office of
24 Planning, as we've submitted, gave you our response we
25 did not support or could not support the Motion for

1 Reconsideration even though we did support the
2 Petition at its initial case in chief.

3 We did, however, note for you that it seemed
4 prudent to us that your findings be supplemented
5 because there is case law that indicates that a final
6 Decision and Order from any administrative agency
7 should have at least enough facts to allow a reviewing
8 court to know what were the reasons why you made your
9 decision. And to a certain extent that, frankly, does
10 seem both fair and reasonable.

11 Paragraph 112 does set forth some of the
12 discussion. We did look at the pleadings in the files
13 and the documents. The Office of Planning does think
14 that there's enough information in there for you to
15 find that Petitioner failed to meet their burden of
16 proof.

17 So even though we might have come, if we
18 were a Commission, might have come to a different
19 decision, nevertheless we do think -- we don't agree
20 with the Motion for Reconsideration. We do think you
21 should probably supplement your record. We think it
22 would be prudent to do so and it would be fair to do
23 so.

24 But we do also think that there's sufficient
25 facts in the record for you to find under the criteria

1 set forth by you or set forth as a requirement for the
2 boundary amendment that Petitioners failed to meet
3 their burden. Thank you.

4 CHAIRMAN DEVENS: Thank you. Parks?

5 MS. LANE-KAMAHELE: The Park Service takes
6 no position on the Petitioner's request for
7 reconsideration.

8 CHAIRMAN DEVENS: Thank you. Commissioners
9 have any questions for the parties? Commissioner
10 Lezy.

11 COMMISSIONER LEZY: Thank you, Chair.
12 Mr. Yee, because you've been so instructive in this
13 case, how would you see, if you were tasked with
14 supplementing this Decision and Order, what do you
15 think would be necessary in order to meet muster as
16 far as potential review?

17 MR. YEE: It's a somewhat delicate question
18 because the Office of Planning was in support. Let me
19 preface my remarks by saying we don't necessarily
20 agree with the final conclusion.

21 But with respect to the Motion for
22 Reconsideration certainly there's information in front
23 of you that although the sound impacts from the
24 airport would not violate any laws, and although it
25 would not pose a health or safety problem to the

1 residents, and even though the Department of
2 Transportation was in agreement, there was also
3 testimony that complaints were likely to be generated;
4 that this could have impact on future airport
5 operations not because they'd be prohibited but just
6 because of the pressures that would be put on.

7 There was information about the importance
8 of the airport under the General Plan by the county as
9 well as I believe a statement that residential use,
10 although consistent with the county plan, and
11 industrial use or nonresidential use would probably be
12 more consistent with respect to issues of sound.

13 With respect to the issues of conservation I
14 would certainly recognize that there's a very large
15 setback, larger than normal. But at the same time
16 even the Office of Planning recognized that there is a
17 different value to a beach, which is surrounded in its
18 natural setting by a lava field, from a beach which is
19 surrounded, although a thousand feet away from
20 neighborhoods and grocery stores and the like.

21 So there was a conservation value to keeping
22 the land. Certainly open views is a conservation
23 value. We certainly -- I think you would have to
24 acknowledge that that type of conservation land that
25 was involved was not noted to be of a high resource so

1 not resource land containing an important watershed or
2 forest, et cetera. But, nevertheless, it was
3 conservation land and there was a value to that
4 conservation land.

5 There are a variety of other probably
6 smaller things. I would probably look at the public
7 comments that were provided to you, some of which were
8 very credible and informative I think.

9 And I guess now I'm blanking about the rest
10 of the concerns expressed by the Commission members.
11 But those would be the kinds of facts that support
12 what I think were the conclusions of at least some of
13 the Commission members with respect to sound and the
14 value of conservation.

15 COMMISSIONER LEZY: Thank you.

16 CHAIRMAN DEVENS: Any further questions?
17 None. Commissioners' pleasure on this item.
18 Commissioner Heller.

19 COMMISSIONER HELLER: Yes. I'd like to make
20 a motion that as to the Motion for Reconsideration we
21 grant in part and deny in part. That we deny the
22 Motion to Extend Time and deny the Motion to Reopen
23 the Hearing.

24 As far as the Motion for Reconsideration is
25 concerned my motion is that we find that there is no

1 new evidence and no new arguments have been presented
2 that could not have been presented before. And
3 therefore there is no reason to change the substance
4 of our decision.

5 However, we grant to the limited extent of
6 supplementing the Findings of Fact and Conclusions of
7 Law to spell out in somewhat more detail the basis of
8 the decision.

9 Specifically addressing the concerns that
10 lead to the original decision including, but not
11 limited to traffic mitigation, public access to the
12 shoreline, potential adverse impacts on the airport
13 and/or the community around it, preservation of the
14 conservation designation and mitigation of the
15 concerns of the public.

16 And my motion, I repeat, would not change
17 the actual Decision and Order but would merely
18 supplement the Findings of Fact and Conclusions of
19 Law.

20 CHAIRMAN DEVENS: Is there a second?

21 COMMISSIONER TEVES: Second.

22 CHAIRMAN DEVENS: There's a second.

23 Discussion? No discussion. The roll call.

24 MR. DAVIDSON: Motion to grant in part and
25 deny in part as set forth by Commissioner Heller and

1 seconded by Commissioner Teves.

2 Commissioner Heller?

3 COMMISSIONER HELLER: Yes.

4 MR. DAVIDSON: Commissioner Teves?

5 COMMISSIONER TEVES: Yes.

6 MR. DAVIDSON: Commissioner Lezy?

7 COMMISSIONER LEZY: Yes.

8 MR. DAVIDSON: Commissioner Kanuha?

9 COMMISSIONER KANUHA: Yes.

10 MR. DAVIDSON: Commissioner Jencks?

11 COMMISSIONER JENCKS: Yes.

12 MR. DAVIDSON: Commissioner Contrades?

13 COMMISSIONER CONTRADES: No.

14 MR. DAVIDSON: Chair Devens?

15 CHAIRMAN DEVENS: Yes.

16 MR. DAVIDSON: Motion passes 6 to 1, Chair,
17 with two excused.

18 CHAIRMAN DEVENS: All right. So we will
19 direct the executive director to draft the
20 supplemental D&O in accordance with the motion that
21 has just passed.

22 MS. BENCK: Excuse me, Chairman.

23 CHAIRMAN DEVENS: I'm sorry, go ahead.

24 MS. BENCK: Could we ask, then, so the
25 Decision and Order that was issued dated November 22,

1 is that officially rescinded? For court appeal
2 purposes we need to know what our statute of
3 limitations is.

4 CHAIRMAN DEVENS: My understanding is that
5 it was simply a motion to supplement the findings to
6 give more detail, more information justifying or
7 supporting the denial.

8 MR. LIM: Are we going to end up with a new
9 Decision and Order? That's what I think you're going
10 to end up with.

11 CHAIRMAN DEVENS: It'll be a -- it'll be a
12 Decision and Order that will be supplemented as far as
13 the findings are concerned.

14 MR. LIM: The reason why we ask is the
15 timeframe for filing an appeal will run very close to
16 your end product. And unlike court proceedings where
17 it's clear when you file a Motion for Reconsideration
18 you get the extension of the time to file an appeal,
19 it's not clear here.

20 So if the Commission would, we would
21 appreciate that you would add in a supplement to the
22 finding that you've made that the November 22, 2010
23 Decision and Order that you issued is going to be
24 supplemented, and a new Decision and Order with the
25 new findings will be issued. That way we don't have

1 to file --

2 CHAIRMAN DEVENS: Start your time again.

3 MR. LIM: That's correct.

4 CHAIRMAN DEVENS: Okay. Yeah, I think --

5 MR. YEE: Mr. Chairman?

6 CHAIRMAN DEVENS: I'm sorry. Mr. Yee?

7 MR. YEE: I understand the dilemma. My only
8 suggestion might be that I believe the time period to
9 appeal runs from the date of the final Decision and
10 Order.

11 So what you may want to just note is that
12 the final Decision and Order will be this new order
13 coming out rather than getting into the semantics of
14 what's rescinded, what's not rescinded.

15 It's just that the original Decision and
16 Order -- that this new decision that you're going to
17 be signing will be the final Decision and Order from
18 which then the time for appeal runs.

19 CHAIRMAN DEVENS: Right. The supplemental
20 will be the final, Mr. Lim. That way I don't want you
21 getting caught on the timing. I understand the
22 dilemma. We'll make this one the final. Does that
23 satisfy your concern?

24 MR. LIM: Yes. The new one will be the
25 final Decision and Order.

1 CHAIRMAN DEVENS: We're thinking about doing
2 this tomorrow.

3 MS. BENCK: Okay.

4 CHAIRMAN DEVENS: So we can speed it up for
5 your side and you can do whatever you need to do. So
6 you should come back tomorrow. We'll put it on the --
7 we'll continue it till tomorrow, this same item.
8 Hopefully it doesn't jamb you folks up, but we'll put
9 it on as the first order of business. I believe we
10 start at 9:30 tomorrow.

11 MR. LIM: We'll do that. Mr. Moresco flew
12 in from California but he'll have to leave this
13 afternoon. But if you'll excuse his presence.

14 CHAIRMAN DEVENS: Thank you. Take a short
15 5-minute break for the next matter.

16 (Recess was held. 11:15)

17 xx

18 xx

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25 xx

1 CHAIRMAN DEVENS: We're back on the record.
2 We're on the second hearing and action matter. This
3 is an action meeting on SP06-400 William Horneman on
4 behalf of Hawaiian Cement, Maui, for a ten-year
5 extension of a Land Use Commission special permit to
6 operate and expand the Pohakea Quarry and base course
7 operation on approximately 79.2 acres of land within
8 the State Land Use Commission Agricultural District at
9 Ma'alaea, Maui, Hawai'i.

10 If we can have the appearances by the
11 parties.

12 MS. FUKUDA: Good morning, Chair, members of
13 the Land Use Commission. My name is Karlynn Fukuda
14 from Munekiyo & Hiraga, Inc. Joining me today is Dave
15 Gomes, the general manager of the Maui Concrete and
16 Aggregate Division for Hawaiian Cement.

17 CHAIRMAN DEVENS: Good morning.

18 MR. HOPPER: Michael Hopper on behalf of the
19 County of Maui Department of Planning. With me is
20 Paul Fasi. He is the county planner assigned to this
21 project.

22 MR. YEE: Good morning. Deputy Attorney
23 General Bryan Yee on behalf of the Office of Planning.
24 Wit me is Abe Mitsuda from the Office of Planning.

25 CHAIRMAN DEVENS: Good morning to you all.

1 Let me recite the state of the record. On April 13,
2 2010, the Commission received an application for time
3 extension from the Maui County Department of Planning
4 and the decision of the Maui County Planning
5 Commission.

6 On April 15, 2010 the LUC requested that the
7 Maui Planning Department clarify the record before the
8 Maui Planning Commission.

9 On August 31, 2010 the LUC received a copy
10 of a letter to Munekiyo & Hiraga, Inc. from Maui
11 County Department of Planning confirming that the Maui
12 Planning Commission had reviewed 23 LUC conditions of
13 approval from the Decision and Order and Amended
14 Decision and Order dated December 4, 2006 and
15 December 18, 2006 respectively.

16 On October 20, 2010, the LUC received
17 written correspondence from the Maui County Planning
18 Director Kathleen Ross Aoki, and Maui County agenda
19 minutes to confirm that the Maui County Planning
20 Commission had voted to recommend inclusion of all 23
21 LUC conditions at its July 13, 2010 meeting.

22 We will first take public testimony, if
23 anyone signed up. It doesn't appear that there's any
24 public testimony in this matter. I'll now turn to
25 Bert to make his presentation.

1 MR. SARUWATARI: Okay. The matter first
2 came before the Commission in 2006 when the Applicant
3 proposed and received approval for the 64.4-acre
4 expansion of the existing Pohakea Quarry and base
5 course operation beyond its permitted 14.8-acre site.

6 Map 1 on the wall is the original 2006 map
7 that was prepared by staff. It shows the original
8 permitted area of quarry as well as the expansion
9 area. It's located immediately west of the
10 intersection of Kuihelani Highway in Honoapi'ilani.

11 The current request before the Commission is
12 a 10-year time extension to the 79.2-acre quarry on
13 December 15, 2009 to December 15, 2019. The Planning
14 Department recommended and the Planning Commission
15 concurred that Condition Nos. 6 and 7 should also be
16 deleted.

17 Condition No. 6 pertains to the filing of a
18 compliance report. And Condition No. 7 pertains to
19 the development of the property in substantial
20 compliance with representations.

21 Staff recommends that if the Commission is
22 inclined to approve the 10-year time extension so that
23 Condition No. 1 is amended to reflect the date of
24 December 15, 2019, that Condition No. 6 not be deleted
25 but be replaced by the following standard condition,

1 and I'll read it: "On each anniversary date of this
2 Decision and Order the Applicant shall file annual
3 reports to the LUC and the DP in connection with the
4 status of the subject project and the applicant's
5 progress in complying with the conditions imposed
6 herein. The annual report shall be submitted in a
7 form prescribed by the executive director of the
8 Commission."

9 Staff also recommends that Condition No. 7
10 be retained, not be deleted. Staff further recommends
11 that the remaining conditions be retained in their
12 entirety. That concludes my staff report, Chair.

13 CHAIRMAN DEVENS: Thank you, Bert.
14 Petitioner, you want to make your presentation?

15 MS. FUKUDA: Thank you, Mr. Chairman. As
16 Mr. Saruwatari noted, we came before the Land Use
17 Commission back in 2006 for approval of a special use,
18 state special use permit for the expansion area so the
19 entire TMK parcel could be utilized for rock quarrying
20 operation. And at that time the Commission granted a
21 5-year permit, I believe, it ended up being.

22 The Applicant, Hawaiian Cement, does have a
23 20-year lease with the landowner. The 20-year lease
24 right now would expire in 2024. And there is an
25 option to extend the lease for another 20 years.

1 We are respectfully asking for the 10 year
2 time extension request for the state special use
3 permit. We would also like to respectfully request
4 that the Commission consider deletion of Conditions
5 No. 8, 10 and 16. These are conditions that have been
6 met by the Applicant.

7 Condition No. 8 is in terms of the
8 maintenance plan that had to be submitted to the State
9 Department of Transportation approved. And there was
10 an approval by the State DOT, the Maui office, of that
11 maintenance plan. And that approval was submitted
12 with our compliance report.

13 Also for Conditions No. 10 and 16: No. 10
14 was that an Archaeological Inventory Survey be done on
15 the entire parcel be approved and also clarify a
16 previously identified site, archaeological site T9.
17 That Archaeology Inventory Survey has been done and
18 approved by the State Historic Preservation Division.

19 And in the process of that inventory survey
20 it was noted that that site T9 is not actually a
21 significant site, and thus no preservation was
22 recommended by the State Historic Preservation
23 Division.

24 So Condition 16 talks about retaining
25 protective fencing on that T9 site, but that was based

1 on the previous review of that site potentially being
2 an historic site. So we respectfully request
3 consideration of those -- deletion of those
4 conditions. Thank you.

5 CHAIRMAN DEVENS: County?

6 MR. FASI: Good morning. Thank you, Chair.
7 The Maui Planning Department has no objections to the
8 request made to retain Conditions 6 and 7. And
9 furthermore the department has no objections to the
10 Applicant's recommend deletions of Conditions 8, 10
11 and 16. It does bring the conditions into conformity
12 with the realities of today. Thank you.

13 CHAIRMAN DEVENS: Thank you. Mr. Yee?

14 MR. YEE: I think our only concern is one
15 sentence in 8 which says, "No increase in stormwater
16 runoff will be allowed onto the state highway
17 right-of-way." That, I think, is a continuing
18 obligation.

19 With respect to the other conditions we have
20 no objection. I guess I would ask just for
21 clarification that State Historic Preservation
22 Division did formally agree that site T9 is not marked
23 for preservation.

24 CHAIRMAN DEVENS: Would the Petitioner have
25 any objections to keeping the language in Condition 8

1 as argued by Office of Planning?

2 MS. FUKUDA: With regards to, I believe it
3 seems to be 8B, if I'm not mistaken, by the State
4 Office of Planning, I think that would be -- the
5 Applicant would be fine with retaining that part of
6 the condition.

7 CHAIRMAN DEVENS: It seems it would be a
8 continuing obligation.

9 MS. FUKUDA: Yes.

10 CHAIRMAN DEVENS: Any questions for the
11 parties? Commissioners? Any motion?

12 COMMISSIONER LEZY: Chair, just one
13 clarification. Mr. Yee, were you asking for proof
14 from the Applicant that SHPD has, in fact, signed off?

15 MR. YEE: Yeah, I think they represented
16 it's no longer marked for preservation. I was just --
17 and I think it's true -- but I was just asking for
18 them to make that extra statement of, "and SHPD's
19 reviewed and agreed that T9 is not marked for
20 preservation."

21 MS. FUKUDA: Mr. Chair, if I may. There was
22 a letter dated April 1st, 2008 from State Historic
23 Preservation Division which includes the approval of
24 the Archaeological Inventory Survey, that supplemental
25 that was done. And that was included as part of our

1 compliance report.

2 I do note, if I may read an excerpt from
3 this approval letter. It says that, "We understand
4 that two sites were identified and documented by your
5 firm for the first time. All seven of the sites are
6 significant under criteria D and have yielded adequate
7 information."

8 And there's no requirement for preservation.
9 There is a requirement that states here, if I can
10 continue on on that April 1st, 2008 letter, it says,
11 "We have recommended the presence of a fulltime
12 archaeological monitor for proposed ground altering on
13 the parcel," which the Applicant has and will continue
14 to do for any ground altering on the parcel.

15 Any new areas that are opened up there is an
16 archaeological monitor that is present on site. And
17 then reports are submitted to State Historic
18 Preservation Division for any of that ground-altering
19 work. So I present that information.

20 CHAIRMAN DEVENS: Very good. Thank you.
21 Mr. Fasi, you have something more you want to add?

22 MR. FASI: Yes. Just for clarification just
23 to clarify that the increase in stormwater runoff is
24 also a condition of the county's special use permit.
25 So they will still have to abide by everything. And

1 it's verbatim as in the state special use permit.

2 CHAIRMAN DEVENS: Thank you for that
3 clarification.

4 MR. YEE: Chair, can I ask a question?

5 CHAIRMAN DEVENS: Mr. Yee.

6 MR. YEE: And I think maybe it's answered
7 and I'm just not familiar enough with the file. Is
8 site T9 listed in the Archaeological Inventory Survey?
9 She read the results saying nothing was marked for
10 preservation. But it would have been helpful to just
11 sort of fill the record and to say "Site T9 was
12 included in the AIS. It was not identified for
13 preservation and SHPD concurred with that conclusion."

14 I guess I was just looking for that sort of
15 simple statement and I just didn't hear it. Maybe
16 it's sort of assumed in what you reported but I just
17 didn't hear it so I'm asking for clarification.

18 MS. FUKUDA: Chair, if I may, I'll read an
19 excerpt from the Archaeological Inventory Survey that
20 was done for that additional area which is the report
21 that is commented on or approved by this April 1st,
22 2008 letter.

23 It just states here, "During the current
24 study PHRI site T9 was easily relocated by SCS
25 Archaeologists Ian Bassford and Cathleen Dagher as its

1 boundaries were flagged with yellow construction tape.
2 Following a thorough inspection Bassford and Dagher
3 determined this feature to be naturally occurring
4 unmodified boulder field as there was no evidence of
5 human alteration or usage.

6 "Based on the findings of the current
7 survey, T9 is no longer considered an archaeological
8 site, does not warrant archaeological data recovery as
9 recommended by M.L.K. Rosendahl in 1988 and no longer
10 warrants implementation of measures to prevent
11 accidental encroachment recommended by Eble and
12 Pantaleo in 1997."

13 MR. YEE: Thank you.

14 CHAIRMAN DEVENS: Any further questions?
15 Commissioner Lezy, you have a motion on this matter?
16 (Pause) To move this along?

17 COMMISSIONER LEZY: Apparently so, ah,
18 Chair. (Audience Laughter)

19 MR. SARUWATARI: Can I just clarify
20 something real quick?

21 CHAIRMAN DEVENS: Yes, Bert.

22 MR. SARUWATARI: The Applicant's request to
23 delete Conditions 8, 10, and 16 were not considered by
24 the Planning Commission I assume because those
25 conditions were imposed back in 2006 by the Land Use

1 Commission. And those conditions were imposed because
2 they mirrored the county special use permit. That's
3 all.

4 CHAIRMAN DEVENS: That's a good point.
5 Thanks, Bert.

6 MR. SARUWATARI: So those conditions, as I
7 said, did not come up with the record for us. The
8 record is basically the time extension and deletion of
9 Conditions 6 and 7 I believe, just to clarify.

10 (Ms. Erickson is no longer present)

11 CHAIRMAN DEVENS: That's a good point.
12 Thank you, Bert. May I ask you a question, Bert. So
13 do you believe that because it did not come up to us
14 as being deleted, that perhaps it's something that we
15 should not be considering at this point?

16 MR. SARUWATARI: Yeah. My understanding is
17 that we need to consider what was before the Planning
18 Commission.

19 CHAIRMAN DEVENS: Right.

20 MR. SARUWATARI: That's what came up to us.
21 That's the request.

22 CHAIRMAN DEVENS: Right. Petitioner, you
23 want to address that issue? I think that's right.
24 But you want to add something? Maybe we're missing
25 something here.

1 MS. FUKUDA: I would note that as part of
2 the Planning Commission review of this project we did
3 mention to the Commission at that time that we would
4 be seeking deletion of the Conditions 8 and 10. We
5 inadvertently forgot to include 16. But that is on
6 the record at the Planning Commission meeting.

7 Our understanding was that the Planning
8 Commission was just a recommending body and that final
9 action, decision on whether deletion would actually
10 occur would be with this body. But if that's not the
11 ability because of process to be done today, the
12 Applicant is willing to keep those conditions on and
13 then at a later time seek deletion of those conditions
14 and just hope for approval of the time extension
15 request today.

16 CHAIRMAN DEVENS: Okay. I'd rather play it
17 safe so that we don't cause any kind of -- or raise
18 the kind an issue where someone else may come in and
19 say we may have overstepped our authority or
20 jurisdiction on this. I think it's a good point that
21 Bert makes. And that's kind of the way I've always
22 considered the rule as well. Okay. Commissioners
23 have any other questions or clarification?

24 Commissioner Lezy, you want to take a shot
25 at a motion on this matter?

1 COMMISSIONER LEZY: Now that things have
2 been clarified...

3 CHAIRMAN DEVENS: Yeah.

4 COMMISSIONER LEZY: Thank you.

5 CHAIRMAN DEVENS: Just trying to help you.

6 COMMISSIONER LEZY: I appreciate that.
7 Chair, yes, I make a motion that in docket SP06-400
8 William Horneman on behalf of Hawaiian Cement, that
9 the Commission grant the request for time extension
10 for the Pohakea Quarry, Ma'alaea, Maui including
11 specifically but limited to the deletion of Condition
12 Nos. 6 and 7 of the prior Special Use Permit.

13 CHAIRMAN DEVENS: Is there a second?

14 COMMISSIONER JENCKS: Second.

15 CHAIRMAN DEVENS: Discussion?

16 COMMISSIONER CONTRADES: Yes.

17 CHAIRMAN DEVENS: Commissioner Contrades.

18 COMMISSIONER CONTRADES: Are we going to
19 follow Bert's recommendation to replace? Bert's
20 recommendation was to replace 6 and keep 7.

21 COMMISSIONER LEZY: Okay.

22 CHAIRMAN DEVENS: Do you want to amend the
23 motion to reflect that, Commissioner Lezy?

24 COMMISSIONER LEZY: Yes, Chair, thank you.
25 And my apologies, Bert.

1 COMMISSIONER CONTRADES: Do we need to state
2 for the record that the extension goes until
3 December....9....

4 MR. SARUWATARI: December 15 --

5 COMMISSIONER CONTRADES: December 15 --

6 MR. SARUWATARI: 2019.

7 COMMISSIONER CONTRADES: 2019.

8 CHAIRMAN DEVENS: That would be the ten
9 year.

10 COMMISSIONER LEZY: Allow me to restate my
11 motion please, Chair, then. In the same docket number
12 I move that we grant the time extension request for
13 the Pohakea Quarry, Ma'alahea, Maui and including
14 amendment of Condition No. 6 of the prior Special Use
15 Permit and deletion of the Condition No. 7. In
16 particular the amendment of Condition No. 6 would be
17 to indicate that the extension is through
18 December 15th, 2019.

19 CHAIRMAN DEVENS: There's a second on that?

20 COMMISSIONER JENCKS: Second.

21 CHAIRMAN DEVENS: Discussion?

22 COMMISSIONER CONTRADES: Did you say delete
23 No. 7?

24 COMMISSIONER LEZY: Is it amendment of No. 7
25 and deletion of No. 6?

1 COMMISSIONER CONTRADES: Staff's
2 recommendation was keep No. 7.

3 COMMISSIONER LEZY: Keep No. 7. Pardon me.
4 See, Chair, this is what happens when you give me jobs
5 to do.

6 (Laughter)

7 CHAIRMAN DEVENS: The motion will be amended
8 to --

9 COMMISSIONER LEZY: Allow me to...

10 (Audience laughter)

11 CHAIRMAN DEVENS: Go ahead.

12 COMMISSIONER LEZY: -- allow me to restate
13 for the third time. I move to grant the request for
14 time extension for the Pohakea, Ma'alaea, Maui and
15 that we retain Condition No. 7 to the prior Special
16 Use Permit and amend Condition No. 6 to the prior
17 Special Use Permit to indicate that the extension is
18 through December 15, 2019.

19 (Pause)

20 Chair, I withdraw my motion -- (audience
21 laughter) and I invite -- I invite Commissioner
22 Contrades to take over.

23 CHAIRMAN DEVENS: That's strike three
24 already. You're gone.

25 (Laughter)

1 COMMISSIONER CONTRADES: Mr. Chairman, I
2 move that --

3 CHAIRMAN DEVENS: Commissioner Contrades.

4 COMMISSIONER CONTRADES: -- in the matter of
5 SP06-400 William Horneman on behalf of Hawaiian Cement
6 request for a time extension be approved as
7 recommended by staff.

8 CHAIRMAN DEVENS: Is there a second?

9 COMMISSIONER JENCKS: Second.

10 CHAIRMAN DEVENS: Any further discussion?
11 Hearing none --

12 COMMISSIONER LEZY: I could have done *that*.
13 (laughter).

14 CHAIRMAN DEVENS: Hearing none, we'll take
15 the roll call vote.

16 MR. DAVIDSON: Motion to approve SP06-400
17 time extension as stated by Commissioner Contrades.
18 Commissioner Contrades?

19 COMMISSIONER CONTRADES: Aye.

20 MR. DAVIDSON: Commissioner Jencks?

21 COMMISSIONER JENCKS: Aye.

22 MR. DAVIDSON: Commissioner Teves?

23 COMMISSIONER TEVES: Aye.

24 MR. DAVIDSON: Commissioner Lezy?

25 COMMISSIONER LEZY: Aye.

1 MR. DAVIDSON: Commissioner Kanuha?

2 COMMISSIONER KANUHA: Aye.

3 MR. DAVIDSON: Commissioner Heller?

4 COMMISSIONER HELLER: Yes.

5 MR. DAVIDSON: Chair Devens?

6 CHAIRMAN DEVENS: Yes.

7 MR. DAVIDSON: Motion passes 7/0, Chair.

8 CHAIRMAN DEVENS: Is there anything else the
9 parties want to add for the record? Thank you very
10 much.

11 MS. FUKUDA: Thank you very much. Happy
12 holidays.

13 CHAIRMAN DEVENS: We'll go off the record.

14 (Off the record)

15 CHAIRMAN DEVENS: We're back on the record.
16 We're on the third item on today's agenda involving
17 Tropic Land.

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1 This is a continued hearing on Docket
2 No. A09-782 Tropic Land, LLC to amend the Agricultural
3 Land Use District boundaries into the Urban Land Use
4 District for approximately 96.0 acres in Lualualei,
5 Waianae District, O'ahu, Hawai'i Tax Map Key No.
6 (1)8-7-09:02(por.) Can we have the parties please make
7 their appearances please, starting with Mr. Yuen.

8 MR. YUEN: Thank you and good morning,
9 Mr. Chairman and Commissioners. My name is William
10 Yuen on behalf of Tropic Land, LLC. With me is Arick
11 Yanagihara, the project manager for Tropic Land.

12 MS. TAKEUCHI-APUNA: Good morning. Deputy
13 Corporation Counsel Dawn Takeuchi-Apuna on behalf of
14 the Department of Planning and Permitting. Here with
15 me today is Mike Watkins.

16 CHAIRMAN DEVENS: Good morning.

17 MR. YEE: Good morning. Deputy Attorney
18 General Bryan Yee on behalf of the Office of Planning.
19 With me is Ruby Edwards and behind me is Abe Mitsuda
20 from the Office of Planning.

21 MS. TOWNSEND: Aloha. Marti Townsend on
22 behalf of the Concerned Elders of Waianae. With me is
23 Alice Greenwood.

24 CHAIRMAN DEVENS: Good morning to you all.
25 Let me update the record. On November 18th, 2010 the

1 Commission received the following: OP's Second
2 Amended List of Exhibits, Exhibits 22 & 23.
3 Petitioner's Revised List of Witnesses; Revised
4 Rebuttal Witness List, Second Revised Exhibit List;
5 and Exhibits 64-70; Intervenor Concerned Elders of
6 Waianae's First Amended Exhibit List; and Exhibits
7 20-26.

8 On November 29, 2010 the Commission received
9 Intervenor Concerned Elders of Waianae's Expert
10 Witness Written Statements, Exhibits 14-19.

11 I understand there's no public witnesses
12 that want to give testimony at this time. Is that
13 correct, Mr. Davidson?

14 MR. DAVIDSON: That's correct.

15 CHAIRMAN DEVENS: Let's take care of the
16 additional exhibits at this time. We'll take at least
17 the first witness before we break for lunch. Does
18 that fit with your schedule, Mr. Yuen?

19 MR. YUEN: Yes, sir.

20 CHAIRMAN DEVENS: Okay. Do you have
21 additional exhibits you want to offer into evidence at
22 this time, Mr. Yuen?

23 MR. YEE: Yes, Mr. Chairman. I'd like to
24 offer into evidence Exhibits Nos. 64 through 70.

25 CHAIRMAN DEVENS: Any objections to the

1 offer of those exhibits, by the parties?

2 MR. YEE: No objection.

3 CHAIRMAN DEVENS: Hearing none, those
4 Exhibits 64 through 70 will be received into evidence.
5 County, you have additional exhibits?

6 MS. TAKEUCHI-APUNA: No.

7 CHAIRMAN DEVENS: Mr. Yee, do you have
8 additional exhibits you want to offer at this time?

9 MR. YEE: I don't think so. Not at this
10 time.

11 CHAIRMAN DEVENS: Okay. Elders?

12 MR. YEE: I'm sorry. When we start our case
13 we are going to ask for an opportunity to submit
14 exhibits if we can at that time.

15 CHAIRMAN DEVENS: Sure. No problem.
16 Elders, do you have any exhibits you want to offer
17 into evidence?

18 MS. TOWNSEND: Yes. We submitted additional
19 Exhibits 20 through 26. Just to clarify we also --
20 our Amended Exhibit list clarifies Exhibits 14 through
21 19 are the expert witness statements and then continue
22 with 20 to 26 submitted on the 18th.

23 CHAIRMAN DEVENS: All right. So do you want
24 to offer Exhibits 14 through 26 into evidence at this
25 time?

1 MS. TOWNSEND: Yes, sir. Thank you.

2 CHAIRMAN DEVENS: Any objection from the
3 parties?

4 MR. YUEN: I have an objection to Exhibit
5 No. 20 which is the article from the magazine. I'm
6 assuming that the Concerned Elders are going to
7 present testimony by the other witnesses. And based
8 on the assumption that these witnesses will be
9 testifying I will not have any objection to the other
10 exhibits.

11 I only ask, though, that if Mr. William Aila
12 becomes the Director of the Department of Land and
13 Natural Resources, if he assumes a governmental
14 capacity and does not testify on behalf of the
15 Concerned Elders, I would at the time object to the
16 introduction of his testimony.

17 CHAIRMAN DEVENS: So right now your only
18 objection is to Exhibit 20?

19 MR. YUEN: Yes.

20 CHAIRMAN DEVENS: And what's the grounds for
21 the objection?

22 MR. YUEN: I'd like to have the opportunity
23 to examine the author of the article. I don't see the
24 author of the article listed as a witness.

25 CHAIRMAN DEVENS: Ms. Townsend did you have

1 a witness that you were going to be using this exhibit
2 with?

3 MS. TOWNSEND: Not specifically. My
4 intention for admitting that exhibit was informational
5 along the same lines as the "Star Bulletin" article
6 that the Petitioners had submitted. I could try and
7 contact the author and see if he's willing to testify
8 but it was more a point of information for the
9 Commissioners.

10 CHAIRMAN DEVENS: Mr. Yuen, do you have any
11 objection to the authenticity of the article or is it
12 just mainly the substance that you want to question?

13 MR. YUEN: I have no -- well, frankly, I
14 have never heard of Flux Magazine until I saw this
15 article. But I have no objection to this being a copy
16 of an article that appeared in Flux Magazine, whatever
17 Flux Magazine is. But I would object to it being used
18 to prove certain facts unless we are able to examine
19 the author of the article.

20 CHAIRMAN DEVENS: Okay. You know, the
21 Chair's thinking is always to try and admit as much as
22 possible. And I'm confident that the Commissioners
23 can give the appropriate weight. I do note your
24 objections and the limitations that you may have on
25 questioning the substance. But I think that will go

1 to the weight of the article itself.

2 MR. YUEN: Thank you.

3 CHAIRMAN DEVENS: So we'll admit it, receive
4 Exhibit 20 over the objections of the Petitioner.

5 MS. TOWNSEND: Thank you.

6 CHAIRMAN DEVENS: With the understanding
7 we'll give it the appropriate weight if the author
8 isn't here, there's no witness to testify on the
9 substance of the article. It's admitted.

10 MS. TOWNSEND: Thank you. Should I respond
11 to the concern about our cultural expert witness
12 William Aila, Jr.? Should I handle that somehow?

13 CHAIRMAN DEVENS: Well, I think that's a
14 little different because Mr. Yuen may not have the
15 opportunity to cross examine that witness, if that was
16 someone you were going to call. And I think when we
17 try to balance the fairness of it all I think whoever
18 it may be should have an opportunity to at least cross
19 examine the witness.

20 MS. TOWNSEND: So I guess to clarify, it was
21 news to us that he was being appointed or nominated.
22 And we are currently working to find another cultural
23 practitioner. So I'm hoping that the Commission will
24 accept a written statement from a different cultural
25 expert who'd be available at the next hearing or

1 whenever our opportunity comes to present.

2 CHAIRMAN DEVENS: I think what you will
3 have to do, and I'll let Mr. Yuen respond as well, is
4 probably make the request upon the Commission only
5 because certain deadlines have come and gone. But
6 certainly there may be special circumstances here
7 where you had thought the witness would be available.

8 MR. YUEN: I would have no objection to
9 submitting another witness for Mr. Aila should
10 Mr. Aila become unavailable.

11 MS. TOWNSEND: It would be a substitute.

12 CHAIRMAN DEVENS: Do the other parties have
13 an objection to that stipulation?

14 MR. YEE: No objection.

15 CHAIRMAN DEVENS: We'll accept that
16 stipulation. And as soon as you find out who that
17 witness is, if you can let all the other parties know.

18 MS. TOWNSEND: I will. Thank you.

19 CHAIRMAN DEVENS: So do you want to withdraw
20 that -- well, actually why don't we leave it for now
21 because you don't know if he's going to be available
22 or not. Right?

23 MS. TOWNSEND: Okay. Sounds good. Thank
24 you.

25 CHAIRMAN DEVENS: Mr. Yuen, you want to go

1 with your first witness.

2 MR. YUEN: Thank you. My first witness is
3 Alii Tampos.

4 CHAIRMAN DEVENS: I'm sorry. Let me just
5 maybe clear for the record we have received into
6 evidence the Elders' Exhibits 14 through 26 with the
7 exception of we will reserve ruling on the exhibit
8 documenting Mr. Aila's proposed testimony. I'm sorry.
9 Go ahead, Mr. Yuen your first witness.

10 MR. YEE: Just for the record, Chair, I'm
11 happy to continue with Petitioner's case and whatever
12 order they want to present it. We will be coming
13 back, however, to Mr. Yanagihara for
14 cross-examination, correct?

15 MR. YUEN: That's correct. I just want to
16 get this one in and out.

17 CHAIRMAN DEVENS: He's taking a witness out
18 of order. We're trying to get him done before lunch
19 but we'll certainly come back to the witness to give
20 you an opportunity to cross examine. Mr. Tampos, if
21 we could swear you in.

22 ALII TAMPOS
23 being first duly sworn to tell the truth, was examined
24 and testified as follows:

25 THE WITNESS: Yes.

1 CHAIRMAN DEVENS: If you could state your
2 name and address.

3 THE WITNESS: Alii Tampos, 91-1765 Puhiku
4 Street in Ewa Beach.

5 DIRECT EXAMINATION

6 BY MR. YUEN:

7 Q Mr. Tampos, what is your position with
8 Tropic Land?

9 A Site manager.

10 Q And, Mr. Tampos, I've submitted into
11 evidence a pail of soil which I'm not sure you can see
12 it but it's an orange pail that's immediately below
13 the table in front of you. I'd like you to describe
14 the procedure you followed in removing this soil from
15 the Tropic Land property on November 6, 2010.

16 I have submitted into evidence photographs
17 which I've listed as Exhibit 67 and a map that I've
18 submitted as Exhibit 68 in this regard. Mr. Tampos,
19 can you just tell the Commission what you did in
20 removing the soil.

21 A On November 6th I went to the property. It
22 was about on the left side as you enter the gate,
23 northern side of the property. I took a shovel and
24 dug down about 6 inches and removed some dirt and
25 rock.

1 Q And is the soil that you removed in the
2 pail, in the orange pail that's marked Exhibit 67?

3 A Yes.

4 Q And the map that I submitted as Exhibit 68,
5 is that the location of the soil that you removed?

6 A Yes.

7 MR. YUEN: No further questions.

8 CHAIRMAN DEVENS: City?

9 MS. TAKEUCHI-APUNA: No questions.

10 CHAIRMAN DEVENS: OP?

11 MR. YEE: No questions.

12 CHAIRMAN DEVENS: Elders?

13 MS. TOWNSEND: Just a few questions.

14 CROSS-EXAMINATION

15 BY MS. TOWNSEND:

16 Q Aloha.

17 A Hi.

18 Q So how long have you been with Tropic Land?

19 A About four years.

20 Q Four years. So 2006?

21 A Yes.

22 Q And you've been -- have you been on the
23 property that whole time?

24 A Yes.

25 Q Okay. So you're one of the people who live

1 on the prop -- who stayed on a regular basis, live
2 in --

3 MR. YUEN: Mr. Chair, this goes beyond the
4 scope of my direct examination. I asked him just to
5 authenticate the soil sample.

6 CHAIRMAN DEVENS: We'll give her a little
7 latitude.

8 Q (By Ms. Townsend) Okay. So you're very
9 familiar with the land.

10 A Somewhat.

11 Q Okay. And do you also operate a trucking
12 company?

13 A Yes.

14 Q And you've expressed interest in being a
15 tenant in the industrial park.

16 A Yes, to rent.

17 Q To rent. Okay. So you've been here since
18 2006. Are you familiar with some of the previous
19 violations that the Tropic Land has received for
20 operating a baseyard?

21 MR. YUEN: I'm going to object to that
22 question. This goes way beyond the scope of my direct
23 examination.

24 CHAIRMAN DEVENS: It may go to credibility,
25 but do you have foundation for that? Is there going

1 to be evidence?

2 MS. TOWNSEND: Yes. I was expecting
3 actually Mr. Yanagihara to testify first to establish
4 the violations in the past.

5 CHAIRMAN DEVENS: And then what would that
6 have to -- how does that relate to this witness's
7 testimony?

8 MS. TOWNSEND: It goes to the -- I guess I'm
9 just trying to give the Commission as much information
10 as possible about the operation of Tropic Land on this
11 parcel.

12 CHAIRMAN DEVENS: That's okay. And we want
13 to hear the information. But what is the, you know --

14 MS. TOWNSEND: Okay. So I'm not exactly
15 sure what the Petitioner is hoping to prove with this
16 bucket of soil. And I want to be able to establish
17 that there has been improper industrial use of the
18 property in the past that may have undermined the
19 quality of the soil if that's what they're hoping to
20 demonstrate with it.

21 CHAIRMAN DEVENS: Okay, that's probably --
22 you may want to ask Mr. Yanagihara those questions
23 because it was a pretty limited scope of testimony
24 from this witness.

25 MS. TOWNSEND: Okay. Thank you.

1 CHAIRMAN DEVENS: Anything more you want to
2 ask?

3 MS. TOWNSEND: No, I think that's it.
4 Thanks.

5 CHAIRMAN DEVENS: Any questions from the
6 Commissioners? One question. Mr. Tampos, how long
7 did it take you to get the bucket of soil?

8 THE WITNESS: About two minutes.

9 CHAIRMAN DEVENS: Very good. Anything else?

10 MR. YUEN: No redirect.

11 CHAIRMAN DEVENS: It's about 12:00 right
12 now. What we'll do we'll take our lunch break. We'll
13 reconvene at 1:15, 1:30 if that's okay with the
14 parties.

15 MR. YUEN: 1:15 or 1:30.

16 CHAIRMAN DEVENS: We'll come back at 1:15.

17 MR. YUEN: Okay. Thank you very much.

18 (Lunch recess was held.)

19 CHAIRMAN DEVENS: (1:30) We are going to go
20 back on the record. Mr. Yuen, you're going to
21 continue with your witness Mr. Yanagihara.

22 MR. YUEN: Yes. Mr. Yanagihara was being
23 cross-examined by Bryan Yee of the Office of Planning.

24 CHAIRMAN DEVENS: Mr. Yanagihara, you're
25 still under oath. Do you understand?

1 THE WITNESS: Yes.

2 CHAIRMAN DEVENS: Mr. Yee.

3 CROSS-EXAMINATION

4 BY MR. YEE:

5 Q Mr. Yanagihara, I have several more
6 questions. But before I get to that is there anything
7 that you wanted to -- I just want to give you an
8 opportunity to either update, clarify or correct any
9 of your testimony you gave before. Is there anything
10 you wanted to supplement the record with?

11 A In terms of the transcript, I had already
12 previously given to my attorney, it's more or less
13 non-substantive language corrections, punctuations,
14 like that.

15 Q Okay. At the last hearing we were talking
16 about the mitigation provisions set forth by your
17 consultants in the final environmental impact
18 statement. And at that time I had asked you whether
19 you would be representing that you would be
20 implementing those mitigation recommendations from
21 your consultant.

22 Are you prepared to answer that question at
23 this time?

24 A Yes, I am.

25 Q Are you prepared to commit to performing the

1 mitigation measures recommended by your consultants in
2 the Final EIS?

3 A Yes, we are.

4 Q There are no particular mitigation measures
5 that you're not going to be performing that are
6 recommended by your consultants.

7 A As contained in the EIS, yes.

8 Q Okay. Let me turn to the Lualualei Naval
9 Access Road. You're aware that this is a matter of
10 great importance to the Office of Planning?

11 A Can you repeat that question?

12 Q Are you aware that access to Lualualei Naval
13 Access Road is an issue of great importance to the
14 Office of Planning?

15 A Yes, we are.

16 Q And you had spoken of an ability to get a
17 5-year license agreement. Do you remember that?

18 A Can you repeat that again?

19 Q Do you remember speaking about an ability to
20 get a license agreement from the Navy for Lualualei?

21 A Yes, I do.

22 Q And the Navy has offered you a 5-year
23 license agreement to continue to use the area as an
24 open storage area. Do you remember that?

25 A Yes.

1 Q But that particular license agreement offer
2 did not extend to the proposed developments for the
3 Petition Area.

4 A That's kind of our understanding based on
5 our interpretation of that letter.

6 Q The Navy also sent you a proposal dated
7 July 26, 2010 for a long-term easement that would be
8 able to allow you to develop the property. Do you
9 remember that?

10 A Yes, I do.

11 Q Did you respond to the Navy on the July 26,
12 2010 proposal?

13 A Regarding the long-term easement.

14 Q Yes.

15 A We are in discussions with the Navy over
16 several of the conditions contained in that letter,
17 and the discussions are ongoing right now.

18 Q Who are you talking with at the Navy?

19 A Randy Young, Lynn Tanaka.

20 Q And were there discussions --

21 A And we also have intermediaries working with
22 them also.

23 Q So in addition to yourself other people are
24 talking to Randy Young and Lynn Tanaka.

25 A Yes.

1 Q Were there discussions with Mr. Young or
2 Ms. Tanaka subsequent to July 26, 2010?

3 A There were several e-mail transmissions, but
4 nothing of substance. Just more or less posing
5 questions regarding some of the conditions.

6 Q So when you say you're engaged in
7 negotiations or discussions, that would seem to imply
8 to me that these are internal discussions or at least
9 discussions which are not involving the Navy?

10 A I've a phone conversation with Mr. Young.

11 Q Okay. So was --

12 A That was early on in the process.

13 Q I'm trying to focus on your discussions
14 after July 26, 2010. I'm just trying to find out the
15 status of your, the status of this July 26, 2010
16 proposal. So, so far I've heard you tell me you got
17 the proposal, right?

18 A Yes, we did.

19 Q You sent some e-mails which were
20 non-substantive but asked questions, correct?

21 A Yes.

22 Q Did you have oral discussions with any
23 member of the Navy after July 26, 2010?

24 A I don't remember.

25 MR. YUEN: I'm going to interject and say

1 that I as the attorney for Tropic Land have had
2 several discussions with Randy Young regarding the
3 offer to use.

4 MR. YEE: Okay. Thank you. I appreciate
5 that. Thank you.

6 Q You're aware that the Navy --

7 CHAIRMAN DEVENS: But you're just asking
8 this witness about what his conversations were,
9 correct?

10 MR. YEE: Yes.

11 Q So would it be your understanding, then,
12 that discussions have occurred by your attorney with
13 the Navy?

14 A Yes.

15 Q And was that on your behalf?

16 A Yes.

17 Q Do you know what the status of those
18 discussions then are?

19 A In what regard?

20 Q What's the status of the discussions? How
21 close are you to completing an agreement with the Navy
22 for a long-term easement?

23 A Well, it depends because if you understand
24 the process we have been working with the Navy since
25 2008. The local NAVFAC has to report to Washington.

1 Anything we discuss with them has to be cleared
2 through Washington, to our understanding.

3 When we started the process we had three
4 different commanding officers that we had to deal
5 with. There's a new commanding officer that just came
6 on board as of July 2010. I believe his name is
7 Coronado (phonetic) or something to that effect.

8 So I'm not -- did that answer your question?
9 Or -- in terms of the status? It's a long, involved,
10 convoluted process that we're going through in
11 arriving at a satisfactory, mutual agreeable --
12 agreement between Tropic Land and the Navy.

13 Q The Navy sent you a letter dated July 26,
14 2010 which constituted the Navy's position on this
15 case, correct?

16 A Yes.

17 Q So that letter went through all those
18 processes you were referring to about approvals on the
19 Navy's side, yes? You would assume. You would
20 understand.

21 A Yes.

22 Q Okay. So if you simply said, "Yes, I
23 agree," you'd be close to an agreement?

24 A Yes, we would. But we did not agree, like I
25 mentioned, with several of the terms and conditions

1 mentioned in that letter.

2 Q Do you have some indication that the local
3 Navy is amenable to your modifications?

4 A Pardon?

5 Q Do you believe that the local officers or
6 agency officials in Hawai'i are amenable to your
7 proposal?

8 A Based on our discussions that we have had
9 with them, yes.

10 Q And it also requires an agreement with some
11 of the other property owners that are using Lualualei
12 Naval Access Road, correct?

13 A In terms of ultimately creating a user group
14 or an LLC that would be a party to that agreement.

15 Q So how close are you to getting agreement
16 from those other parties?

17 A Well, we have had several meetings and
18 discussions with the principals of PVT and Pineridge,
19 two of the principal users along the main stretch of
20 the Lualualei Naval Road.

21 Q So you've had discussions. Are they
22 agreeable to the provisions of the July 26, 2010
23 letter?

24 A Not at this point in time. They're on a
25 similar track with us in terms of questions of several

1 of the conditions that were put forth by the Navy in
2 that July letter.

3 Q Is it -- when do you think then -- when will
4 you know whether or not you will be able to get a
5 long-term access through Lualualei Naval Access Road?

6 A I can't answer that specifically or
7 definitively at this point in time.

8 Q Is there a point in the process by which you
9 will get the Lualualei Naval Access Road easements
10 before you proceed further with development?

11 A I'm not quite sure I understand your
12 question.

13 Q Let me rephrase. You're aware that the
14 Office of Planning has suggested that you get that
15 access prior to applying for zoning.

16 A Yes. I understand that is your position.

17 Q And you understand that the Office of
18 Planning's position is that you should get that
19 Lualualei Naval Access prior to significant
20 development of the property.

21 A Yes.

22 Q Do you think that you're going to have to --
23 do you think that you may be significantly developing
24 the property before you get the long-term easement?

25 A What do you define as "significantly

1 developing the property"?

2 Q Well, I will let you describe to me. What
3 do you think you will need to do on the property
4 before you get the easement?

5 A Okay. Let's backtrack a little. Right now
6 there's an existing unilateral agreement on the
7 property that came forth in 1996 for the development
8 of the golf course.

9 Contained in that unilateral agreement is a
10 specific condition that the petitioner or the party to
11 that agreement would have had to get a long-term
12 easement for the property before that golf course
13 could open.

14 Our position is that we would like our
15 unilateral agreement, when and if we go to the city
16 and county, to be subject to our obtaining a long-term
17 satisfactory easement for the use of Lualualei Road.

18 Q Do you think you would begin mass grading
19 before you get the long-term easement?

20 A That's not our intent.

21 Q Do you want the ability to do mass grading
22 before you get the long-term easement?

23 A If it's possible, but I don't think it's
24 practical.

25 Q What about the zoning? Do you want to get

1 the zoning before you get the long-term easement?

2 A Yes. And make the zoning subject to our
3 obtaining a satisfactory easement for the Lualualei
4 Naval Road.

5 Q And what happens if you cannot get the
6 long-term easement?

7 A Then I presume just like the existing
8 unilateral agreement it continues until we actually
9 comply with the terms and conditions of the unilateral
10 agreement, whereby the zoning become formally
11 effective.

12 Q So your desire would be to maintain your
13 development rights indefinitely.

14 A I'm not sure indefinitely because to the
15 extent with this Land Use Commission, we have
16 committed to developing the property within 10 years.

17 Q How much time after zoning would you need --
18 let me backtrack. If you cannot get zoning until you
19 get the easement, just assume that for the moment, so
20 you have to get your easement before you get the
21 zoning.

22 And also assume that you have to complete
23 the infrastructure within 10 years from the date of
24 the Decision and Order. What do you think is a period
25 by which you have to get the long-term easement?

1 A Well, for all intents and purposes if we
2 could get the easement right now we would be happy as
3 a clam. But it's just that we're subject to this
4 process in dealing with the bureaucracy of the Navy in
5 obtaining a long-term easement.

6 Hopefully, based on the discussions we are
7 having now through several intermediaries, we can come
8 to an agreement within the next six months. But I am
9 not holding my breath waiting on that. We hope to get
10 it before the end of the year.

11 Q And maybe it would help you if I explain why
12 I'm asking the question. Normally I don't, but if it
13 would help you answer the question. The Office of
14 Planning is obviously concerned for any developer that
15 puts a lot of development into a property which, if it
16 then violates the condition, we have to look at the
17 issue of reversion. Okay.

18 So if you have a 10-year requirement to
19 complete the infrastructure, and if you have to get
20 your zoning before -- I'm sorry if you have to get the
21 long-term easement before you get zoning, then you
22 only have a certain amount of time, then, to meet that
23 10-year time period. Do you understand that?

24 A Yes, I do.

25 Q Okay. So I'm trying to figure out, then

1 what time period would be appropriate to make sure you
2 get that long-term easement in order to meet the
3 10-year infrastructure requirement?

4 A I can't answer you definitively. But for
5 all practical intents and purposes time is money. The
6 longer this process takes for us to get the LUC
7 approval for the boundary amendment, to go the city
8 and county for the WSCP approval, an amendment to the
9 5-year plan, and to get our ultimate zoning is all
10 time.

11 And every day that goes by is costing us
12 money. So there is a strong intent and desire on our
13 part to do this as quickly as possible. If you're
14 going to ask me for specific timeframe, like I
15 mentioned, we've been working with the Navy since 2008
16 when the city told us "time out". They are not going
17 to take over the road.

18 So we have been in that process for two
19 years already. From what I've been told by the Navy
20 the problem is there was a precedent somewhere in
21 Florida where an easement was granted to a developer
22 for access to a naval road. Apparently the document
23 was not drafted properly so it resulted in a lot of
24 problems and repercussions for the Navy as a result of
25 that. Unfortunately, our situation is different. But

1 the mindset in Washington that they're looking at the
2 situation as being similar.

3 Q Just a couple more questions on this issue.
4 You are representing, however, that you will be
5 getting access to the property through Lualualei Naval
6 Access Road, correct?

7 A Yes.

8 Q And are you also representing that you will
9 maintain that access through Lualualei Naval Access
10 Road?

11 A Can you clarify what you mean by "maintain"?

12 Q Well, if, for example, you get a 20-year
13 easement and in 20 years the Navy decides, "I'm not
14 going to let you stay on the road," then you're going
15 to have to go through Hakimo Road unless there's some
16 other infrastructure built.

17 A Conceivably, yes.

18 Q And that's problematic. Do you understand
19 that?

20 A Yes.

21 Q To use Hakimo Road.

22 A Yes. But what you have to understand also
23 is that we're not only asking the Navy for an
24 easement, we're telling the Navy, "We will manage and
25 maintain the road on your behalf at no cost to the

1 Navy." The Navy then gets to use the road free and
2 clear.

3 Q So I'm looking and asking you if you are
4 representing that you will not just get the easement
5 but that you will keep the easement, that you will
6 keep the access through Lualualei Naval Access Road?

7 A I don't understand what you mean by "keep
8 the easement". It definitely is our intent to have a
9 long-term easement. We've asked for 50 years.

10 Q Okay. I think at this point I'll just move
11 on. The second issue is commercial intrusion. You're
12 familiar with the Office of Planning's concerns about
13 that?

14 A Yes, I am. But I don't quite understand
15 why.

16 Q You've provided a list of activities for
17 this industrial area which would include a baseyard
18 for trucking, landscaping or construction equipment,
19 is that right?

20 A Yes, we have. But those are similar to what
21 is allowed for in the master use table in the LUO
22 under the I-1 designation.

23 Q As a general matter this type of activity
24 tends to generate less income per square foot than
25 other commercial activities that are potentially

1 possible for industrial.

2 A That's your opinion.

3 Q Do you think that's not true?

4 A It varies from, on a case-to-case basis. It
5 varies by location. It varies by actual type of use.
6 I mean there's many variables that can go into
7 determining the difference in the rents or the prices
8 obtained for properties based on the ultimate use.

9 Q As a general matter eating establishments
10 will generate a higher square footage cost than --

11 A As a general matter, but not on a
12 case-by-case basis they may be different.

13 Q And if you have, you know, all things being
14 equal the property owner will tend to rent it out to
15 the person who's going to pay them the most money,
16 right?

17 A I mean practically speaking, yes.

18 Q So if a person had a choice between renting
19 it out for a restaurant which pays a higher square
20 footage amount or a trucking baseyard which tends to
21 pay a lower square footage, the tendency would be to
22 have restaurants, right?

23 A Well, but if you look at practical where
24 this property's located, I mean if he can get a
25 restaurant to locate there, more power to him. Would

1 you want to put a restaurant there and spend the
2 infrastructure and capital to put a restaurant?

3 It may be a situation where an owner may
4 subsidize an eating establishment on site to help with
5 his employees. There are many variables that can go
6 into that.

7 Q And one of the things, one of the
8 attractions of your particular project is that it
9 provides a service and an activity, that's industries
10 for this region, right?

11 A Yes. That is the underlying intent.

12 Q Such as the baseyard for trucking,
13 landscaping or construction equipment.

14 A Yes.

15 Q You're familiar with the Office of Planning
16 and the Department of Agriculture's concern about the
17 impact of this development on agriculture?

18 A Yes, I am.

19 Q Are you agreeing to do anything that would
20 mitigate the impact of your development on
21 agriculture?

22 A As I mentioned in my last testimony we have
23 approximately 23 acres of property across the street.
24 Concurrent with our obtaining I-1 zoning for this
25 property it is our intent to apply to the city to

1 revert the zoning back to Ag-2.

2 Q What is the current zoning?

3 A The current zoning consistent with existing
4 property is P-2.

5 Q In P-2 preservation?

6 A Preservation that's conducive to developing
7 a golf course.

8 Q So preservation does allow for agriculture,
9 is that correct?

10 A I'll have to refer to the LUO.

11 Q Are you aware that preservation does not
12 include residential development?

13 A Pardon?

14 Q Are you aware that preservation lands do not
15 include residential dwellings?

16 A Not specifically. I'll have to research the
17 question and give you a more definitive answer.

18 Q Would it be your understanding that in Ag 2
19 you are allowed to put in farm dwellings?

20 A Yes.

21 Q You consider the move from preservation to
22 agriculture a reversion of the property?

23 A What do you mean by reversion? Is it
24 diminution of value or just a conversion of the
25 zoning?

1 Q Well, actually I thought I was using your
2 term. But would there be a reduction in value from
3 moving the property from preservation to agriculture?

4 A I'm not the expert to determine that.

5 Q Okay. Let me move on to the Ulehawa Stream.
6 You're aware the Office of Planning has expressed
7 some questions about the impact of this development on
8 the Ulehawa Stream.

9 A Yes, I am.

10 Q Would you agree that the runoff from the
11 Petition Area would not go directly into the Ulehawa
12 Stream?

13 A Well, I believe, if you recall based on the
14 testimony of our civil engineer, there will be no net
15 positive runoff from this property as a result of the
16 development. There may be some runoff that occurs
17 from the roadways on the property onto and into
18 Ulehawa Stream. But it may be an engineering issue.

19 We will be building roads. We will be
20 building swales on the side of the road. And are
21 charged with the engineer to develop a system of swale
22 that minimizes the runoff from the roads onto the
23 swales into Ulehawa Stream.

24 Q I remember the testimony about the runoff
25 that goes onto the road, into the storm drains, and

1 those eventually dump into the Ulehawa Stream. I was
2 not referring to that as a direct, as a direct runoff.

3 I was referring to water that flowed
4 directly from your property into Ulehawa Stream.
5 Would that be going on after development?

6 A Well, the way the design is, my
7 understanding of the preliminary thought process with
8 the design is that we are building roads as part of
9 the Project. On the side of the roads will be swales
10 to catch the runoff from rainwater onto the roads.
11 That swale will have underground piping that will be
12 channeling the water onto Ulehawa Stream.

13 But we've asked our engineer to design the
14 swales so as to minimize the amount of water that
15 actually ends up in Ulehawa Stream.

16 Q In your existing unilateral agreement
17 there's a \$1 million community benefits package.

18 A Can you repeat that question?

19 Q In your existing unilateral agreement
20 there's a \$1 million community benefits package
21 provision.

22 A I believe in the existing unilateral
23 agreement, I'm not sure the amount is \$1 million. It
24 may be more, maybe be less.

25 Q Okay. What are you agreeing to -- or what

1 is your proposal for a community benefits package for
2 this Project?

3 A I believe I answered the question in my last
4 testimony that we had made a promise to the
5 Nanakuli/Maili Neighborhood Board that from the
6 proceeds of this -- sales proceeds of this Project we
7 will set up a \$1 million community fund.

8 The thought process at this time is we will
9 set up a 501(c)(3) corporation that there will be
10 consisting of directors from the Neighborhood Board
11 and the community who will then determine the use of
12 those funds.

13 Q Your FEIS also identified multiple wells on
14 the site which had been capped. Are you aware of
15 that?

16 A Yes, we are.

17 Q Would you be, in the future, clarifying
18 whether you intend to formally abandon these wells
19 pursuant to --

20 A Well, the wells are all capped right now. I
21 believe, several, probably most of them, we can't even
22 locate two of them. I'm told they were capped by the
23 previous owner, but we can't locate two of them. The
24 ones we know are there are capped.

25 Q Go ahead.

1 A They are capped but I don't think they're
2 producing any water.

3 Q If they're capped does that mean you've
4 decided to abandon the use of those wells?

5 A I'm not sure "abandon" is the proper word
6 but they're not --

7 Q Do you intend to use those wells?

8 A -- being used right now.

9 Q Do you intend to use wells in the future?

10 A We have no intent to use the wells.

11 Q Do you intend to -- well, then do you intend
12 to no longer use the wells?

13 A Forever?

14 Q Yes. Until you get additional approvals.

15 A I cannot commit to that. I'm not the owner.

16 Q Are you familiar with the Commission on
17 Water Resource Management requirements for abandoning
18 wells?

19 A I believe I do.

20 Q You're aware there's a notification and
21 process by which you are to cap and notify CWRM when
22 you abandon a well?

23 A I don't remember that specifically.

24 Q If there is such a requirement, will you be
25 following that requirement?

1 A I'll have to consult with the owners.

2 Q You spoke extensively about the CC&R's at
3 the last hearing. CC&R's would be enforced by the
4 residents or the tenants of the industrial park,
5 correct?

6 A It will be part of the documentation for the
7 condominium project that we intend to develop.

8 Q And enforcement is by tenants upon other
9 tenants, correct?

10 A Pardon?

11 Q Enforcement is by tenants enforce CC&R's,
12 right?

13 A Well, normally in a condominium or a planned
14 units subdivision you do have a homeowners'
15 association elects a board of directors that's
16 responsible for maintaining compliance with the -- not
17 only the CC&R's, you have the declaration, you have
18 the bylaws, you have the articles, you also develop
19 rules and regulations for that specific project.

20 Q Okay. And who enforces the CC&R's?

21 A The board of directors.

22 Q Third parties are not allowed to enforce the
23 CC&R's, right? So Concerned Elders of Waianae could
24 not come to --

25 A You do hire a property manager to maintain

1 the project and they are responsible for partial
2 compliance.

3 Q Could Concerned Elders of Wai'anae enforce
4 the CC&R's if they were not a tenant of the industrial
5 park?

6 A If they wish to register a complaint
7 relative to a violation of a -- perceived violation of
8 a CC&R, they can always file a complaint with the
9 board of directors of the association.

10 Q The Petition Area does not represent all of
11 the lands owned by the Petitioner in this area,
12 correct?

13 A Can you repeat that question?

14 Q The Petition Area does not represent all of
15 the land owned by the Petitioner in this area.

16 A Yes.

17 Q Are you prepared to say what will be done
18 with the land which is not within the Petition Area?

19 A Yes, we are.

20 Q What are you going to do with the land?

21 A On the existing 236-acre site, 96 acres as
22 we are presenting here will be developed as an I-1
23 light industrial park. The remaining portions of the
24 property that goes up the mountain will remain in the
25 existing preservation or conservation zoning.

1 We have 2 parcels across the street totaling
2 a little over 23 acres. As I mentioned we do intend
3 to convert that zoning back to Ag 2. One of the two
4 parcels is approximately 27.2 acres.

5 We are also working with a local not-for
6 profit community group for the development of an
7 agribusiness incubator on that site. Right now the
8 discussions are very preliminary and we're waiting for
9 them to come back to us with a little more definitive
10 proposal about the actual usage of that 2.7 acres.

11 Q Are you amenable to putting a conservation
12 easement on the mauka lands that are not within the
13 Petition Area?

14 A I am not specifically familiar what you mean
15 by a conservation easement.

16 Q Are you willing to agree to keep the lands
17 in conservation?

18 A That is our intent.

19 Q Are you willing to agree to keep them in
20 conservation?

21 A I'll have to consult with the owners. Right
22 now at this point in time the development -- the
23 nature of that property is not conducive to any
24 worthwhile development or further improvements.

25 Q Are you aware that Civil Defense has stated

1 that the project needs to install a specific type of
2 solar powered siren for this development?

3 A Can you repeat that question again? You're
4 talking a little fast for me.

5 Q I'm going to make an effort. I know I've
6 done this several times. I'll try to slow down. Are
7 you aware that Civil Defense has stated that this
8 Project needs to install a specific type of solar
9 powered siren?

10 A In terms of specifications, no. I am aware
11 of a request in that regard.

12 Q Will you be complying with the Civil
13 Defense's request to install a siren?

14 A That is our intent, yes.

15 Q Of a particular type.

16 A Yes.

17 CHAIRMAN DEVENS: Let me ask you. When you
18 say it's your intent, are you committing to it or just
19 saying it's an idea still --

20 THE WITNESS: At this point I don't recall.

21 CHAIRMAN DEVENS: Let me say why. Because
22 we're trying to figure out what you're agreeing to do
23 as part of the conditions. So when you say "intent",
24 personally I'm not quite sure what you're committing
25 to, if anything.

1 THE WITNESS: He's asking me a question but
2 I don't recall the specific details of that. I recall
3 in general that there was a request or letter to put
4 up a siren. But I don't specifically remember the
5 actual specs.

6 CHAIRMAN DEVENS: That's fine. I'm not
7 trying to tell you how to answer the question. I'm
8 just saying when you use the word "intent" it's vague
9 to the Commission. We don't know if you're
10 representing that as something you will definitely do
11 or you're still thinking about.

12 THE WITNESS: We're not -- I mean we will do
13 that.

14 CHAIRMAN DEVENS: Okay. That's all I was
15 trying to clarify. Thank you, sir.

16 THE WITNESS: But in terms of the actual
17 specification in following what the Civil Defense is
18 requiring I'm not clear on that.

19 CHAIRMAN DEVENS: That's fair enough. And I
20 apologize for interrupting.

21 MR. YEE: I appreciate the question.

22 Q Since your last testimony have you looked --
23 well, let me backtrack. You're aware there's a
24 railway track at the intersection of Farrington
25 Highway and Lualualei Naval Access Road, correct?

1 A Yes.

2 Q Are you aware that there's a possibility
3 that the improvements at that intersection may impact
4 that railway track?

5 A Yes, I am.

6 Q Have you looked at the process for either
7 moving or -- well, have you looked at the process that
8 would be needed to move that railway track?

9 A Not specifically, but if I recall there was
10 an environmental assessment done by the state of
11 Hawai'i Department of Transportation for the
12 intersections on Nanakuli Avenue, and there was
13 another avenue whereby the mitigation for the movement
14 of that railway track was addressed in that EA.

15 Q Have you drawn any conclusions about the
16 necessity or likelihood of getting approvals to make
17 the necessary improvements at this intersection?

18 A It's my understanding based on that state of
19 Hawai'i Department of Transportation EA that approval
20 was obtained to incorporate either the movement or the
21 mitigation of the railway track into the proposed
22 intersection.

23 So hopefully we can -- if and when
24 improvements are necessary for the Lualualei/
25 Farrington Highway improvements the template will have

1 already been established to accomplish that.

2 Q For this particular project some of the lots
3 are going to be sold as lots, and some of them will
4 actually have buildings on them, is that right?

5 A Well, we intend to sell graded lots.

6 Q Are you going to do any horizontal --

7 A What?

8 Q I'm sorry. Are you going to do any vertical
9 construction?

10 A We don't know. Whether or not the developer
11 will actually keep some lot and develop buildings
12 thereon we have not made a decision as yet. Depends
13 on ultimately the demand for the lot sales.

14 Q Can you represent that if the Commission
15 grants your request, then this Project will be
16 substantially completed within 10 years from the date
17 of this Decision and Order?

18 A I believe I already made that commitment in
19 the last testimony.

20 Q And if so then the infrastructure or the
21 backbone infrastructure for the Petition Area would
22 then definitely be completed within 10 years of the
23 Decision and Order.

24 A Yes.

25 MR. YEE: That's all the questions I have.

1 Thank you.

2 CHAIRMAN DEVENS: Ms. Townsend.

3 CROSS-EXAMINATION

4 BY MS. TOWNSEND:

5 Q Aloha. Can you hear me?

6 A Can you speak slowly, Marti.

7 Q I'm going to try. I've been practicing.

8 A I'm hard of hearing.

9 Q All right. So we'll start with a few easy
10 ones, make sure that everything works. Can you talk a
11 little bit about your vision, Tropic Land's vision for
12 this industrial park? What is it going to look like,
13 who is going to be there?

14 A That's a pretty broad question. Can you be
15 a little more specific?

16 Q Let me give a little context. So some of
17 the concern that the Concerned Elders have is that
18 there's a large difference between Mapunapuna or Sand
19 Island and, say, Mililani Tech Park.

20 A As I explained in my last hearing, lot of
21 people talk about industrial. But the predominantly
22 industrially zoned land on this island and in this
23 state is I2. We are going for an I-1 light industrial
24 project. The uses within the I-1 light industrial is
25 contained in the city and county LUO in terms of

1 allowable uses. That is what we envision as far as
2 potential users.

3 Q What do you envision it looking like?

4 A What do we envision it looking like?

5 Q Mmm-hmm.

6 A Can you be more specific? It will have
7 roads. It will have swales by the roads. We will
8 have lots of one to two acres. And it will be up to
9 the ultimate purchasers or lessees of this lot in
10 terms of the actual usage what types of improvements
11 they'll build on the property.

12 For example, if a trucking company buys a
13 lot to use as a baseyard, they may elect to pave or to
14 just put base coarse to be able to park their trucks.
15 They may have a small office building or warehouse.

16 But it's hard to determine ultimately what
17 the actual users will be, who they will be and what
18 they will be using the property for. We do know, for
19 example, I think as I mentioned, we had three to four
20 acres dedicated where we are working with a group to
21 build a business incubator which is now evolving into
22 a digital media incubator.

23 They had made a presentation to the
24 community within the last sixty days that I believe
25 they were more specific in terms of what their vision

1 was for that particular site. That is the only group
2 right now that we are actively working with because
3 we're not allowed to take any binding sales or
4 reservations at this point in time.

5 Q I understand. I understand. So it's hard
6 to anticipate what businesses would actually be in the
7 industrial park.

8 A Well, the businesses will be limited to
9 what's allowable under the I-1 LUO constraints. Are
10 you familiar with that?

11 Q Yes. We reviewed the table, yes, thank you.

12 A Do you have any questions about those uses?

13 CHAIRMAN DEVENS: Why don't we let her ask
14 the questions. It's a time of cross-examination. She
15 asks questions. You're here to only answer the
16 questions.

17 THE WITNESS: Understood.

18 Q (By Ms. Townsend): What we're trying to get
19 at is to try to assess the viability of the Project
20 and what the Project would look like if it were
21 successful. I'm curious have you, in assessing the
22 need for I-1 industrial land, have you researched
23 other industrial lots in the Waianae and in the 'Ewa
24 Coast area?

25 A Yes, we did.

1 Q Okay. Are there empty industrial parks
2 currently in the Waianae Coast?

3 A I'm not sure how you classify empty. But
4 there are, let me -- I do have a map here that has a
5 designation of all the other industrial zoned
6 properties in the Waianae Coast. The predominant
7 concentration there is a 25-acre parcel that's located
8 right down the road from us, our property. That is
9 the largest single other industrially zoned land.

10 The other parcels are close to Wai'anae
11 Mall. The majority is owned by the city and Hawaiian
12 Home Lands. And none of the parcels are large enough
13 or conducive in terms of a size and location for a
14 light industrial park.

15 Q Okay. So just to clarify. So there are
16 industrial lots along Farrington. They may be smaller
17 than 96 acres but they're currently zoned industrial?

18 A I2.

19 Q Okay. And are they empty or occupied?

20 A I believe some may be empty, some may be
21 used.

22 Q Okay. Did you also look at Kapolei? Are
23 you familiar with Kapolei Harborside Center?

24 A Not specifically.

25 Q You know that there is an industrial park at

1 Kapolei.

2 A Yes, I do but I'm not intimately familiar
3 with that project.

4 Q Okay. Do you consider them competition to
5 this industrial park?

6 A Not necessarily.

7 Q Because?

8 A We are located quite away from there.
9 We have a different marketplace. I'm not sure what
10 their specific zoning is. As I mentioned there is a
11 specific differentiation between I-1, I-3, I-2. If
12 it's in Kapolei or close to Barber's Point it may be
13 an I-3 project.

14 Q Okay. Thank you. So do you know how much
15 Kapolei Harborside Center is charging per square foot?

16 A Not at this particular point in time.

17 Q Okay. You're planning to charge twenty
18 dollars a square foot.

19 A We hope to charge less than twenty dollars a
20 square foot.

21 Q So we'll say up to twenty dollars a square
22 foot.

23 A Yes.

24 Q Okay. Just 'cause 20's an easier number to
25 do math. And it's 41 lots, 2 acres each?

1 A Forty-one lots, 1 to 2-acres each.

2 Q Okay. So approximately it would be -- it
3 would definitely be over a million dollars to buy a
4 lot?

5 A Well, if you take \$20 times 43,560 square
6 feet that's a little over 800,000, yeah, close to a
7 million.

8 Q So around a million dollars. So you'd be
9 making \$41 million if you were able to sell all the
10 lots at least.

11 A Yeah. But the infrastructure is going to
12 cost us money too.

13 Q So that's why -- okay. All right. So how
14 much is the infrastructure going to cost you?

15 A I think our consultant represented that the
16 basic infrastructure costs at this point in time is
17 approximately \$29 million. There's probably another 5
18 to \$6 million of holding costs. It depends on what
19 other types of improvements we are required to do.

20 It depends on the financing and the interest
21 costs. As I mentioned time is money. The longer it
22 takes the more money is built up and sunk into the
23 ground, so to speak.

24 Q So can you give me a little more detail for
25 what is included in that \$29 million? What are you

1 already expecting to have to pay for?

2 A The roads.

3 Q The roads. So by "roads" --

4 A The sewage treatment plant.

5 Q Wait. Stop talking. The roads, just to
6 make sure I'm clear, 29 million includes the internal
7 roads for the industrial park.

8 A Yes.

9 Q The improvements down the Navy road, does
10 the 29 million cover that?

11 A What improvements are you talking about down
12 to the Naval Road?

13 Q Can I refer you to Petitioner's Exhibit 36?

14 A You're talking about the waterline that we
15 need to connect at Pa'akea, yes.

16 Q The waterline's included. I'm talking about
17 in the July 26 letter from the Navy they had talked
18 about one of the requirements is to upgrade and
19 maintain the road to city and county of Honolulu or
20 state of Hawai'i road standards.

21 A That is one of the conditions we are
22 negotiating with the Navy.

23 Q Okay. So the 29 million you guys are
24 projecting doesn't include that improvement.

25 A No.

1 Q Okay. Does the 29 million include the
2 expansion of Farrington Highway?

3 A No, it doesn't.

4 Q Doesn't. Okay. Does it also include the
5 EIS that the Navy is expecting for the road agreement?

6 A Can you repeat that question?

7 Q The \$29 million, does that include the EIS
8 that the Navy is requiring for the road agreement?

9 A The EIS that the Navy...

10 Q Yes. I read that the letter in the
11 correspondence with the Navy one --

12 A Our intent is to present -- we presented
13 them with our existing EIS. And they have not come
14 back to us yet whether or not that's satisfactory for
15 their purposes.

16 Q Okay. Thank you. Does the 29 million
17 include things like liability insurance?

18 A Yes, it does. That's part -- well, let me
19 backtrack. As I mentioned, over and above the
20 \$29 million there are additional costs, soft costs,
21 interest, liability insurance, legal fees,
22 architects, engineers, consultants. They all add up
23 at the end of the day.

24 Q This hearing, that's part of that.

25 A I'm paying for his... by the hour.

1 Q Sorry about that. Okay. How do you expect
2 to cover this, you know, 36 or so million dollars in
3 hard and soft costs as you call them?

4 A How do I expect to cover it?

5 Q Yes.

6 A By selling lots.

7 Q Okay. So these are expenses that you would
8 be able to pay for after...ah...

9 A The normal profit -- if I understand what
10 your question is.

11 Q Okay. Thank you.

12 A You normally get the zoning.

13 Q Okay.

14 A You normally develop your project plans.
15 You go through the condominium process. You get your
16 horizontal property -- or the condominium reports.

17 Q Okay.

18 A At some point in time you're allowed to get
19 pre-sales or reservations. You then go out and get
20 those reservations. Then you go to a bank and say, "I
21 need a loan for X number of dollars to develop the
22 infrastructure." Does that answer your question?

23 Q Yes. I would like to know the timing.

24 A Depends how much the bank lends you. The
25 rest has to come in the form of equity from the owners

1 of the project.

2 Q Okay. In your opinion do you feel the
3 owners have enough equity to cover the expenses to be
4 incurred by this Project?

5 A Yes, I do.

6 Q So we talked a little bit about the condo
7 association. I'd like a little more detail. Is it
8 correct that the owners of the condo lots would pay
9 into an association fees that would then be used to
10 pay for the obligations of the association; is that
11 correct?

12 A Well, normally when you have a homeowners
13 association their primary function is to maintain and
14 manage the common areas of the property. In this
15 project the common areas would primarily be the roads,
16 that proposed sewage treatment plant, the landscaped
17 areas, the fencing, and the maintenance and management
18 of that hundred foot swale that we discussed and
19 proposed behind the project.

20 Q Okay.

21 A And those are then paid for by common area
22 dues that's assessed to each owner based on their
23 percentage of ownership within the project.

24 Q Okay. Can you anticipate ballpark how much
25 those requirements will cost?

1 A Not at this point in time.

2 Q So a person who wants to buy one of your
3 lots, it's hard to say how much they would be paying
4 out of pocket for association dues?

5 A Not at this point in time. But when and if
6 they are ready to buy a lot, we will have to present
7 disclosure and estimates of how much it will cost in
8 terms of maintenance fees for their particular lot.

9 Q Okay. All right. So you didn't mention in
10 the common use, common area dues enforcement. How
11 would the condo association, you know -- how would
12 they enforce? They're not going to hire security.

13 A Those documents will have to be developed.
14 Right after zoning process we will probably have to
15 hire a condominium document specialist and he will
16 draft the bylaws, the articles, like I mentioned, the
17 declaration, and the rules that would be determined.

18 Q So I have kind of two questions around the
19 enforcement. So I understand there will be CC&R's.
20 And I'm concerned, as the state pointed out, regular
21 community members would not be able to enforce the
22 CC&R's. It would be us begging the condominium
23 association to please enforce the CC&R's.

24 A Did you say "begging"?

25 Q Begging. We would go and say, "Hey, there's

1 a problem. Do something."

2 A Well, they can file a complaint.

3 CHAIRMAN DEVENS: Can we hold that last
4 question and take a short break. We've been going a
5 long time for the court reporter. Take a 5-minute
6 break.

7 (Recess was held. 2:15)

8 CHAIRMAN DEVENS: We're going to go back on
9 the record. Elders, it was your cross-examination.

10 MS. TOWNSEND: Thank you.

11 CHAIRMAN DEVENS: And also we're probably
12 going to probably run to about 3:30 because there's a
13 few things that the Commission has to get ready for
14 for tomorrow. So we're going to go for another hour
15 or so.

16 MS. TOWNSEND: Okay. Are you saying I have
17 to be done by 3:30?

18 CHAIRMAN DEVENS: No. Just saying today's
19 time is only going to run to 3:30. If you're not done
20 we'll continue later.

21 MS. TOWNSEND: Thank you very much.

22 Q Okay. So we were talking about the
23 condominium association and the fees and what was
24 covered under the fees.

25 A Under the?

1 Q Under the fees that -- okay. We were
2 talking about what condo dues would pay for?

3 A The common area maintenance.

4 Q The common area maintenance. Okay. So what
5 I saw -- so just to make sure I got the list right
6 that you gave: Roads, the internal roads inside the
7 industrial park, the wastewater treatment facility,
8 wastewater storage.

9 A It's not for the cost of the road. It's for
10 the maintenance of the road.

11 Q Okay. Sorry. Maintenance.

12 A Normally -- are you familiar with condo
13 associations in subdivisions? Normally the developer
14 also sets up a reserve based on a reserve study that
15 determine what is needed to maintain the common area.

16 Q Okay.

17 A So the intent of the dues is to preserve
18 that reserve and to cover extraneous costs needed to
19 maintain the roads, the sewage treatment plant, the
20 common area, including paying for a property manager,
21 including paying for security, all things incidental
22 to maintaining the ongoing activities of the light
23 industrial park.

24 Q Okay. Thank you. So, and it's your
25 testimony that right now it's not possible to

1 anticipate how much --

2 A It's a little premature to determine what
3 the maintenance fee will be.

4 Q All right. So looking at the list of things
5 that are covered by the cost of dues, I don't see in
6 here maintenance of the Navy road. Is that right, the
7 maintenance -- road maintenance is only for roads
8 internal?

9 A Well, if we're successful with the Navy in
10 terms of what we propose to them, we will be
11 responsible for maintaining and managing the road.
12 Part of the cost for the users for the association of
13 the light industrial park will be used for the cost of
14 maintaining the main access road which will be
15 Lualualei Naval Road.

16 Q Okay. All right. Just to clarify because
17 I'm slightly confused. When you say "we" are going to
18 maintain the road do you mean Tropic Land?

19 A The association along with other users being
20 PVT, Pineridge and whoever else joins the LLC that
21 wants to use the Lualualei Naval Road as the primary
22 access road for their property.

23 Q So are you anticipating one group or two
24 groups, one that's the tenants and one that's...?

25 A There will be one conceivably, a limited

1 liability corporation that will hold the easement and
2 maintain and manage the easement. One of the members
3 of that LLC would be the association of condo owners
4 for the, at this point in time, Nanakuli Community
5 Baseyard Project.

6 Q So it's also hard to anticipate how much
7 maintenance of the Navy road under that LLC group.

8 A Can you repeat that question?

9 Q Yes. Is it also difficult at this point for
10 you to anticipate how much fees would cost for that
11 LLC group maintaining?

12 A I don't have that answer for you. Because
13 our proposal with the Navy we would maintain and
14 manage the road in its present shape and condition
15 which is, right now it's in pretty damn good shape.

16 Q So to clarify that, you're not anticipating
17 any streetlights, for example?

18 A Not at this point in time.

19 Q Or sidewalks?

20 A No.

21 Q A bus stop? Is that something that is
22 foreseeable?

23 A It may be conceivable but I can't really
24 commit to that at this point in time, if and when they
25 determine that a bus stop is appropriate.

1 Q What I'm trying to get at is what Tropic
2 Land is anticipating. Because part of the concern for
3 the state is the expenditure of public funds. So my
4 question to you is as the representative of the
5 owners, do you anticipate -- is it in your vision that
6 there would be bus stops up the Navy road?

7 A We haven't had any discussion with the mass
8 transit authority for the creation of a bus route up
9 Lualualei Road or the development of a bus top at this
10 point in time.

11 Q Thank you. Enforcement of the CC&R's. May
12 I present to you a scenario. And you can help me try
13 to figure out where the enforcement would happen.

14 CHAIRMAN DEVENS: If it's a hypothetical I
15 don't think that's a real proper question. It
16 wouldn't be proper for this witness. You can ask him
17 a factual -- he had factual testimony. But just
18 giving him a hypothetical I don't think would be
19 proper. It'd probably be a waste of time.

20 MS. TOWNSEND: Okay. Let me try something
21 that's based on past experience. It's already
22 happened, something that's happened. Okay.

23 Q So assuming that the industrial park is
24 established and there is a condo association, how will
25 the condo association prevent people from using -- the

1 users of the industrial park, how will they prevent
2 those users from driving down Hakimo Road on a regular
3 basis, you know?

4 A That's not a common area.

5 Q So they cannot --

6 A The condo association, like I mentioned, is
7 responsible for maintaining and managing the common
8 area of the project. They have no jurisdiction
9 outside the confines of the project.

10 Q Okay. So when --

11 CHAIRMAN DEVENS: So answer is no. Right?

12 THE WITNESS: Not at this point, yeah.

13 Q (By Ms. Townsend): Is there a way to
14 enforce, limit -- is there a way to limit people from
15 using Hakimo Road to access the industrial park on a
16 regular basis?

17 A Hakimo --

18 CHAIRMAN DEVENS: Wait. Are you asking his
19 client? Or are you just asking in general is there a
20 way to limit access? Because the police can limit
21 access. You can limit it a thousand different ways.
22 What's the question?

23 MS. TOWNSEND: I'm looking to -- we don't
24 want people to use Hakimo Road. And I'm trying to
25 highlight how difficult it will be to maintain Hakimo

1 Road as a rural road.

2 MR. YUEN: I'm going to object. I'm going
3 to ask, point out to the Commission that when the
4 Commission took the field trip to the property the
5 Commission, I believe, observed that the two accesses
6 to Hakimo Road from the property were through gates
7 that remain locked normally.

8 CHAIRMAN DEVENS: Well, I don't want to get
9 into any argument. You can ask him if he or his
10 client intends to do anything about that or what the
11 plan may be. And that may answer your question.

12 Q (By Ms. Townsend): Okay. You understand
13 the concern about increased use of Hakimo Road?

14 A Yes, I do.

15 Q Is there anything that Tropic Land proposes
16 to do to ensure that the public doesn't -- that the
17 use of Hakimo Road doesn't increase?

18 A Well, at this point in time one, Hakimo is a
19 public road.

20 Q Yes.

21 A And you cannot tell people not to use a
22 public road.

23 Q Exactly.

24 A We can recommend to potential owners and
25 tenants as part of the documents, that they not use

1 Hakimo Road. But I don't think there's any way
2 practical to prevent them from actually using the
3 road, should they so see fit.

4 Q Thank you. Moving back to the 29 million or
5 36 million costs in general. You said that the
6 improvements to Farrington Highway are not included,
7 correct?

8 A Not at this point in time.

9 Q Okay. From what has been submitted Tropic
10 Land is willing to pay their fair-share of
11 improvements to Farrington Highway?

12 A Yes, we are.

13 Q Do you have -- can you anticipate how much
14 that will cost?

15 A Not at this point in time.

16 Q Okay. So you don't know how much your
17 fair-share would be.

18 A Not the, not the figure in terms of actual
19 costs to widen, to acquire the land, the legal fees,
20 the time involved for getting approval from the
21 Railway Society for moving, I don't have that figure.

22 Q Do you have an idea of how much it would --
23 how much of the total figure, whatever it is, would be
24 your fair-share?

25 A I believe our traffic consultant mentioned

1 based on his study 15 percent.

2 Q Fifteen percent. Okay. And improvements to
3 the Navy road based on the July 26 letter, those are
4 also not included in the 26.

5 A As I mentioned to you those are one of the
6 conditions we are currently negotiating with the Navy.
7 Our position, we will pay for the cost of maintaining
8 the road in its present state.

9 Now, just for clarification, the reason the
10 Navy came up with that requirement is our
11 understanding they have a liability concern in terms
12 of somebody get injured on the road because it wasn't
13 up to so-called county standards.

14 Q In your negotiations with the Navy -- I
15 don't know if this is a fair question so it's okay to
16 object -- can you tell us what you don't agree with
17 from the Navy?

18 MR. YUEN: I object.

19 MS. TOWNSEND: Okay.

20 CHAIRMAN DEVENS: Sorry. What was your
21 question?

22 MS. TOWNSEND: My question was: What terms
23 of the Navy's agreement does Tropic Land not agree
24 with? And they don't want to tell me. I guess I
25 can't force them.

1 CHAIRMAN DEVENS: No, he can. It's a fair
2 question.

3 THE WITNESS: Well, I mean the two basic
4 issues are the 10-year initial term and the
5 requirement to maintain the road to so-called county
6 or state standards. Those are the two primary
7 negotiating points.

8 Q (By Ms. Townsend) Okay. And you would like
9 as far as the lease term, would you like it to be
10 indefinite or...?

11 A As I mentioned we asked for a 50-year lease.
12 I believe there is a precedent because the Navy had
13 also granted the city a comparable easement to the
14 Waipio Park for that Waipio Access Road. It's a
15 50-year easement.

16 Q Thank you. Okay. So trying to understand
17 the perspective from potential buyers, tenants to the
18 condo association. We know that is approximately a
19 million dollars to purchase the lot, and then an
20 unknown amount of fees associated regularly with the
21 common use. Then how much to actually make the lot
22 usable for, I believe, in the EIS, is it correct that
23 you projected \$30 million cost to the tenants?

24 A Well, it depends on what each tenant intends
25 to use the lot for or build thereon. If somebody's

1 going to use it just for a primary baseyard with a
2 small, little office facility, his cost would be a lot
3 less than someone who would want to put up a little
4 small, a bigger warehouse facility.

5 Q Okay. I remember your testimony from our
6 last hearing that the idea was that people who are
7 engaging in light industrial activities in residential
8 areas along the Wai'anae Coast would be attracted to
9 your industrial park.

10 A Well, we hope so. That's part of the
11 purpose for the business incubator.

12 Q The digital incubator.

13 A Well, it may be -- the actual details of the
14 property it totals 4 to 5 acres. A portion of that
15 property the intent at this point in time is to build
16 a digital incubator. But there are other portions of
17 the property that can conceivably be used for business
18 incubator use.

19 Q Okay. So it's your testimony, it's your
20 understanding that small businesses currently in
21 Wai'anae would be able to get, have a million dollars
22 approximately to purchase a lot.

23 A They're not purchasing a one-acre lot. They
24 will be pur -- or conceivably leasing a space within
25 the business incubator?

1 Q Okay. So how would the purchasing part go?

2 A Pardon?

3 Q Sorry. Let me back up. It was my
4 understanding that it is Tropic Land's intent to sell
5 the industrial park lots and leave. Tropic Land would
6 be out.

7 A To end users, yes.

8 Q To end users. Okay. So who do you see
9 being the end users, the purchasers of the lot?

10 A Well, whoever wants to buy. I mean, like I
11 mentioned, we are going to go back to the Leeward
12 community and give them the first choice of buying
13 lots.

14 Accomplishing that, we go out to the general
15 marketplace in terms of perspective buyers. There
16 could also be investors that would buy a lot, build a
17 warehouse and sublease space within that property or
18 that warehouse to end users.

19 Q In establishing the condo association then
20 would control or participation in association
21 decisions be based on ownership amount that you own
22 and --

23 A Well, the general --

24 Q -- users?

25 A -- practice is that each lot will have a

1 common area percentage designation based on the size
2 of that lot relative to the whole project. Let's say
3 you own one lot. You get 1/42 percentage as a
4 simplified basis. So that owner will have one 1/42
5 voting rights within the association.

6 Q Okay. Is it possible then for a large
7 investor to come and buy up the lots and then be the
8 association?

9 A It is possible.

10 Q Thank you. You recall the testimony of the
11 economics analyst, the economist, I'm sorry Mr. Minn.

12 A Not in great deal. It was a little
13 convoluted.

14 Q Do you recall his testimony about the
15 capture rate for assessing the economic viability?

16 A That's where it got a little convoluted.

17 Q Okay. From your reading of the economic
18 analysis are you familiar with the 1.2 capture rate?

19 A I remember the number but I don't
20 necessarily relate to it.

21 Q Okay. Let me back up a little bit. You're
22 the project manager.

23 A Yes, I am.

24 Q Okay. And have you been project manager for
25 other projects just in general?

1 A For Tropic Land.

2 Q No. In general.

3 A Yes, I have.

4 Q Have any of them included industrial parks?

5 A This is my first industrial park.

6 Q This is your first industrial park. The
7 owners of Tropic Land, do they own other industrial
8 parks?

9 A Not industrial parks per se, but they have
10 invested and been involved in other projects.

11 Q What would you say is your experience and
12 capacity, yours and the owners of Tropic Land, your
13 experience and capacity to implement this Project all
14 the way? You haven't done industrial parks before.

15 A You don't have to be an experienced
16 developer of industrial parks to develop an industrial
17 park. You have consultants. There's many
18 similarities with industrial parks with subdivisions,
19 with condominiums, with office buildings. I don't
20 think lack of experience in an industrial park per se
21 precludes the ability to develop this successfully and
22 properly.

23 Q Okay. It seems to me from the testimony
24 that's been given that there were a lot of challenges
25 to this industrial park. You recall the testimony of

1 the engineer and the construction that would be needed
2 to overcome the high shrink/swell rate, for example?
3 Do you remember that testimony?

4 A Yeah, but that's not atypical.

5 Q And road maintenance, the challenges with
6 negotiating the road agreement as well as securing the
7 road improvements on the Farrington Highway, were
8 those anticipated by Tropic Land?

9 A I think, as I mentioned, when we first got
10 involved in the development we thought that Lualualei
11 Road was going to be taken over by the city and we
12 will be dealing with the city. A curve ball was
13 thrown to us when the city decided not to do that.

14 But having been involved in other
15 development projects there are a lot of moving parts
16 to any project you deal with. There are a lot of
17 surprises. That's the nature of development. The
18 object is overcome these obstacles.

19 Q Fair enough. Let me ask the question this
20 way: What consideration did you give to the cost of
21 road improvements to Farrington Highway?

22 A What consideration? I believe I have
23 answered that question before.

24 Q Okay. What about munitions at the Navy
25 base? What consideration did the developers give to

1 the challenges of --

2 MR. YUEN: I'm going to object to the
3 relevance of that question.

4 MS. TOWNSEND: The Navy has raised concerns
5 in commercial development near their munition storage
6 is a concern for them. So I'm wondering what
7 considerations the developers have given to that.

8 CHAIRMAN DEVENS: We'll allow it.

9 A Well, for one thing we will hire a security
10 company to secure and maintain the security of the
11 Project. That will give them some comfort level. But
12 in terms of any specific concerns that the Navy had
13 I'm not aware of any specific concerns relative to the
14 project.

15 Q (By Ms. Townsend) Okay. I'm wondering how
16 you explain these two different narratives. One that
17 we hear from Tropic Land is people from Waianae will
18 work at the industrial park. The other narrative that
19 we're hearing from both the economist and the
20 transportation expert is that a significant number of
21 people from outside Wai'anae would be coming to
22 Wai'anae to work. How do you explain the difference?

23 A Well, if you understand their methodology a
24 lot of it's based on formulas of existing traffic,
25 existing ratios of traffic. We had, like for example,

1 with our traffic engineer, explained to him that our
2 hope and intent that a lot of these lots will be sold
3 to Leeward Coast residents. We gave him the list of
4 potential lessees or buyers.

5 However, his response was that he comes up
6 with a traffic analysis based on a certain modeling or
7 formulas based on existing traffic flow. That's the
8 way they do it.

9 But practically speaking hopefully, as we
10 mentioned in all our testimony before, in the
11 Neighborhood Board throughout the community, our
12 intent and hope is that the majority of people who buy
13 lots or lease lots within the project will come from
14 the Leeward Coast. That will, in turn, lessen the
15 traffic flow flowing out of Farrington Highway.
16 Because it is proven that the Leeward Coast residents
17 have the longest commute in the state of Hawai'i.

18 Q It's true, the Leeward Coast residents have
19 the longest commute in the state of Hawai'i. I'm
20 curious what will Tropic Land do to overcome the
21 predominant -- to overcome the status quo as it is?
22 What elements, based on the testimony of the
23 economic -- the economist and the transportation
24 expert it seems like a lot of changes would be made,
25 would need to be made to Wai'anae in order for this

1 industrial park to be successful. Would you agree?

2 A I don't understand what you mean by lot of
3 changes would be needed to be made in the Leeward
4 Coast to make this successful. Can you elaborate?

5 Q For example, Mr. Minn said that in order for
6 a 2 percent capture rate to be realized there would
7 need to be a lot more urbanization of Wai'anae. Do
8 you recall that?

9 A Not specifically.

10 MR. YUEN: I believe the counsel is
11 misstating Mr. Minn's testimony. I suggest that she
12 just ask --

13 CHAIRMAN DEVENS: He didn't remember it
14 anyway.

15 MS. TOWNSEND: Okay. So I'll move on.

16 Q Let's move on to the community involvement
17 and support of the Project. Do you recall -- it was
18 your testimony that you secured a resolution from the
19 Nanakuli Neighborhood Board in July 2008, correct?

20 A Yes. 2008. That's what you mentioned,
21 right?

22 Q 2008.

23 A Yes.

24 Q Okay. What was the date of the Draft EIS?

25 A Pardon?

1 Q What was the date of the Draft EIS? When
2 was it released to the public?

3 A I don't remember.

4 Q Could it have been March 2009?

5 A I don't remember specifically.

6 Q Was it before or after the Nanakuli
7 Neighborhood Board made a decision?

8 A I mean --

9 MR. YUEN: If you recall.

10 THE WITNESS: I don't recall.

11 CHAIRMAN DEVENS: Well, you know what,
12 everything's if he can recall. By jumping in like
13 that...

14 THE WITNESS: I don't remember specifically.

15 CHAIRMAN DEVENS: That's fine. But
16 everything is based on what you can recall. If you
17 don't recall we can accept that. She can ask her
18 follow up question.

19 Q (By Ms. Townsend): You initially started
20 to seek a resolution from the Waianae Neighborhood
21 Board, correct?

22 A Yes, we did. Well, not necessarily a
23 resolution. We sought their approval and support for
24 the Project.

25 Q What did they say?

1 A Pardon?

2 Q What did say?

3 A I believe I covered that in my last
4 testimony. We started with the Wai'anāe Neighborhood
5 Board I believe in September 2007.

6 Q Yeah.

7 A Our first approach to them was based on our
8 discussion with the city the city told us, "You go out
9 to the community and get their input and support." So
10 we asked the Wai'anāe Board members, "We have this
11 piece of property. Give us some suggestions as to the
12 type of uses." The predominant response that we got
13 was for a light industrial park.

14 We then proceeded to work with their
15 planning and zoning committee. Again, they
16 reconfirmed the fact of a need for light industrial
17 park. We then developed a little more definitive
18 plans for light industrial park and made an initial
19 presentation to the Wai'anāe Board I believe in
20 December of 2007. We were then supposed to follow
21 that presentation with detailed discussions with, I
22 believe, what they call a PIG committee or Permitted
23 Interactive Group.

24 However, about that time we were advised
25 that the Nanakuli Maili Neighborhood Board was being

1 formed and we fell within their jurisdiction. So we
2 then started the process with the Nanakuli Maili
3 Neighborhood Board I recall in May of 2008.

4 Q Why did you not return to the Wai'anae
5 Neighborhood Board?

6 A Pardon?

7 Q Why did you not return to the Wai'anae
8 Neighborhood Board?

9 A Because this Project is within the
10 jurisdiction and confines of the Nanakuli Maili
11 Neighborhood Board. And some of the members of the
12 Nanakuli Ma'ili Neighborhood Board were previously
13 members of Wai'anae Neighborhood Board.

14 Q Is it conceivable that Wai'anae residents
15 would be affected by the industrial park in Lualualei?

16 CHAIRMAN DEVENS: You know what, that's just
17 too broad of a question. You gotta be more specific.

18 Q (By Ms. Townsend): Okay. Is it possible
19 that residents represented by the Wai'anae
20 Neighborhood Board would be affected by, for example,
21 the traffic created by the industrial park in
22 Lualualei?

23 A Well, I mean you can carry that to the nth
24 degree because any project will affect many different
25 neighborhood boards. I mean the Wai'anae Neighborhood

1 Board previously was the largest geographic
2 Neighborhood Board on the island. The primary effect
3 and benefits for this Project will accrue to the
4 Nanakuli Ma'ili Neighborhood Board jurisdiction.

5 Q I'm glad you brought up benefits. Speaking
6 of benefits and risks, I'm curious did you go door to
7 door along Hakimo Road to talk to residents?

8 A I didn't go door to door.

9 Q Did anyone with Tropic Land?

10 A I believe some of our representatives may
11 have met with some of the residents on Hakimo Road.
12 As to who, when and where I cannot specifically tell
13 you at this point in time.

14 Q Do you know if they asked, what benefits the
15 Hakimo Road residents asked for?

16 A Not specifically at this point in time.
17 They did have a venue, however, by virtue of attending
18 the neighborhood boards whereby the Project was
19 presented.

20 Q What do you see as the purpose of
21 establishing a community benefits package?

22 A What do I see as the benefits?

23 Q What's the purpose of establishing a
24 community benefits package?

25 A I don't quite understand the nature of the

1 question.

2 Q Would you agree that a community benefits
3 package ensures that benefits from a development are
4 shared with the community that may bear risks from a
5 development?

6 A Yes.

7 Q Would you agree that residents along Hakimo
8 Road would bear a greater risk from this development
9 than, say, residents from Haleakala Avenue?

10 A That's a matter of opinion.

11 Q I'm asking for yours.

12 A I don't necessarily agree with that.

13 Q Okay. The community benefits package, when
14 would the funds be released to the community?

15 A As I mentioned the funds would be accrued
16 from the portion of the sales proceeds derived from
17 the Project sales.

18 Q And when would they be released?

19 A They would be established into a fund that
20 will be governed by 501(c)(3) corporation made up of
21 representatives from the community. In terms of the
22 specific details I don't have that at this point in
23 time.

24 Q Okay. Would you agree to a timeline, for
25 example: Community benefits package shall be

1 established prior to the ten year development horizon
2 for this Project?

3 A Well, if the funds accumulate from the
4 project sales within the 10-year period, yes. But in
5 terms of timeline I'm not prepared to commit to that
6 without consultation with the owners.

7 Q Okay. You also mentioned the 23 acres
8 across the street.

9 A Yes.

10 Q And that just to refresh my memory, that
11 soil is the same as the 40 acres of farmable soil on
12 the...ah...

13 A Well, I believe, the 40 acres in question
14 are probably is B soil.

15 Q B.

16 A Whereas based on the different soil
17 classifications the soil on the 23 acres' under the
18 ALISH prime. If you're going to ask me which one is
19 better or to differentiate between the two I can't.

20 Q I'm curious, it's your testimony that an ag
21 park be established on those 23 acres.

22 A I didn't say an ag park.

23 Q Okay. Sorry.

24 A We would allow -- our intent is to convert
25 the zoning of that 23 acres back to Ag 2. And on the

1 2.7-acre portion we are working with a community group
2 to establish an agribusiness incubator project on the
3 2.7 acres.

4 Q Is there any reason why supporting ag
5 ventures on the 23 acres is more advantageous than
6 supporting them across the street on the 96 acres?

7 A I don't understand the nature of your
8 question.

9 Q If the soils are basically the same, why
10 have an ag park across the street? Why not have the
11 ag park on the petitioned area?

12 A Because we're going to develop a light
13 industrial park on the 96 acres.

14 Q Okay. Fair enough. From my reading of the
15 submittal, your submittal, the original unilateral
16 agreement the community was guaranteed \$2 million from
17 the golf course. Curious, would Tropic Land consider
18 matching that community benefits package?

19 A Not at this point in time. We're already
20 committed to \$1 million.

21 CHAIRMAN DEVENS: Do you have an estimate as
22 to how much more you may have? Timewise.

23 MS. TOWNSEND: I don't know, 30 minutes?
24 How long -- I'm over half done.

25 CHAIRMAN DEVENS: No, no. If you don't

1 finish today we'll continue. I was hoping at least
2 finish up today so we can release this witness.

3 MS. TOWNSEND: What time is it?

4 CHAIRMAN DEVENS: It's about 3:00 o'clock
5 right now.

6 MS. TOWNSEND: Okay. I'll try. So can we
7 move to the violations, discussion about the
8 violations?

9 I recall your testimony. There were three
10 violations, correct? One for stockpiling, one for
11 grading and one for operating a baseyard?

12 A Yes.

13 Q Are these the only violations that Tropic
14 Land has received for these?

15 A To my knowledge.

16 Q So you're unaware of a notice of violation
17 to Tropic Land on February 21, 2008 for operating a
18 baseyard.

19 A No.

20 Q Okay.

21 A Is that different than the violation we
22 received for -- it may have been the same violation or
23 same notice or...?

24 Q There was a violation on -- notice of
25 violation on May 25th, 2010 and another one on

1 February 21st, 2008.

2 A I'm not aware of the 2008 violation.

3 Q But if I recall from your testimony you have
4 been with Tropic Land since 2007?

5 A 2007. But let me clarify. My role with
6 Tropic Land, as I mentioned, project manager. My
7 responsibilities is for overseeing the entitlement
8 process and ultimately the development of the Project.
9 We have hired and maintained project -- a site manager
10 like Alii Tampos who is responsible for the actual
11 management of day-to-day maintenance of the land
12 itself out in Lualualei.

13 Q So Alii Tampos would know about, possibly
14 know about the violations in February 2008.

15 A Pardon?

16 Q So Alii Tampos would probably know about the
17 violation in 2008.

18 A I don't believe he was the property manager
19 at that time.

20 Q All right. Let's move on. Are you aware of
21 the double penalty fee for grading without a permit
22 that was issued on May 13, 2010?

23 A Can you repeat that?

24 Q Are you aware of the double fee penalty that
25 was issued by the city for grading without a permit on

1 May 13?

2 A Yes, I am.

3 Q 2010. And the double fee penalty for
4 stockpiling permit violation on May 13.

5 A Yeah, I believe I addressed those in my last
6 testimony.

7 Q Okay. Thank you very much. Given this
8 history of violations do you feel that -- given these
9 history of violations and given your experience with
10 industrial parks and truck baseyards, do you feel like
11 it is easy to enforce requirements such as, you know,
12 using land as it's supposed to be used?

13 A I didn't catch your last statement.

14 Q Let me try and ask it a different way. It
15 seems to me, and I'm wondering if you agree, that it
16 is difficult to enforce requirements for land use
17 designations based on this history of violations and
18 Tropic Land --

19 A As I explained in my last testimony there
20 were underlying reasons and rationale why the
21 violations occurred.

22 Q I'm sure there was a reason for everything.
23 My point is that Tropic Land has at least two
24 violations for operating a baseyard. I'm wondering if
25 this speaks to the difficulty of enforcing things like

1 CC&R's or other commitments made to ensure that --

2 A No, it doesn't.

3 Q Thank you. Trying to be as logical as
4 possible. Moving to the negotiation with the Navy.
5 I'm curious why Tropic Land has not paid the \$4,900
6 for the 5-year lease.

7 A That's for the interim use of the property.
8 Right now we hardly use the property. It's vacant.
9 There's no activity on the property. We only go there
10 to check it from time to time. We already have an
11 easement along the whole frontage of the property.

12 There were some conditions contained in the
13 license agreement that, again, are still in
14 discussions with the Navy relative to the appraisal.
15 I don't recall. There were some other issues that we
16 are in the process of negotiating or clarifying with
17 the Navy as to their requirements.

18 Q All right. Thank you. It's my
19 understanding, though, from the testimony that was
20 given at the site visit that part of the reason why it
21 is asphalted right now is to allow for truck washing.
22 So that brings me to the --

23 A Yeah. We did have a prior stock -- I mean a
24 grubbing permit that contained in that grubbing permit
25 was the ability to provide a paved, a paved area for

1 the washing of trucks.

2 Q So during that time period where there was
3 grading -- grubbing, stockpiling and washing of trucks
4 Tropic Land used the Naval Road without the Navy
5 license, correct?

6 A Yes.

7 Q Thank you. Do you recall a fire that
8 occurred recently in Lualualei?

9 A Yes.

10 Q Can you tell us a little bit about how that
11 affected the Tropic Land parcel?

12 A How it affected it? It burned it.

13 Q Thank you.

14 (Laughter).

15 The extent? What was the extent of the
16 damage?

17 A Well...

18 CHAIRMAN DEVENS: Is this relevant to
19 anything?

20 MS. TOWNSEND: Yeah. I'm concerned about
21 the risk of fire and the requirements for installation
22 of --

23 THE WITNESS: Well, let me explain that.

24 CHAIRMAN DEVENS: Wait. I want to hear what
25 she has to say on this.

1 MS. TOWNSEND: Okay. So one of the issues
2 in adopting the urban classification is whether
3 expending public funds for things like fire
4 mitigation. And I want to show that this area has
5 some concerns around fire that I think might be higher
6 than other areas. And the recent fire in Lualualei
7 might be an example of that.

8 CHAIRMAN DEVENS: So what is the specific
9 question?

10 MS. TOWNSEND: I just wanted him to describe
11 the extent of the damage. They cut the fence, how
12 many acres were burned. How long did it take to put
13 the fire out. Things of that nature.

14 CHAIRMAN DEVENS: Do you have that
15 information?

16 THE WITNESS: Well, I believe, the fire
17 actually started on the Leeward land site. According
18 to Alii he suspects, and because we are no longer
19 allowed to have anyone on site, that there had been
20 incidents of people cutting our fence, coming onto our
21 property and cutting down the kiawe.

22 And he suspects that the area where people
23 entered the property or cut the fence is where the
24 fire may have started.

25 Now, the other issue with the grading was

1 there was a larger fire that occurred a year or so
2 ago. And at that time when the fire department came
3 to our site they requested our site manager to grade
4 the area and put a fire truck turn-around to make it
5 easier for them to access the back areas of the
6 project.

7 Unfortunately, out of ignorance, he graded
8 the property, someone reported us and we were cited
9 for the violation. We have since restored that
10 property and are awaiting approval from the city and
11 county for the restoration.

12 Q (By Ms. Townsend) Thank you. I have a few
13 clean-up questions, things that I missed. This will
14 be a little random. But in terms of the CC&R's would
15 Tropic Land be willing to allow community members to
16 enforce the CC&R's?

17 A That is not a typical way it's done.

18 Q I understand.

19 A Normally, as I mentioned, the CC&R's are
20 dedicated to govern the common areas of the project.
21 You have a board, you have a property manager. Have
22 you ever been on a condo association or been involved
23 in a condo association?

24 Q I live with my mom. No.

25 A A lot of times it's self-policing. You have

1 individual members who also are aware of what's
2 happening on the project and they report to the condo
3 board of directors from time to time.

4 As an outsider to the extent you have a
5 complaint with regard to the project you can always
6 submit a complaint or formal letter to the board of
7 directors for corrective action.

8 Q If corrective action isn't taken, what, um,
9 options do community members have to have a violation
10 remedied?

11 A You can always sue them. You can always
12 report them to the proper authority or governmental
13 body that's responsible for that particular item.

14 Q Would Tropic Land be willing to set aside a
15 legal defense fund?

16 A No.

17 Q Thank you. In this EIS the -- okay. I have
18 a couple questions around the railway. The railway.
19 You mentioned there was an EIS conducted by the state
20 to analyze the railway and the road widening.

21 A I'm not sure about the EIS or EA.

22 Q Okay. Thank you for the clarification. An
23 environmental review was done by the state.

24 A Yeah.

25 Q Okay. And do you know if that covered the

1 Lualualei Naval Access Road?

2 A I don't believe it did.

3 Q It did not. Okay. Is this EA or EIS part
4 of the record now? Is it something --

5 A I believe it's on the OEQC website.

6 Q Is it referenced in the EIS for the Tropic
7 Land industrial park?

8 A No, it's not. I think it came after.

9 Q Okay. It came after?

10 A I may be wrong but I believe it did come
11 after.

12 Q Okay. All right.

13 MS. TOWNSEND: I think I'm done. Thank you.

14 CHAIRMAN DEVENS: Okay. Is there any
15 redirect?

16 MR. YUEN: I've got a couple questions.

17 CHAIRMAN DEVENS: Okay.

18 REDIRECT EXAMINATION

19 BY MR. YUEN:

20 Q Mr. Yanagihara, what I have on the wall is
21 Petitioner's Exhibit 70 which purports to be a
22 schedule of the signalized intersections along
23 Farrington Highway.

24 Part of the discussions with the state
25 involved the need for the state's requirement that

1 Tropic Land pay the cost of all recommended traffic
2 projects to the intersection of Lualualei Naval Access
3 Road and Farrington Highway.

4 And I believe the state asked you if you are
5 prepared to follow all the recommendations in the EIS
6 by your consultants.

7 Was the recommendation of the traffic
8 consultant that Tropic pay its fair-share of the
9 intersection improvements to the Lualualei Naval
10 Access Road/Farrington Highway intersection? And if
11 so what is your rationale in agreeing to that
12 recommendation?

13 A Yeah, our consultant had recommended and we
14 agreed we would pay our fair-share for any
15 improvements to the intersection. Part of our
16 rationale that based on our research, if you go to the
17 map starting at Wai'anae, all the way up to Mohi'i
18 Street every single stoplight intersection has had a
19 left-turn lane installed by the state of Hawai'i.

20 For some reason they stopped at Au Young
21 Homestead Road which has a signalized light. And now
22 they're planning to put one at Haleakala and Nanakuli
23 Avenue but bypassing Au Young, Lualualei Road and
24 Helelua Street. All these were paid for without any
25 fair-share.

1 So in our case we are prepared to pay our
2 fair-share because our traffic consultant has also
3 represented that the existing traffic conditions
4 warrant construction of a left-turn lane even without
5 the development of a light industrial park.

6 Q Second. One of the recommendations by the
7 Office of Planning is that the CC&R's for the Project
8 require all purchasers or lessees to build
9 improvements to the LEED or Leadership in
10 Environmental Design silver standard for core and
11 shell or new construction. Does Tropic agree to this
12 condition, and if not why not?

13 A No, we do not.

14 MR. YEE: Excuse me. I believe at this
15 point we're on redirect. And these are not new
16 issues. These are issues that we had submitted in our
17 original testimony.

18 So I believe it would be matters that should
19 have been raised in his direct. I don't think any of
20 the parties addressed it in our cross-examination so I
21 would object on the grounds it's beyond the scope.

22 CHAIRMAN DEVENS: Yeah, I agree. But I
23 think it would help to hear his reasoning. But I
24 think you're right. But give some leeway to Mr. Yuen
25 because I think we'd like to hear what the response

1 would be. So go ahead with the question.

2 Q (By Mr. Yuen): If you can answer the
3 question, what is Tropic Land's position with respect
4 to this condition?

5 A We are not prepared to comply with this
6 position (sic). One of the primary reasons is that as
7 I had mentioned on several occasions in my testimony,
8 we are trying to create an affordable project for
9 primarily businesses and residents along the Leeward
10 Coast. For us to impose a condition that purchasers
11 and lessees of the lots comply with the LEED Silver
12 standards is very, very cost prohibitive.

13 Our research has shown that LEED compliance
14 adds anywhere from 5 to 15 percent additional cost for
15 development of buildings within a site or on a
16 proposed site.

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

18 CHAIRMAN DEVENS: County have any follow-up
19 questions?

20 MS. TAKEUCHI-APUNA: No.

21 CHAIRMAN DEVENS: Mr. Yee?

22 RECROSS-EXAMINATION

23 BY MR. YEE:

24 Q If I understand your testimony today
25 regarding LEED, your objection is LEED may not be

1 practicable for all of the tenants?

2 A Yes.

3 Q Would you then -- sorry, go ahead and
4 finish.

5 A No. That's yes.

6 Q In that case then would you have an
7 objection to a requirement to put in LEED to the
8 extent practicable?

9 A We would prefer not to impose any additional
10 constraints and costs to our potential lessees and
11 tenants. We also are aware that there aren't any
12 other projects where LEED silver has been imposed as
13 far as industrial parks are concerned.

14 Q But your concern about the practicality
15 would go away if the condition was "to the extent
16 practicable", correct?

17 A What do you mean by "practicable"? It
18 always involves a cost.

19 Q Yes, it does involve a cost. But I'll move
20 on. I do have one question that arose during
21 cross-examination. And it involves the Hakimo Road
22 access. And the question is: After you're fully
23 developed and assuming you have your Lualualei Naval
24 Access Road, what happens to that dirt road access to
25 Hakimo Road?

1 A At this point in time we intend to maintain
2 it in its present condition and have it available to
3 the city and county for emergency purposes.

4 Q You heard Chair Devens ask you about the
5 difference between an intention to do something and a
6 representation that you will do something. Do you
7 remember that?

8 A Yes, I do.

9 Q Can you do more than simply say what you
10 intend to do? Can you represent that that road will
11 be closed except for emergency traffic?

12 A I'm not in a positon to answer that until
13 such time as we determine what the nature and extent
14 of our use of Lualualei Naval Road will be at this
15 time.

16 Q Your TIAR assumes access to Lualualei Naval
17 Access Road, correct?

18 A Correct.

19 Q What does it assume regarding that roadway
20 access through Hakimo Road?

21 A That it may become -- and we haven't made a
22 determination yet -- a secondary road. Let's say a
23 user owns a lot and lives on Hakimo Road. It'd be
24 impractical for us to not allow that person to access
25 the project at his site through Hakimo Road.

1 Q So does the TIAR then include the amount of
2 traffic that would be generated from your site onto
3 Hakimo Road?

4 A It does not include Hakimo Road because the
5 intent -- maybe I'm using the wrong word. The primary
6 access is Lualualei Naval Road. That's what the study
7 was based on.

8 Q So the study's based upon primary access
9 through Lualualei Naval Access Road. What does it
10 assume regarding Hakimo Road? That there's only
11 emergency access or that there's regular general
12 public access?

13 A I don't believe there was any assumptions
14 made on the TIAR regarding Hakimo.

15 Q I'm not sure how there could be no
16 assumptions. You either have to say there's going to
17 be access or there's not going to be access, right?

18 A Can you rephrase that question?

19 Q I will defer this to the Department of
20 Transportation's witness. So with that I have no
21 further questions.

22 CHAIRMAN DEVENS: Ms. Townsend, do you have
23 any follow-up?

24 RE CROSS-EXAMINATION

25 BY MS. TOWNSEND:

1 Q Okay. Did the TIAR consider Hakimo Road at
2 all?

3 A I believe it did not.

4 Q Thank you. Are you aware of the access
5 connecting Lualualei Naval Access Road and Hakimo Road
6 over Ms. Stack's property?

7 A It is not over Ms. Stack's property. The
8 easement is all on Tropic Land property.

9 Q Okay. Let me clarify. I've been to the
10 property. There are two roads. There's the one that
11 Tropic Land made and has two gates, and slightly mauka
12 is one more road.

13 A The paved portion -- right now the road
14 comes like this -- the paved portion is on -- half of
15 it is on our side that connects to that partially
16 paved road.

17 Q Right.

18 A That easement is all on Tropic Land property
19 for access from Lualualei Naval Road to Hakimo Road.

20 Q Is there an unpaved access that connects
21 Hakimo Road to Lualualei?

22 A Yes, there is.

23 Q Thank you. And that's located mauka of the
24 Tropic Land road.

25 A I'm not sure. I mean -- what you consider

1 mauka?

2 Q Okay. It is between Tropic Land's road and
3 the Navy base.

4 A Lualualei Road is between Tropic Land and
5 the Navy base.

6 Q All right. You testified in regards to
7 Petitioner's Exhibit 70 that several intersections
8 have left-turn storage lanes. And that the State
9 Department of Transportation chose not to install
10 left-turn lanes on Lualualei Naval Access Road.

11 A Not only Lualualei Naval Access Road but
12 starting from Au Young.

13 Q Thank you.

14 A You understand what I'm saying?

15 Q Yeah, yeah.

16 A Okay.

17 Q So it's your understanding they made a
18 conscious decision to not add turning lanes to those
19 streets.

20 A I can't speak whether or not they made a
21 conscious decision. I'm not the DOT.

22 Q Okay. Are you aware of the DOT's reasoning
23 why they did not add left-turning lanes to those
24 roads?

25 A No, not specifically.

1 Q Okay. In relation to traffic are you aware
2 of the park symbol that has been placed on, it's not
3 exactly the corner but immediately behind Pacific
4 Mall?

5 A On the Leeward land site, correct?

6 Q Yes, on the Leeward land site.

7 A Yes, I am.

8 Q Did the TIAR consider that park?

9 A No, it didn't because that park came about
10 subsequently to the completion of the TIAR.

11 Q All right. Thank you very much.

12 MS. TOWNSEND: I'm done. Thank you.

13 CHAIRMAN DEVENS: Commissioners, any
14 questions for the witness? Commissioner Lezy.

15 COMMISSIONER LEZY: Thank you, Chair.
16 Thank you for your testimony, Mr. Yanagihara. I'll
17 try to be quick. I know you've been up there for a
18 while. You know, the Commission has to issue its
19 decision by the end of May of 2011.

20 As we sit here today can you give me an idea
21 of what kind of confidence you have that the agreement
22 with the Navy regarding the long-term use of Lualualei
23 Naval Road will be resolved by that point in time.

24 THE WITNESS: I believe, as I mentioned, I
25 mean if we had our druthers it would be done today.

1 Again, dealing with the inherent bureaucracy of the
2 Navy, NAVFAC, in Washington has proven to be somewhat
3 difficult.

4 We have recently made contact with a
5 intermediary who is assisting us in communications
6 with the Navy in terms of trying to resolve the two
7 primary issues we have with regards to that July 2010
8 letter that we got from NAVFAC. So, again, to answer
9 your question I mean I hope or we hope that we can
10 resolve it by May 2011.

11 COMMISSIONER LEZY: But there's a
12 possibility altogether that there will be no
13 resolution by that point in time, correct?

14 THE WITNESS: There is that possibility
15 also. Because as I mentioned we have been at this for
16 three years. We go down one path, then the change of
17 command with a new commanding officer and we have to
18 start from square one again.

19 We have been dealing with three different
20 NAVFAC commanding officers since we started in 2008.

21 COMMISSIONER LEZY: And I assume that the --
22 maybe I shouldn't assume. The owners will have to
23 obtain financing in order for this project to,
24 assuming that there's redistricting, the owners will
25 obtain financing in order to complete the Project?

1 THE WITNESS: Yes, they will.

2 COMMISSIONER LEZY: Okay. And I presume
3 that in order to obtain financing a critical component
4 that you're going to have to show anyone who's going
5 to provide that financing, is access to the Petition
6 Area, correct?

7 THE WITNESS: Definitely, yes.

8 COMMISSIONER LEZY: So in the event that
9 you're unable to negotiate a long-term easement for
10 use of Lualualei Naval Road, it's more than likely
11 that the owners will be unable to obtain financing.

12 THE WITNESS: More than likely but it's not
13 impossible.

14 COMMISSIONER LEZY: Okay. And I would, I
15 guess, also expand on that by saying would you agree
16 that a 10-year easement is also not going to provide
17 the kind of confidence that a provider of funding is
18 going to require.

19 THE WITNESS: Well, it's not practical
20 because a loan to be funded with a 10-year
21 amortization that will probably be tied into the
22 access issue is not feasible. So, again, one of the
23 issues we are negotiating with the Navy is extension
24 of that 10 year. We are requesting a 50-year
25 easement.

1 COMMISSIONER LEZY: Right. That's what
2 you're requesting.

3 THE WITNESS: That's what we are requesting.
4 And there's a precedent for the Navy granting a
5 50-year easement, as I mentioned.

6 COMMISSIONER LEZY: But that was on a
7 different roadway, correct?

8 THE WITNESS: But it's on a roadway on this
9 island dealing with a Navy road.

10 COMMISSIONER LEZY: But that was not
11 Lualualei.

12 THE WITNESS: No, it was not Lualualei. It
13 was the Waipio Park Access Road.

14 COMMISSIONER LEZY: Have the owners
15 identified, I guess what I would call, a drop dead
16 date by which they have to have this issue resolved in
17 order for the Project to continue? I mean I think
18 personally a drop dead date is May 20, 2011.

19 THE WITNESS: Not necessarily 'cause we had
20 expected this whole process to take, to have been
21 consummated a lot sooner. But it's taken a lot longer
22 than we'd expected also. Because we still have, after
23 the LUC we still have to get the WSEP amendment
24 approved. Then we have to go back to DPP for actual
25 zoning change. And that probably won't be occurring

1 'til latter part of this year or early next year,
2 hopefully.

3 COMMISSIONER LEZY: Thank you.

4 CHAIRMAN DEVENS: Commissioner Kanuha.

5 COMMISSIONER KANUHA: Thank you,
6 Mr. Yanagihara. You know, given the present status of
7 the Lualualei Access Road and just the uncertainty in
8 the negotiations, the timeframes, et cetera, and then
9 you just responded that, you know, you thought that
10 the process would be further along given that you also
11 have these other approvals that you have to have, but
12 the issue's still going to be the same whether it's
13 before us or, you know, the city and county as you go
14 down the road.

15 So I think, you know, my concern is that
16 this petition is almost premature until you have that
17 locked down. Because I don't -- I just have a hard
18 time envisioning how such a critical component to
19 making, you know, this Petitioner get any kind of
20 consideration. How can you even consider it without
21 something really solid on it? All I've heard from
22 your testimony is you really don't know.

23 THE WITNESS: Well, I'm not sure. We do
24 have that formal letter, which to me was a milestone
25 event, that came from Washington. We have two primary

1 issues that we're just trying to resolve at this point
2 in time: That being their request that we improve the
3 road to certain county standards and the initial
4 10-year term limitation.

5 As we speak those issues are being
6 negotiated with the Navy which we hope will come to an
7 early resolution in the near future.

8 COMMISSIONER KANUHA: Well, again, I say
9 finalize it before you file the petition.

10 THE WITNESS: Understood.

11 CHAIRMAN DEVENS: Any other questions? Any
12 follow-up questions?

13 MR. YUEN: None.

14 CHAIRMAN DEVENS: County, any further
15 questions?

16 MS. TAKEUCHI-APUNA: No.

17 CHAIRMAN DEVENS: Mr. Yee?

18 MR. YEE: No.

19 CHAIRMAN DEVENS: Ms. Townsend?

20 MS. TOWNSEND: No.

21 CHAIRMAN DEVENS: So, we're done with this
22 witness. It's about 3:30 so we'll take a recess for
23 the day and return tomorrow. Just so you know we'll
24 be taking up the 'O'oma matter first thing in the
25 morning. Hopefully they won't take too long.

1 MR. YUEN: So about what time?

2 CHAIRMAN DEVENS: We actually start at, I
3 believe, Dan, at 9:30 tomorrow? So about 10 or so.
4 Thanks.

5 (The proceedings were adjourned at 3:30 p.m.)

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C E R T I F I C A T E

I, HOLLY HACKETT, CSR, RPR, in and for the State of Hawai'i, do hereby certify;

That I was acting as court reporter in the foregoing LUC matter on the 2nd day of December 2010

That the proceedings were taken down in computerized machine shorthand by me and were thereafter reduced to print by me;

That the foregoing represents, to the best of my ability, a true and correct transcript of the proceedings had in the foregoing matter.

DATED: This _____ day of _____ 2010

HOLLY M. HACKETT, CSR #130, RPR
Certified Shorthand Reporter