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LAND USE COMMISSION

STATE OF HAWAI'I

CONTINUED HEARING

A12-795 WEST MAUI LAND COMPANY, INC.)
KAHOMA RESIDENTIAL, LLC)
_____)

TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on for a Public Hearing at the Courtyard Maui Kahului Airport, Haleakala Room, 532 Keolani Place, Kahului, Maui, Hawai'i, commencing at 9:30 a.m. on October 5, 2012, pursuant to Notice.

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

1 A P P E A R A N C E S

2 COMMISSIONERS:
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11 DEPUTY ATTORNEY GENERAL: SARAH HIRAKAMI, ESQ.

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13 Docket No. A12-795 West Maui Land, Inc. (Maui)

14 For the Petitioner: JAMES GEIGER, ESQ.
15 HEIDI BIGELOW
16 West Maui Land Co. Inc.

17 For the County: JAMES GIROUX, ESQ.
18 Deputy Corporation Counsel
19 KURT WOLLENHAUPT

20 For the State: BRYAN YEE, ESQ.
21 Deputy Attorney General
22 RODNEY FUNAKOSHI, OP

23 Intervenor: MICHELE LINCOLN

24 Intervenor: ROUTH BOLOMET

25 Also Present: KUMU MICHAEL LEE

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1 Q A couple follow-up questions from your
2 testimony from yesterday. The first thing is that you
3 indicated you'd been on the property eight times.

4 A Correct.

5 Q When was the first time you were on the
6 property?

7 A About three or four months ago.

8 Q Sometime in June of this year?

9 A Something like that.

10 Q I think in one of our written testimonies
11 or perhaps Ms. Bolomet's testimony there was some
12 indication around June 6th or 7th. Does that sound
13 about right?

14 A Something like that.

15 Q You were not on the property before April
16 of this year, is that correct?

17 A No, I was not.

18 Q Okay. And as I understand it you had one
19 trip to the property in July where you spent about
20 three days on the property?

21 A Something like that, yes.

22 Q And when I say "property" I should have
23 been specific. I apologize. The Petition Area. Did
24 you understand.

25 A That is correct. That is correct.

1 Petition Area.

2 Q If you could please wait until I finish it
3 will make our court reporter's job a little easier.
4 Would that be okay?

5 A That is fine.

6 Q Now, I want to talk to you a little bit
7 about some of your comments about the wildlife that
8 you saw or observed. Are you familiar with a document
9 called the Atlas of Hawaiian Watersheds and Their
10 Aquatic Resources?

11 A No, I'm not.

12 Q Were you familiar -- strike that. Were
13 you aware that the Department of Aquatic Resources has
14 six criteria that they use to determine the biotic
15 importance of streams and watersheds?

16 A I would not know.

17 Q Would you be aware that Kahoma Stream did
18 not meet any one of the six criteria that would be
19 important for biotic importance of streams and
20 watersheds?

21 A I am not aware of that.

22 Q Want to talk to you a little bit about the
23 groundwater that you were talking about. Did you
24 review the soils investigation report in this matter?

25 A I scanned it.

1 Q And you were here when Mr. Beagle
2 testified.

3 A That is correct.

4 Q And you recognize that Mr. Beagle in his
5 research or his work, rather, put in 19 pits and put
6 in 3 boring holes?

7 A That is correct.

8 Q And in none of those cases was groundwater
9 struck. You understand that?

10 A That is correct.

11 Q You have provided testimony about the
12 Sterns', you call them water map, correct?

13 A That is correct.

14 Q Now. Mr. Sterns was a fellow who went
15 around the islands and provided a geological and
16 hydrological review of most of the islands, correct?

17 A That is correct.

18 Q He did one of O'ahu, he did one of Lana'i,
19 Maui and the Big Island.

20 A That's correct.

21 Q Did you know he also did a bulletin or
22 report that went with each map?

23 A Yes.

24 Q Did you review the bulletin that Mr. Sterns
25 did for Maui?

1 A I reviewed some of it but it was a scan.

2 Q The bulletin's 402 pages and it's divided
3 up into East Maui and West Maui. You understand that?

4 A Correct.

5 Q Were you aware that Mr. Sterns did not use
6 the word "limestone" any time in connection with his
7 discussion of East Maui?

8 A Yes.

9 Q Were you aware that Mr. Sterns didn't use
10 the term "lava tube" any time in his discussion of
11 East Maui?

12 A That is correct.

13 Q And you were aware that he cataloged a
14 number of streams on Maui.

15 A Yes.

16 Q And you're aware that he didn't catalog
17 any -- excuse me. Let me reask the question. Are you
18 aware he cataloged a number of springs in Maui?

19 A Could you repeat that question?

20 Q Sure. You're aware he cataloged a number
21 of streams in Maui.

22 A That is correct.

23 Q And you're aware that he didn't catalog a
24 single spring in the Lahaina area.

25 A That is correct. But I must add that I

1 know where they are. As a Hawaiian cultural
2 practitioner even he didn't. Just to let you know.

3 Q But he was the one you were relying upon.

4 A That is correct.

5 Q Okay. Now, let me talk to you a little bit
6 about the cultural assessment that you talked about.

7 Were you aware of the cultural history overview of
8 Kahoma Stream Flood Channel that was done in
9 September 1979 by Hawaiian Marine Resources?

10 A No, I'm not.

11 Q Did you review any cultural reports or
12 archaeological reports on file with SHPD concerning
13 the Kahoma Stream area?

14 A Yes, we did.

15 Q You reviewed the Connolly report which
16 we've talked about.

17 A Yes, we did.

18 Q I believe that's Exhibit, Petitioner's
19 Exhibit No. 39, correct?

20 A Yes.

21 Q Did you also review a TRIP report,
22 archaeological site investigation Kahoma Stream flood
23 Control Project dated May 1987?

24 A I scanned some of the materials that were
25 put into this, yes.

1 Q You understand in that particular report
2 someone had made a claim of a burial site at the
3 Kahoma Stream complex, right?

4 A That is correct.

5 Q You understand that they identified the
6 Kahoma Stream complex on an As Built map of the Kahoma
7 Stream Flood Control Channel?

8 A That is correct.

9 Q And you understand that the Kahoma Stream
10 Terrace Complex identified in Connolly and also part
11 of Farley's report --

12 A Correct.

13 Q -- is located under the debris basin?

14 A "Under the debris basin". I may object to
15 that.

16 Q Okay.

17 MR. GEIGER: Chair, we marked yesterday as
18 Exhibit 41 which was an addendum to archaeological
19 investigation. I'm not offering it at this time, but
20 it does have attached to it a map from which the
21 Farley map was used. So if I could, I guess, show the
22 witness Exhibit 41 at this time so we can have a
23 record.

24 PRESIDING OFFICER HELLER: You can show it
25 to him at this time, but at this point the exhibit has

1 not been admitted or even offered.

2 MR. GEIGER: I'd go ahead and offer the
3 exhibit at this time just to short circuit if that
4 would be fine.

5 PRESIDING OFFICER HELLER: Well, parties,
6 are there any objections to the Exhibit 41 that was
7 provided yesterday attached to Petitioner's rebuttal
8 exhibit list?

9 MR. GIROUX: No objection.

10 MR. YEE: No objection.

11 PRESIDING OFFICER HELLER: Ms. Lincoln?

12 MS. LINCOLN: I don't think I got one. I
13 don't know what he's talking about. I'm sorry.

14 MR. GEIGER: It was handed out yesterday,
15 placed in front of you yesterday morning.

16 PRESIDING OFFICER HELLER: Well, to keep
17 things moving forward why don't you just ask your
18 question of the witness.

19 (Document handed to witness).

20 MR. GEIGER: I provided the witness a copy
21 of Petitioner's Exhibit 41 and am directing his
22 attention to figure 4 of the exhibit.

23 Q Do you see that, sir?

24 A Yes, I do.

25 Q And do you see the outline of the various

1 features of the Kahoma Stream Terrace Complex?

2 A Yes, I do.

3 Q And you see that those are in the area
4 where the debris basin was constructed. (people
5 coughing)

6 A I'm sorry. There were coughs going on. I
7 couldn't hear that.

8 Q Okay. And you see that the features from
9 the Kahoma Stream Terrace Complex are in the area
10 where the debris basin was constructed?

11 A You'd have to point where the debris basin
12 is on this map. I just see a lot of things all over
13 the place.

14 MR. GEIGER: May I?

15 PRESIDING OFFICER HELLER: You may, but if
16 he's not familiar with the map, asking him questions
17 about it isn't going to be helpful.

18 Q (By Mr. Geiger): Understood. I guess I
19 should ask you, Mr. Lee, would it help you if I
20 pointed out where the debris basin was?

21 A Yes, it would.

22 MR. GEIGER: For the record I'm showing
23 Mr. Lee on the exhibit there's a red circle appears in
24 the coordinate C7.

25 A Okay.

1 Q And then to the right at the coordinate C6
2 is the head wall of the debris basin going toward the
3 top weir. Further up is the other end of the head
4 wall. Over to the right the coordinate E3 and down to
5 C3 is the upper end of the debris basin.

6 A Okay. So this is where that big drainage
7 water thing we saw culminated. I understand what
8 you're talking about.

9 Q You would agree with me, wouldn't you, sir,
10 that the Kahoma Stream Terrace Complex is in that
11 location under the debris basin?

12 A It's a portion of it, a portion of it.
13 Yes, I would agree a portion of it. Not the complete,
14 but a portion of it.

15 Q Well, the remainder of it actually runs to
16 the bottom of that diagram or toward the housing area,
17 correct?

18 A Correct.

19 Q It doesn't run makai or toward the ocean,
20 correct?

21 A Are we talking about the limits of this
22 map? Or are we talking about what I just said in
23 commentary of it's a portion of it?

24 Q What you just said in commentary it's a
25 portion of it.

1 A It's a portion of it that goes towards the
2 proposed area.

3 Q Now, Mr. Lee, you were at the site on
4 September 8th, correct?

5 A Correct.

6 Q And Rory Frampton was at the site that day.

7 A That is correct.

8 Q And Mr. Frampton showed you a map from the
9 Farley Report?

10 A That is correct.

11 Q And that's a portion of figure 4 which I've
12 just shown you, correct?

13 A That is correct.

14 Q And at that time isn't it correct that you
15 stated you 100 percent agreed with Mr. Frampton that
16 the location of the Kahoma Stream Terrace system was
17 mauka of the Project site?

18 A "If -- the word was "if" this railroad,
19 which is the premise of Mr. Frampton's location site,
20 if this railroad was higher up then logically
21 Mr. Frampton would be correct. "If".

22 But as we have demonstrated on this map
23 that's impossible. Because there was no railroad
24 higher up. So incorrect because it was conditional
25 "if".

1 Q Okay. So it's still your position that
2 despite figure 4, which is an as-built plan showing
3 the Kahoma Stream Terrace, and despite what you said
4 the other day, that portion of the Kahoma Stream
5 Terrace is on the Project site?

6 A What I said is -- and this was relating to
7 where the rock is -- that the cultural feature is
8 lower than what was represented when it said "next to
9 the railroad bridge".

10 I believe that the poles are mis-numbered
11 on this map causing the mistaken identity of the
12 location because there is no other railroad crossing
13 or bridge above that would make your statement
14 accurate. That is where the differential takes place.

15 Q Did you make any attempt to find a
16 telephone pole with the number 6 on it?

17 A I don't have to look for a telephone pole.
18 I just have to look for the railroad because there is
19 no other railroad.

20 Q Sir, that wasn't my question. Did you make
21 any attempt --

22 A No.

23 Q -- to find a telephone pole --

24 A No.

25 Q -- with the number 6?

1 A No.

2 Q Did you make any attempt to find the
3 concrete foundation referenced in the Connolly report?

4 A Not necessary. No.

5 Q Isn't it correct you also told Mr. Frampton
6 that the -- or you showed Mr. Frampton the location of
7 the libation stone?

8 A Right.

9 Q That you've identified as a libation stone?

10 A Correct.

11 Q And isn't it correct you also told
12 Mr. Frampton on September 8th that that stone did not
13 come from the property?

14 A If, it was conditional, *if* that location
15 that you talked about here, because of the railroad
16 was higher up. If that was correct then that came
17 from -- the libation stone would have come up from
18 there. Conditional "if".

19 But my knowing that by the maps and
20 everything that it is not up there, that you have the
21 feature which is below and a push pile was pushed over
22 it. That's my understanding.

23 Q And you agree that the rocks that are out
24 there that you can observe are a push pile.

25 A That portion of it is a push pile over an

1 existing Hawaiian feature.

2 Q Okay. You didn't move any of the rocks to
3 see if there is a Hawaiian feature.

4 A I don't have to move the rocks to see if
5 there's a Hawaiian feature based on a Hawaiian
6 cultural practitioner.

7 Q Let me ask you a slightly different
8 question. You heard Mr. Hobdy testify in this case.

9 A Yes.

10 Q And you understand Mr. Hobdy said that the
11 Hawaiian owl, pueo, is not an endangered animal in
12 Maui.

13 A Yes.

14 Q Do you agree with that?

15 A No. Because -- I don't agree with it
16 because the lack of available space in its habitat is
17 pushing it further and further into the mountains. So
18 I witnessed three days ago a dead owl on the road as
19 we were going to pick up limu at the whale sanctuary.
20 And I believe that there's not enough protection for
21 them. I believe that they *will* be pushed over the
22 edge.

23 Q Whale sanctuary being in Kihei.

24 A Kihei.

25 Q Let me ask you, are you familiar with

1 Hawaii Administrative Rules 13-124-2?

2 A No, I'm not.

3 Q That's the administrative rule on
4 indigenous wildlife, endangered and threatened
5 wildlife and introduced wild birds. They have a
6 listing of the endangered wildlife. Have you ever
7 reviewed that listing?

8 A No, I have not.

9 Q Are you aware the Hawaiian owl is not
10 listed as endangered on the island of Maui?

11 A No, I'm not.

12 MR. GEIGER: Nothing further.

13 PRESIDING OFFICER HELLER: Thank you.

14 County?

15 MR. GIROUX: Thank you.

16 CROSS-EXAMINATION

17 BY MR. GIROUX:

18 Q Mr. Lee, I just want to ask you some
19 questions about, as far as to get clarity, regarding
20 your cultural practices. I know we've had about two
21 hours of testimony last night. But if we could just
22 narrow that down to a plausible list, I guess? It's
23 just because of my ignorance that I need to define
24 that scope.

25 A Sure. I appreciate that.

1 Q As far as maybe we can start with: What
2 are the things on this property that are essential for
3 you to do your cultural practice?

4 A Well, again, as I tried to make the
5 statement, the western lens is to do what you're doing
6 right now, site focus at Project site area.

7 We look at it as a complex which you cannot
8 separate this or bifurcate this. What happens in the
9 mountain, the ocean, the mid-range, all of what
10 happens at Mala and how the water, the water that
11 flows underneath the property not just the flood plain
12 control channel that's there, it's gonna affect the
13 coral and my practice down at the sea.

14 So that's the best way that I can tell you
15 how it's gonna do it. Is that if the assessment for
16 the spring and the well and the pipes that are there
17 are not looked at, the danger factor is like a
18 cascading effect that can take place down at Mala
19 where I collect the limu, the apana sponge and the
20 coral medicine.

21 Q Okay. Well, let's stick with that then.
22 As far as your understanding of the Project has there
23 been any indication that the manner --

24 A Excuse me. Can I also amend that to the
25 libation stone is also very important because that was

1 put into effect to keep the water running and the
2 health of the whole complex because the waiwai, the
3 freshwater, is where life begins either on the land or
4 in the ocean.

5 So that stone in its position as far as the
6 mitigating thing for us Hawaiians who are cultural
7 practitioners, it shouldn't be moved. Whether they
8 decide to mitigate and move the park around the stone
9 that's fine or a feature around it.

10 But that's an important part for us because
11 the connection with the Pu'u Laina is that the death
12 and the birth of Pele's son -- this is the birthplace
13 that's the death place, Pu'u Laina is where his iwi
14 is. So for us there's a connection there.

15 So the mitigating circumstance here is that
16 stone not be destroyed, hauled away and dumped
17 somewhere. But it's there for a purpose as I
18 mentioned about the fire walkers to that stone.

19 Q I'm a little confused. The stone that was
20 on your desk yesterday --

21 A That was part -- can I -- it attaches to
22 here the alua.

23 MR. GIROUX: Let the record reflect that
24 Mr. Lee is pointing to the last photo top --

25 A No. 5.

1 Q Labeled No. 5.

2 A And No. 4 shows that there are grooves in
3 this stone for the awa to flow. So this is an alua
4 stone. So this attaches to here. So for the Pele
5 Clan this with Pu'u Laina, and this is the birthplace
6 an that's where he's buried.

7 MR. GIROUX: And just for the record when
8 Mr. Lee said "here" he was pointing towards the middle
9 of the stone, the stone in the picture labeled No. 5.

10 A That is correct, yes.

11 Q Okay. We might go back to that. But what
12 I want to do is stick with the water just for focus
13 sake.

14 A Sure.

15 Q Is there any indication of your review of
16 the Petitioner's plan that would indicate to you that
17 the manner of construction is going to go below the
18 basal base and interfere with any alleged streams
19 below that base?

20 A Yes. In the sense that when you concretize
21 and put asphalt and sidewalks and carports for 68
22 homes or 69 homes, you're gonna contribute something
23 that is not there currently. As was mentioned in
24 testimony, that 1500 cubic feet per second, that
25 channelized water is different from the 1963,

1 2,500 feet per cubic feet per second. All of that in
2 western terms for flood drain is great. But for us as
3 a practitioner for the consequences that are gonna
4 take place in the ocean with *my* cultural practice
5 under Article XII, section 7 is disastrous.

6 It's gonna contribute to it because you see
7 right now when it rains on that property the water
8 percolates and it's absorbed through and then goes
9 through the lands.

10 What the proposed plan for the Project Area
11 is gonna do is concretize asphalt sections that no
12 longer the ground can penetrate the water and absorb
13 it. It's gonna add to this 15,000-now-plus cubic feet
14 per second to the ocean.

15 Having not concretized that drainage the
16 damage to the ocean would be less. Because as I said
17 the duration, say, the big rain for 2 hours of 15,000
18 plus cubic feet per second in the ocean is now
19 poisoning with water for sea life, which makes it
20 untenable for it to survive in that biosphere that's
21 not used to solid freshwater not being replenished or
22 recirculated.

23 So the take that will happen at the sea
24 with my limu and coral, it's gonna be significant. So
25 that's the mitigation process where in one western

1 lens it's great to take the water off the roads. But
2 in the Hawaiian lens the effect down at Mala is
3 devastating to our cultural practice. So because the
4 spillway -- you know, you have that big drainage
5 system. It's meant to take normal rains and mitigate
6 against that. But.

7 when you have a huge flood, like I believe
8 as a kahuna, that the end of November we are going to
9 have a humongous flood and you will see what I mean.
10 By the time December comes you will all see what I
11 mean what the destruction will be.

12 Q Mr. Lee, again, my whole concern is to
13 focus on. And, again, this might just be my ignorance
14 but it sounds like that when you're telling me about
15 these water calculations that you're focusing on the
16 drainage next to the property.

17 A I'm focusing on the cumulative effects of
18 non-source pollution. What are the cumulative effects
19 of the heavy metals? You're gonna have cars parked in
20 those driveways. You're gonna have cars dripping oil.
21 You're gonna have people fertilizing. You're gonna
22 have heavy metals going into the drain when the rain
23 comes.

24 That is gonna add -- what is the cumulative
25 effect of heavy metals on Mr. Lee's cultural practice

1 vis-a-vis the limus, the invertebrates, the sponge,
2 the kaiten, which we call Pu'u Mo'o When is that
3 effect going to take place in poisoning me? Under
4 Article XII, section 7 we will not overregulate or
5 destroy Hawaiian religious or cultural practice for
6 the health of Hawaiian people. Where does that
7 benefit my health under the constitution? That's what
8 I'm talking about.

9 Q Okay. So as far as to focus on the Project
10 again, then if the drainage is looked at --

11 A Yeah.

12 Q -- and basically a type of water quality
13 control --

14 A Yes.

15 Q -- is in place?

16 A Yes.

17 Q -- then that would satisfy your --

18 A That is correct.

19 Q -- concerns.

20 A That is correct.

21 Q Okay. But as far as volume again, your
22 concern is that it's next to this Project where you're
23 gonna get concentrated volume.

24 A That is correct.

25 Q Okay. And that Project is not under the

1 control of this Petitioner.

2 A That is correct.

3 Q Okay. And that was built in 1990?

4 A Around there, yeah.

5 Q So as far as the impact or scope of your
6 ability to collect limu from 1990, that impact has
7 been there.

8 A Yes.

9 Q Okay. Now, prior to that you mentioned
10 that there were --

11 A Can I say one thing? We have to also add
12 into the picture there's been a drought for, like, 10
13 years in Maui. So and I must add that whenever you
14 have a cycle of drought you're gonna have a cycle of
15 floods following.

16 Q Okay. As far as before that concrete
17 drainage was put in --

18 A Right.

19 Q -- that there was testimony that there was
20 a river that flowed basically closer to the homes that
21 are there now?

22 A That is correct.

23 Q You're not aware of what the volume was in
24 that river?

25 A No, I'm not.

1 Q Do you have any knowledge about what the
2 disruption in water flow from those rivers were prior
3 to --

4 A I can talk to you as a native Hawaiian
5 practitioner on rivers and how they flow. There's a
6 normal flow that comes down. That flow is absorbed
7 into the ground because it's not concretized.

8 Q Yeah.

9 A So a lot of that flow that comes down very
10 swift and everything is dissipated as it comes down to
11 the ocean. What does get down to the ocean because of
12 the structure of the tides, 6 hours in, 6 hours out,
13 and the wave action, the turbidity generally breaks up
14 the maximum concentration of water and spreads it out.

15 So it actually has a beneficial response
16 with the pounding of the waves, like a Jacuzzi, breaks
17 it up. So in that environment is the environment that
18 the life of the sea is used to in its habitat.

19 Q Okay. Prior to the building of the
20 drainage were you ever able to see that river flowing?

21 A Not the river. But I've been to Mala as a
22 little boy before. But not the river. I never went
23 up to this proposed Project site as a little boy.

24 Q So your testimony is that when you were a
25 little boy.

1 A 1962.

2 Q Okay. Do you remember how many times you
3 went as a little boy to the river?

4 A Well, I didn't go to the river, but I did
5 go to Mala. My parents would take us out to the beach,
6 you know, just to go to the beach. And we just played
7 in the water. We did not go to the stream per se.

8 Q Do you have any history or knowledge about
9 the interference of flow of water to the stream prior
10 to the drainage project being put in?

11 A No, I did not.

12 Q And your testimony is that you nor your
13 family ever went to this portion of the property.

14 A That is correct. As a little boy. As a
15 little boy, yeah.

16 Q As far as your, I guess your parents could
17 tell you. Did they ever tell you about going to this
18 piece of property?

19 A No, they did not.

20 Q Did they tell you about anything that
21 existed on that property that would be important to
22 your cultural practice?

23 A No, they did not. But you see it was my
24 grandfather who was the person that talked to me about
25 the Pele moon. He was the one who was more connected.

1 My mother comes from a generation that, to be very
2 perfectly honest, wanted to be haole. So it was my
3 grandfather, who was born in 1905, he was the person
4 who's my teacher and my mentor. And he was the one
5 who taught me Pele.

6 He was the one who instilled my cultural
7 knowledge for the limu and everything because he spoke
8 fluent Hawaiian. And he was attached to the culture.
9 And he was a kahuna of the sea.

10 Q As far as your talking with your
11 grandfather, can you just state his name for the
12 record?

13 A His name was Kino Valentine Guerrero.

14 Q As far as speaking with him do you know
15 when the last time he was -- visited this property?

16 A He probably did. The thing is he visited
17 all the different islands and scoped out the area as a
18 fisherman. Unfortunately, when I was younger I only
19 listened to his stories of what he would reveal to me.

20 And he had -- he had done many things that
21 I found out later like not in a journal but things he
22 did for my other cousins where he did a map of the
23 islands and put where to find limu. And he put the
24 date, the time, in 1963. This was on the Island of
25 O'ahu, not to confuse it with Maui, where he helped

1 some of my cousins with projects that they had for
2 school.

3 Q Okay. I guess as far as any of those
4 journals or through conversation he never told you
5 about any he'iaus that were present on this property?

6 A No. Not from him.

7 Q From any other teacher prior to him?

8 A Aunty Alice Holokai was my source with her.
9 Her son, George Holokai, the master hula chanter,
10 talked about the Pele Clan within the island of Maui.

11 But dealing directly with this area, this
12 would be under *my* cultural practice of what we call a
13 kapu, a standing vision. In Ike Papa Lua -- Ike Papa
14 Lua means "ike" is your knowledge; "papa" is the land
15 and "lua" is 2, this world and the next world.

16 I'm able as a practitioner to go to a site.
17 And based on what I was taught, basically download
18 with the ike of the aka shadow of my ancestors, what's
19 happening there.

20 Q Okay. So as far as prior to your
21 April 2012 visit to the property you didn't see this
22 he'iau.

23 A No. In fact that was the reason why we
24 showed where the fire mark was because I would have
25 missed it. Had I not seen the signs of all this fire

1 moving towards the stone I wouldn't have even thought
2 of going looking there.

3 So this was -- in our practice you have to
4 go with the signs that are telling you where to go.

5 Q Okay. As far as your knowledge, when is
6 the last time your family had any religious practice
7 around this he'iau?

8 A My family had, to the best of my knowledge
9 talking about my mother, she had none. Talking about
10 my brothers, they had none. Talking about myself, not
11 'til I got on the property and saw that. I have done
12 recently what my grandfather did. I cannot speak to.
13 But he was always talking about the Pele Clan.

14 Q But not specifically about this property or
15 this he'iau?

16 A He never mentioned anything to me. I never
17 had the presence of mind to ask him.

18 Q Is there anything else that we've talked
19 about that I've missed as far as labeling as being
20 part of your cultural practice? I think we've talked
21 about the limu, the water, and the libation stone.

22 A Right. I also -- yes. I also go up to
23 Haleakala for years to do my chants there. When I see
24 this humongous rainbow that goes from the ocean to the
25 mountain, that's my sign that I have to go out and

1 chant. And I've done that for over 20 years.

2 Q But not on this property?

3 A Not on this property. And, by the way, the
4 chanting is for Tutu Pele when I go up as I've done on
5 the Big Island for over 20 years.

6 MR. GIROUX: I have no further questions,
7 thank you.

8 PRESIDING OFFICER HELLER: OP?

9 CROSS-EXAMINATION

10 BY MR. YEE:

11 Q I want to start with a technical question.

12 A Sure.

13 Q The pictures you have pointed at, I think
14 you were pointing out pictures 4 and 5.

15 A Right.

16 Q Were those attached as exhibits to Clare
17 Apana's testimony? Were those submitted to the
18 parties at some point?

19 A Yes.

20 Q Was that to Clare Apana's testimony?

21 A Yes.

22 Q Okay. I just want to identify them for the
23 record.

24 MR. GEIGER: The public testimony on what
25 date?

1 MS. BOLOMET: When we were in Lahaina.

2 MR. GEIGER: I don't believe there were any
3 photographs on the day that we were in Lahaina. My
4 recollection was the photographs were on the first
5 September meeting at the Maui Arts and Cultural
6 Center.

7 MR. BOLOMET: It was just the maps that she
8 submitted when we were in Lahaina, not the
9 photographs. I believe it was the maps, the Public
10 Works maps.

11 MR. GEIGER: My recollection of the
12 photographs that Ms. Apana had for her public
13 testimony, they also had a map on the lower right
14 portion of the poster board. I don't see a map on
15 this one so I'm not sure.

16 THE WITNESS: The map was --

17 MS. BOLOMET: The map was the Sterns map,
18 the 1942 Sterns' map and I forgot it.

19 MR. GEIGER: Actually, no, it was not --

20 MS. BOLOMET: No. 17.

21 PRESIDING OFFICER HELLER: Regardless of
22 what was attached to Ms. Apana's public testimony, the
23 immediate question is: Are those photographs in the
24 record as an exhibit we can identify? If somebody can
25 point out which specific exhibit at the next break or

1 perhaps later this morning, we can note that in the
2 record. For now there's no specific offer of any
3 exhibit pending.

4 MR. GEIGER: Except for Petitioner's 41.

5 PRESIDING OFFICER HELLER: Correct.

6 Q (By Mr. Yee) I'm going to ask the question.
7 If you don't know that's okay. I have the same
8 question regarding the survey of 1960 map and the 1884
9 town of Lahaina map that's on the wall that you were
10 using in prior testimony.

11 Are those documents you think were admitted
12 or submitted to the parties previously?

13 A The Intervenor has the answer to that.

14 MS. BOLOMET: The 1884 map is what the
15 Petitioner refers to in his Petition. I believe in
16 the archaeology report they're referring to that.

17 And then the 1916 map we submitted the link
18 to Theresa Donham in a letter disputing the accuracy
19 of the report, the archaeology report. She's from
20 SHPD. But we couldn't get a smaller, scale it down,
21 because the map room couldn't do it. But they gave us
22 the link.

23 MR. YEE: So as I understand it the
24 documents were referenced but not included in other
25 filings. Is that right?

1 MR. BOLOMET: That's correct. I was told I
2 couldn't add any more things. But I will be able to
3 send you the link.

4 MR. YEE: I just wanted to be able to
5 identify for the record what these people are pointing
6 out.

7 Q Okay. So then moving on. So my question
8 involves first the karst system. As I understand both
9 your testimony and Michael Dega's testimony, a karst
10 system initially forms underground as the calcium
11 carbonate dissolves away leaving a cavity in the
12 earth. Correct?

13 A That is correct.

14 Q Then as land forms change sometimes a
15 surface access may be opened up into that cavity.

16 A That is correct.

17 Q As I also understand it, because land forms
18 change, you will often come into a single cavity
19 rather than one long tunnel as cave-ins and other
20 changes the property.

21 A That is correct.

22 Q When a surface access is created the native
23 Hawaiians would often utilize that cavity for purposes
24 of native Hawaiian burials?

25 A That is correct.

1 Q In this particular case, although I
2 understand the land has been significantly reworked,
3 are you aware of the particular site access within the
4 Petition Area through a karst cave system?

5 A No, I'm not. There is no sink hole.

6 Q Are you aware of any surface access to a
7 karst cave system along the old Kahoma Stream?

8 A I'm not aware of such access.

9 Q Are you aware of surface access that was
10 created or found when the Kahoma Stream -- when the
11 current Kahoma Storm Channel was built?

12 A Yes, in this sense when it was referenced
13 about the burial that was removed, obviously was in
14 such a feature that you're talking about.

15 Q Do you know if that was a karst cave
16 system?

17 A I am not specifically aware of any
18 documentation that says that that's a karst cave
19 system.

20 Q So you're aware that there was a burial but
21 you don't know if that was a karst --

22 (coughing sounds)

23 A That is correct.

24 Q Have you talked to the State Historic
25 Preservation Division about your findings regarding

1 either burials or archaeological sites within the
2 Petition Area?

3 A Yes, we have.

4 Q What was SHPD's determination, if any?

5 A This is what happened. I informed the
6 Intervenor Routh Bolomet to put in a burial site claim
7 and also a descendency claim to be taken and filed
8 with SHPD so that it could be presented before the
9 Maui Island Burial Council for disposition. That is
10 the extent of my involvement in your particular
11 question.

12 Q Are you aware of any -- did you help
13 Ms. Bolomet prepare her letter?

14 A No, I did not.

15 Q Are you aware of what the response was to
16 the letter?

17 A No, I'm not.

18 MR. YEE: All right. Thank you. Nothing
19 further.

20 PRESIDING OFFICER HELLER: Ms. Lincoln.

21 CROSS-EXAMINATION

22 BY MS. LINCOLN:

23 Q Do you think as a cultural practitioner it
24 is your duty to protect the pueo that is an aumakua
25 to many Hawaiians? And that in good governance it

1 would be wise to protect the pueo and its habitat
2 before they become an endangered species on Maui?

3 A That is correct. Plus, you see the story
4 that was mentioned about Hina. Hinaikeahi is Tutu
5 Pele. So it would be -- the pueo would be in our
6 family line, yes.

7 Q Okay. My witness was Herman Nao'ole who
8 was at the top of the property.

9 A Yes.

10 Q And his aumakua is the pueo.

11 A Yes.

12 Q How does the removal of the pueo's habitat
13 protect his constitutional rights?

14 MR. GEIGER: I'm going to object. The only
15 expert testimony on pueo habitat in this case was
16 provided by Mr. Hobdy. And Mr. Hobdy said that this
17 area is not a pueo habitat. There's been no other
18 testimony so this would be; number 1, without
19 foundation with this witness; number 2 irrelevant.

20 MS. LINCOLN: Mr. Geiger was the one who
21 asked the question about the pueo. That's the only
22 reason I'm asking it. I'm just verifying what he was
23 just asking him.

24 MR. GEIGER: My questions were limited to
25 whether it was on the Endangered Species or not.

1 Didn't have anything to do with habitat.

2 PRESIDING OFFICER HELLER: You might want
3 to ask a foundation question to establish whether or
4 not he has any expertise on habitat.

5 Q (By Ms. Lincoln) Do you have any expertise
6 on habitat?

7 A For pueo? Yes.

8 Q Okay. Their expert did not see any pueo on
9 the property.

10 A Yeah.

11 Q But I have witnessed it. And a man who's
12 lived by the property since the '70s has witnessed it.

13 A Yes.

14 MR. GEIGER: I'm going to object. There's
15 no question there, just testimony on behalf of the
16 questioner.

17 MS. LINCOLN: I'm sorry. I thought you
18 might ask. I was waiting for you. Can I finish my
19 question?

20 PRESIDING OFFICER HELLER: Ms. Lincoln,
21 please finish your question. But please try to ask
22 questions rather than making statements.

23 Q (By Ms. Lincoln): Okay. I'm sorry it's
24 going slow. Some of us have observed since the '70s
25 that there have been pueo that hunt and live on this

1 property.

2 A Right.

3 Q So therefore it could be a habitat and a
4 hunting ground for pueo.

5 MR. GEIGER: I'm going to object. That's,
6 first of all, leading. Secondly, it is argumentative.
7 Third, it's testifying on behalf of questioner. And
8 fourth, it doesn't -- it doesn't involve his knowledge
9 concerning this property and the habitat.

10 PRESIDING OFFICER HELLER: Ms. Lincoln, I
11 think you're just asking him to assume facts, is that
12 correct?

13 MS. LINCOLN: Ah, no. I'm just wondering
14 why Mr. Geiger got to ask him a question about the
15 pueo. He acted like he was an expert on the pueo;
16 that *I* can't ask him a question on it. In his
17 expertise opinion I'd just like to know: is that a
18 natural type of habitat for a pueo? In his cultural
19 practitioner opinion protecting Hawaiians' rights as
20 their `aumakua and how they worship.

21 PRESIDING OFFICER HELLER: The problem is
22 not asking him if he knows whether this property is
23 habitat for the pueo. The problem is you're making a
24 statement of fact and asking him to assume it.

25 MS. LINCOLN: Okay.

1 PRESIDING OFFICER HELLER: So I'm going to
2 sustain the objection --

3 MS. LINCOLN: Is the --

4 PRESIDING OFFICER HELLER: -- for the
5 record.

6 MS. LINCOLN: Okay. I'm sorry.

7 PRESIDING OFFICER HELLER: For the record
8 I'm going to sustain the objection to the question in
9 its present form. If you want to rephrase it as a
10 question that does not include an assumption of fact
11 you can go ahead and do that.

12 Q (By Ms. Lincoln) Is this a habitat for the
13 pueo?

14 A Yes, this is.

15 Q Thank you. Do people that have the
16 constitutional right to their aumakua and to worship
17 God under the constitution in cultural practice, do
18 they have a right to protect the habitat for the
19 pueo --

20 A Yes, we do.

21 Q -- which is their `aumakua?

22 A Yes, we do.

23 MR. GEIGER: I think that's cumulative of
24 what's been asked.

25 MS. LINCOLN: I'm finished.

1 PRESIDING OFFICER HELLER: It's been asked
2 and answered. Ms. Bolomet, do you have any redirect?

3 MS. BOLOMET: Yes.

4 REDIRECT EXAMINATION

5 BY MS. BOLOMET:

6 Q Yes. It seems that there's a lot of not
7 clear understanding of what an expert is in Hawaiian
8 practice. So could you explain the difference between
9 you as a cultural practitioner and the Petitioner's
10 cultural expert?

11 A Yes.

12 MR. GEIGER: You know, I would object to
13 that because I don't believe that came out in any of
14 the cross-examination of any of the parties. So this
15 seems to be beyond the scope of the cross-examination.

16 PRESIDING OFFICER HELLER: It may not have
17 been asked directly but I think there were questions
18 that were close enough and I'm going to allow this.

19 A The difference is first, an expert is
20 someone who is taught who accumulates knowledge either
21 by reading manuscripts and interviews, going out on
22 location. And it's a cumulative body of knowledge
23 both in academia and in verbal discourse with the
24 native culture can make you an expert.

25 You can to go school, university, master's

1 degree for Hawaiiana with University of Hawai'i,
2 Hawaiian language. Cumulatively that can make you an
3 expert.

4 A native Hawaiian cultural practitioner is
5 protected under Article XII section 7, where an expert
6 is not. The reason why is a native Hawaiian cultural
7 practitioner not only practices but there's a
8 religious component that is involved in the exercise,
9 practice and use of the facilities involved in the
10 practice.

11 When we do our limu medicine we do prayers.
12 We do "ha" that we believe is 75 percent of the mana
13 or the power that is bestowed on the practice. So the
14 religious component is different than a secular point
15 of view and a dispassionate look on the culture.

16 And the practice is, as I say, the
17 religious component and the exercising of that
18 religious component in the belief system of that
19 native culture vis-a-vis the Hawaiian culture is
20 protected under Article XII section 7 as opposed to an
21 expert who may know the rites, the words, but does
22 not utilize them on a daily basis, monthly basis,
23 weekly basis or yearly basis to put into action a
24 religious belief system.

25 Q Would an expert, by the definition you just

1 gave us, know the kauna or the hidden meanings in a
2 chant they would read or the manuscripts they would
3 read?

4 A Only if that kauna was given to them by
5 whoever they interviewed. But 90 percent of the time
6 that would not happen. Hawaiians keep to their
7 families their treasure of what the ike or their
8 mana'o, their knowledge, what they impart to their
9 family.

10 Q Okay. And do you have to be Hawaiian to be
11 a Hawaiian expert?

12 A No, you do not.

13 Q Do you have to be Hawaiian to be a Hawaiian
14 practitioner?

15 A Yes, you do because this is the part that
16 separates the expert from the practitioner. The mana
17 or power that we get is not from us. It is from our
18 ancestors that we call to come. And they stand before
19 us. And through them, we work through them.

20 So there is only one exception that I know
21 of that is valid. And that is Frances Bacon. And she
22 is pure Japanese. She was Mary Kawena Pukui's hanai
23 daughter. Under hanai, based on Hawaiian cultural
24 practice, she was Mary Kawena Pukui's blood daughter
25 in our culture. Which means when Mary Kawena Pukui

1 took Frances Bacon to learn to do the sacred hula on
2 Kauai from a family member, that family member denied
3 Mary Kawena Pukui to teach the Japanese little girl
4 that she adopted as her daughter, the sacred chants
5 and the kaunas we talked about.

6 Mary Kawena Pukui then turned to her
7 relatives and said, "You go back to the ancestors.
8 And you tell them she is hanai."

9 The relative came back and said, "I am
10 sorry. She is Hawaiian." That is the only
11 distinction. When someone hanais anybody they become
12 Hawaiian by blood. And they can have, become a
13 practitioner. That's the only exception I'm aware of.

14 Q Okay. Mr. Geiger asked you a lot about
15 different reports, referring to different reports. Do
16 you need western reports to get your knowledge?

17 A No. The lens of the western culture has
18 its place. Our culture looks at things differently.
19 Many of the questions that were asked about access to
20 rocks and caves and caverns, they're there. I cannot
21 take you there because I haven't been there. But I
22 know they're there. From my spirit I know they're
23 there based on my Hawaiian religious cultural
24 practice.

25 But the question was stated in a manner

1 that I have to answer in the western lens which was
2 answered correctly. But in my ike I know they're
3 there. I haven't found them but the answer was true
4 with what I stated.

5 Q Okay. In Mr. -- the Petitioner's -- what
6 is this called? Exhibit 41, exhibit list, Exhibit 41
7 supposedly given to all of us yesterday? He referred
8 to figure 4. It's a map that is very small. Can you
9 see real clearly say what this is?

10 A Basically when Mr. Geiger showed me -- and
11 his explanation was a good tutorial -- I could figure
12 out what he was saying. Yes, it is small, it's fuzzy
13 and everything but explanation was very well and we
14 got on point.

15 Q Okay. So you're able to -- you're clear on
16 that.

17 A I was able to do it.

18 Q I also noticed that he put in what he got
19 out of the archaeological report. I believe it was on
20 their Page 2 or 3 in the archaeological report in the
21 Petition.

22 But in this document it's Page 5 called
23 figure 1. Do you have it?

24 A I do not have it.

25 MR. GEIGER: Would this be a good time to

1 go ahead and finish offering Petitioner's 41 so that
2 we have something that's in the record?

3 PRESIDING OFFICER HELLER: Ms. Bolomet,
4 since you're using the Exhibit 9 you've obviously had
5 some chance to look at it. Do you have any objection
6 to the admission of Petitioner's Exhibit 41?

7 MS. BOLOMET: I have not read this. I'm
8 just looking at the pictures based on the few minutes
9 that we got it. So I don't know if I object yet. I
10 haven't been able to see it. But I'm referring to
11 something that's in -- I know that's in the
12 archaeological report.

13 And the other one was I was trying to
14 make -- for me I can't even see what he was talkin'
15 about. The map is too small. I didn't have a chance
16 to go on the computer and look at it to see if what he
17 was trying to get Kumu Lee to agree to was actually
18 correct by what I can see.

19 So I'm having a hard time saying that I
20 agree with this because I don't know what I'm agreeing
21 to. But I would like -- we can either go to the
22 Petition and look at this page through the Petition or
23 it's easier on our desk and we can look at it here.
24 But it is in the Petition in the archaeological study.

25 PRESIDING OFFICER HELLER: Mr. Geiger, do

1 you have anything to add at this moment?

2 MR. GEIGER: Well, two things. 1. The
3 Petitioner's Exhibit 41 was stamped yesterday morning
4 during the first break as the Chair had asked us to
5 do. I placed a copy in front of each chair at this
6 table yesterday. Everybody down to Mr. Yee received
7 it so I presumed that the other two also padded out
8 there chairs yesterday.

9 No. 2. If the issue is whether or not
10 figure 4 can be visible, I do have a full sized copy
11 of figure 4 if that would be of assistance. But I
12 don't know if that's what the issue is right now or
13 not.

14 PRESIDING OFFICER HELLER: I'm going to ask
15 that during the break if Ms. Bolomet wants to look at
16 the full sized map you let her look at it.

17 MR. GEIGER: Not a problem.

18 PRESIDING OFFICER HELLER: In the meantime
19 I'll allow you to go ahead and ask your questions and
20 we can deal with the admission of Petitioner's 41 when
21 we get to Petitioner's rebuttal case.

22 Q (By Ms. Bolomet): Okay. So figure 1 page
23 5 in yellow -- is the whole -- it says "Project Area".
24 Now, it doesn't have the names of the streets but this
25 looks like the Project Area goes beyond the TMKs that

1 are being referred to in the actual Project Area.

2 Would you agree, looking at this map -- or
3 this -- yeah, this map -- that this yellow area that's
4 called the Project Area, goes way beyond my
5 grandfather's property called 9795 and it does include
6 the complex area, the Robert Connolly 36 complex area.

7 A Yes.

8 Q All right. Now, I'd like to move to the --
9 oh, let me just ask again. And then on this map there
10 is no place where it shows a railroad, is that
11 correct? Or on this map.

12 A Not physically stated.

13 Q Okay. So would you agree that we had to
14 look at or you had to look at many maps in order to
15 identify where the railroad was at?

16 A That is correct.

17 Q And there were only a few maps that showed
18 the railroad?

19 A That is correct.

20 Q Okay. One of the maps that shows the
21 railroad is behind you, the 1916.

22 A That is correct.

23 Q Wright and Monsarrat map. And based on
24 those maps that's how you draw your conclusion as
25 to -- and the Petitioner's Project Area description

1 with the yellow highlighting -- is that how you draw
2 your conclusion on where the 36 terrace complex --
3 Kahoma 36 Terrace Complex is at?

4 A That's correct.

5 Q I'd like to move on to why -- I think you
6 might have touched on this yesterday, but I don't know
7 that it was clear based on some of the questions that
8 just happened. There was basalt rock that is found
9 over where you believe are karsts. You confirmed what
10 you believe to be karst area with the 1942 Sterns map?

11 A Correct.

12 Q Can you explain how come there's bedrock or
13 basalt rock over this karst area?

14 A Well, you have to understand over millennia
15 you have erosion taking place when the original lava
16 was formed millions of years start to eroding the
17 rock.

18 Then you have the rise and fall of the
19 oceans building the karst system with the calcium
20 carbonate as your ice ages come and go. And ice age
21 doesn't come in a year. It may stick about for 5,000
22 years and it may start to wane. And in the waning
23 take a couple thousand years. So corals get to grow
24 at many different depths and levels.

25 As I stated the joint between your

1 underground pahoehoe lava tubes that are bringing the
2 underground plumbing of the mountain to the sea, the
3 sub-terranean plumbing. You have your rivers above,
4 your plumbing below. That has been covered with rocks
5 that have come down with floods of thousands of years
6 bearing that lava that originally formed under many
7 feet of soil and debris over thousands of years.

8 So it is not uncommon to see soil and
9 debris that the joints between that calcium carbonate
10 join to the pahoehoe lava tubes or channels,
11 underground channels meet, are buried under layers of
12 fallen debris and erosion of over thousands, if not a
13 million years.

14 Q Okay. So the -- in Mr. Dega's
15 archaeological report found in the Petition, he refers
16 to there being 20 floods, big floods in this area.
17 Would that explain why the different rocks and that
18 sort of thing that they keep hitting?

19 A Well, it's a snapshot of a time period.
20 Okay. Multiply that multiple times in the past you're
21 gonna have debris fields coming down. Add to that the
22 sugarcane companies channelizing and doing a push pile
23 on top of that. So you have multiple layers of
24 history taking place here geologically.

25 Q Okay. So you've studied the Sterns maps.

1 A Yes.

2 Q For multiple islands, not just this island.

3 A Yes, I have.

4 Q So we blew up the, what you call the
5 "legends"?

6 A Yes.

7 Q On other -- it's all part of your
8 Exhibit 17.

9 A Yes.

10 Q But in order for people to see it better
11 you blew up the legends so you can read it.

12 A Yes.

13 Q In there does he say "pahoehoe lava tube"?

14 A No. He says "dikes". He talks about dikes
15 and channels.

16 Q And he uses the word "aqueducts"?

17 A Aqueducts are a part of it, yes.

18 Q And is an aqueduct something natural
19 according to what he's talking about or something
20 that's manmade?

21 MR. GEIGER: I'm going to object. That
22 calls for speculation. She's asking this witness to
23 say what Mr. Sterns meant in a document that was
24 written 60 years ago?

25 PRESIDING OFFICER HELLER: I think he

1 indicated that he relied on the document so he can
2 testify to his understanding of it.

3 MR. GEIGER: That would be an okay
4 question. That was not the question that was asked.

5 PRESIDING OFFICER HELLER: Ms. Bolomet,
6 would you like to rephrase your question?

7 Q (By Mr. Bolomet): Okay. Based on your
8 knowledge was the aqueduct's manmade aqueduct or was
9 it something natural that he was referring to?

10 A I believe it was something natural.

11 Q What makes you believe that?

12 A Because we're not the Romans. And there's
13 no history besides flumes that are clearly marked
14 "flumes" which are the manmade structures of the
15 sugarcane were always marked "*flumes*" to identify as
16 manmade *flumes*. Okay.

17 When he talked about aqueducts, he also
18 talks about the calcium limestone wells that are part
19 of the karst system. So this is a natural aqueduct.
20 The only natural aqueducts we have, pahoehoe lava
21 tubes and karsts, the natural at Mala. The natural
22 wells are the karsts that are the sinkholes that are
23 broken into and the water is flowing. They're not
24 flumes. And it clearly delineates "manmade wells" and
25 "native wells".

1 Those native wells were based on the
2 sinkhole karst system. Those aqueducts are either
3 pahoehoe lava tubes and they're not *flumes*.

4 Q So the Sterns map was made in what year?

5 A About 1942 for this for one, 1938 for
6 O'ahu, 1960 for Kaua'i.

7 Q And the map that's behind you, the 1916
8 map, does it clearly show in 1916 that there were
9 flumes?

10 A Yes, it does.

11 Q Okay. Well, so would you say that looking
12 at all the different Sterns' maps and the different
13 water maps that you've looked at, would you say that
14 all springs are always documented?

15 A No, they are not. In fact the 1960 Kaua'i
16 map shows no springs. In fact the 1938 O'ahu Sterns
17 map not only shows the Hawaiian springs but names them
18 in Hawaiian. The Ni'ihau Sterns map was taken from
19 1926, shows most of the springs and features.

20 The Sterns map for the Big Island leaves
21 out many springs where I know there are, being a
22 cultural practitioner. You have to understand -- this
23 is not a criticism to the USGS or Mr. Sterns or any
24 investigative body in the western sense. It depends
25 when you actually do your site visit.

1 If you come during the high tide you're not
2 going to see what's 3 feet below the tide level. If
3 you come at low tide and the tide is out, you're going
4 to see the springs popping up. So it all depends on
5 when and what time did they take their survey. So
6 it's not -- it's not a dig to Mr. Sterns or any
7 cartographer. It's just the time period you go out to
8 do your survey.

9 Q And would you say, having assessed all the
10 different Sterns maps that the map that Mr. Sterns
11 shows for the Kahoma area shows all the springs?

12 A No, it does not.

13 Q And are there any clues on this property
14 that gives you a reason to believe there are maps -- I
15 mean there are springs there or a spring?

16 A Yes, I do. It is the evidence brought in
17 by, the map brought in by Clare Apana. We'll get it
18 for the record. It's going to take time to find it.
19 It was admitted into evidence by the Public Works for
20 the Project Area site. Here it is.

21 I draw your attention to Clare Apana's
22 Exhibit 2A, B, C; 2D and E on the Project site area
23 that's been mentioned in the past that there were
24 pipes that were used for irrigation from your tutu's
25 TMK area, a pipe that was used for irrigation.

1 Clearly it's water irrigation. Clearly it is not part
2 of the city system of sewer or water. But it is
3 mentioned in this exhibit.

4 Q On that Public Works engineering plan does
5 it somewhere on there say specifically that it is not
6 part of the county's hookup?

7 A Yes, it does.

8 Q So if it's not part of the county's hookup
9 how would they get water?

10 A Well, all I can say and address to this is
11 the pipe was there. It existed. That pipe obviously
12 carried water, was not connected to the street for
13 drainage, for street runoff. At one time it was used
14 to transport water. That's all I can say about it.

15 Q Are there multiple pipes transporting water
16 from the same general area on that map?

17 A There is another pipe from the city that
18 they do say belongs to them. It takes the street
19 runoff water through your tutu's TMK map area of the
20 Project Area to the Kahoma Stream Project. That is
21 the second area that does belong to the city and
22 county and still is maintained by them.

23 Q Then I'm not sure what page you're looking
24 at. But on one of the pages that's, I guess, colored
25 with the marker either in red or yellow, yeah?

1 A I'm referring to -- just to let everybody
2 know what page I'm referring to -- it's Exhibit 2C-2.
3 Is this it? Okay.

4 Q Do you see that there's irrigation, potable
5 water pipe going from north to south?

6 A This is what -- this is the irrigation pipe
7 north to south.

8 Q That one's going diagonal from northeast to
9 southwest. But there's one in the middle that's going
10 north to south.

11 A Yes, right.

12 Q On the labels there --

13 A Yes.

14 Q -- are they all considered irrigation
15 pipes?

16 A It says "existing waterline is not part of
17 the city/county water system supply and is abandoned."
18 That's what's feature says.

19 Q Then down below what do those descriptions
20 say?

21 A We marked here in the center. It says "N.
22 No. 6-inch PVC gallon waterline construction existing
23 for irrigation waterline."

24 Q Okay. So there's a north and south
25 irrigation line. There's a diagonal irrigation line.

1 And they're all going towards the 9795 LCA property?

2 A Yes.

3 Q Okay. In addition to that did you notice a
4 Keawe tree in that area?

5 A Yes. They were profuse and very healthy
6 green where, if you remember driving through, there
7 are a lot of dead trees there. But the health of
8 those trees are very apparent by the green foliage
9 amongst brown, gray, dry grass, dying mango trees and
10 plum trees.

11 Q Why would the Keawe trees be green when
12 everything else is dead?

13 A Keawe trees brought in from Africa from a
14 Belgian priest in 1868 of the Sacred Hearts Order,
15 planted the first one on Bishop Street by Our Lady of
16 Peace Cathedral. They've since proliferated because
17 the birds ate the seeds.

18 They have an extensive root system that
19 goes down very deep. They obviously are drawing water
20 not of the Kahoma Stream bed channelized concrete
21 stream. They're finding another water source beneath
22 them on your TMK or where your proposed tutu's TMK's
23 allodial land's here.

24 Q LCA?

25 A LCA.

1 Q So if there's water below there and the
2 pipes go there, what conclusion does that bring you
3 to?

4 A That deep below, because these roots can go
5 90 feet deep, that there is a spring there.

6 Q Okay. And are springs protected, a
7 protected Hawaiian cultural resource?

8 A Under the State Constitution Article XI
9 section 7.

10 Q Okay. Going back to this Exhibit 41.
11 Prior to seeing that very small map were you aware of
12 where the debris basin was at?

13 A I don't understand.

14 Q Mr. Geiger referred to a debris basin.

15 A Yes.

16 Q Were you aware of where the debris basin
17 was before he pointed it out on this map?

18 A No.

19 Q You were asked if only the flood channel
20 that's not part of this Project would be the only harm
21 to your cultural practice down in Mala or on this
22 property.

23 A That's correct. That was asked.

24 MR. GIROUX: I believe that's a
25 misstatement of my question.

1 MS. BOLOMET: Can we get clarification on
2 this question?

3 PRESIDING OFFICER HELLER: I assume this
4 question is just preliminary to your main question?

5 MS. BOLOMET: Yeah.

6 PRESIDING OFFICER HELLER: Why don't you
7 just skip to the main question.

8 MS. BOLOMET: Okay.

9 Q My main question is: With driveways,
10 houses on this proposed Project site, will that
11 increase the harm to your practice or have no effect?

12 A Oh, I've answered that. It would increase
13 it, yeah.

14 Q Substantially or just a little bit?

15 A It would add to the disruption of it.
16 Without protections and mitigations for that drain
17 system just going right into the Kahoma Channel and
18 going directly into Mala will add to a cumulative
19 impact.

20 Q So I'm not sophisticated in this so I'm
21 just going to ask. Should there be houses there or
22 not?

23 A It depends. It depends if mitigation from
24 the Land Use Commission so stipulates to the
25 Petitioner that due to the native Hawaiian cultural

1 practitioner's concerns under Article XII section 7,
2 that these concerns for the practice, vis-a-vis
3 Mr. Lee's limu at Mala, be protected with X, Y and Z
4 to mitigate against the effects of these non-source
5 pollution or source pollution points that will
6 increase the cumulative impacts of heavy metal, lead
7 and other pollutants on Mr. Lee's cultural practice.

8 They could also ask for a study. What
9 would the long-term cumulative impacts be in this
10 Project site on Mr. Lee's cultural practice vis-a-vis
11 heavy metals, lead and other pollutants on Mr. Lee's
12 cultural practice?

13 Q Is there any kind of court cases that
14 enforce that? Or is that just something that the LUC
15 would choose to, choose to rule on?

16 MR. GEIGER: I'm going to object. This is
17 getting way far afield of any sort of redirect. It
18 also would be involving other cases, other matters
19 which this Chair has already ruled are not part of
20 this proceeding.

21 PRESIDING OFFICER HELLER: Well,
22 Ms. Bolomet, I think we've already established that
23 he's not claiming to be an expert in western law. And
24 I think your question basically asks him to express
25 opinions about western law. So I'm going to sustain

1 the objection.

2 MS. BOLOMET: May I give you some basis of
3 where I'm trying to go with this? I understand there
4 is a court ruling that's specific to what you need to
5 do here that will say --

6 PRESIDING OFFICER HELLER: You will have
7 your opportunity to argue the law in this proceeding.
8 The question is whether Mr. Lee is here to give expert
9 opinions as to the law that applies to this case. I
10 don't believe he's been established as an expert in
11 the field of law.

12 MS. BOLOMET: Okay. I think he was
13 involved in that case. That's the only reason I was
14 asking him.

15 PRESIDING OFFICER HELLER: If you want to
16 ask about his knowledge of relevant facts that's
17 different.

18 MS. BOLOMET: Okay.

19 Q May I have your knowledge of relevant facts
20 pertaining to a case that would --

21 PRESIDING OFFICER HELLER: I still think
22 you're asking him to discuss the case law. I'm going
23 to sustain the objection.

24 MS. BOLOMET: Okay. Am I supposed to try
25 to come up with my own words or just move on?

1 PRESIDING OFFICER HELLER: That's up to
2 you. What I'm saying is you should not be asking him
3 questions about the law in Hawai'i.

4 MR. BOLOMET: Okay.

5 Q Were you involved in any cases...

6 (Mr. Geiger reaching for his microphone)
7 (laughter in room)

8 PRESIDING OFFICER HELLER: Go ahead and
9 finish your question.

10 Q (By Ms. Bolomet): Okay. Were you
11 involved in any cases that would, that would be
12 similar to or exactly the same as what we're doing
13 here?

14 MR. GEIGER: I'm going to object. This has
15 no relevance to this Petition or this Petition Area.
16 Other cases makes no difference.

17 PRESIDING OFFICER HELLER: Sustained.

18 MS. BOLOMET: Okay. That means move on,
19 right?

20 PRESIDING OFFICER HELLER: Correct.

21 Q (By Ms. Bolomet) So the he'iau. Let's go
22 to the he'iau. Were you -- were you present when
23 Clare Apana found the cornerstone near where we parked
24 our cars?

25 A Yes.

1 Q What does a corner stone mean in a he'iau?

2 A Well, you're using the wrong term "corner
3 stone". So will you rephrase that please.

4 Q No. Because that's the word that she used.
5 I don't know any other word.

6 A Whatever word she's using that's not
7 correct. It's a --

8 Q Is it boundary?

9 A It's a memorial stone. In the western
10 vernacular, through the western lens it could be used
11 as a boundary stone as they would say, the base stone
12 in a serving note for the deeds that were given out to
13 the Great Mahele.

14 Q Okay. I'm not speaking of the libation
15 stone. What I'm trying to refer to is I'm trying to
16 get an understanding of how big this he'iau could
17 actually be.

18 A It's difficult because, as I mentioned,
19 that there's a push pile that covers the he'iau. So
20 the actual dimensions are being distorted by bush, by
21 old dead trees, by a huge push pile. So I'm not able
22 to give you those dimensions.

23 Q Okay. So how do we find out what those
24 dimensions would be? Would this just be a guess? Or
25 is there an actual scientific way of determining?

1 A I do not know. I do not know.

2 Q Would an archaeological study with a dig
3 determine that?

4 A That could. That could.

5 Q Okay. And would just the libation stone be
6 considered protected under the Article XII section 7
7 or the whole he'iau?

8 MR. GEIGER: I'm going to object because
9 that sounds like she's asking for a legal conclusion
10 as to what's protected under Hawai'i constitution.

11 MS. BOLOMET: A cultural practitioner would
12 know better what he's asking the constitution to
13 protect versus someone who's not a Hawaiian
14 practitioner.

15 PRESIDING OFFICER HELLER: The question was
16 not what he considered culturally significant but what
17 the law says. And on that basis I'm going to sustain
18 the objection.

19 Q (By Ms. Bolomet): Okay. What part of
20 surrounding the libation stone do you consider
21 culturally significant?

22 A At this point the only structure that I
23 feel as a Hawaiian cultural practitioner that has to
24 be protected is the libation stone at this point until
25 and if an archaeological survey study is done to give

1 specific quantity to what is underneath the push pile.
2 Right now my focus is on the libation stone.

3 Q Okay. So it's okay for somebody to put a
4 house 10 feet away from that?

5 MR. GEIGER: Objection. That's
6 argumentative. It's irrelevant.

7 MS. BOLOMET: Well, I think it's relevant
8 in the sense that I'm trying to get an understanding
9 just so there's this property wants to be developed by
10 the Petitioner. So within boundaries he can
11 understand what can be developed will be objected to
12 by an Hawaiian practitioner.

13 So, you know, if we can resolve that, a
14 definition of the space here, then they know how to
15 move forward versus more court litigation later after
16 they've spent hundreds of thousands of dollars in
17 redesign.

18 PRESIDING OFFICER HELLER: I'm going to
19 allow this question. But let me remind you again to
20 ask questions rather than making argument.

21 MS. BOLOMET: Okay.

22 THE WITNESS: My honest appraisal of this
23 in mitigation for the Land Use Commission under
24 Article XII, section 7 will need to move the park area
25 to surround the stone. And that would keep the sacred

1 space sacred. And there could be signage, like they
2 do with the Naha stone on the Big Island, recognizing
3 the cultural significance of Kamehameha and the
4 historical value that it presents, but also mitigating
5 and dealing with the Project Area site.

6 Q (By Ms. Bolomet): Okay. All right. So
7 based on your comments about needing open space for
8 absorption of the area, what percentage of this
9 Project area do you think could be covered with roads,
10 cemented or paved roads and houses and still have the,
11 a good enough open area of absorption to protect your
12 practice?

13 A You know, there would have to be a
14 long-term cumulative impact study to answer that
15 specific question that you have. Because, as was
16 mentioned in the past, going out of my field in the
17 sense that engineering, hydrology, the amount of
18 pollution that is there.

19 To answer your question it would have to be
20 a long-term cumulative study on all the particulars to
21 answer that question.

22 Q Were you present when Wilmont Kahaiali'i,
23 who witnessed some burials taken out of the Kahoma
24 area from karsts, was explaining what we witnessed?

25 MR. GEIGER: Your Honor -- I'm sorry,

1 Chair, I'm going to object. There was nothing about
2 Wilmont Kahai --

3 MS. BOLOMET: Kahai'ali'i.

4 MR. GEIGER: Thank you -- in any of the
5 cross-examination that was made here today. So this
6 is well, well, well beyond the scope of redirect. If
7 she wanted to ask about that that it should have come
8 out in direct testimony.

9 PRESIDING OFFICER HELLER: I think that's a
10 valid point. Ms. Bolomet, redirect is simply to go
11 back and clarify things that came up in the
12 cross-examination, not to open up new territory.
13 Sustained.

14 MS. BOLOMET: The reason I was asking this
15 is because we keep being told there's not a karst.
16 And we established that there was a karst system.
17 It's more proof of a witness that --

18 PRESIDING OFFICER HELLER: If you have a
19 question for this witness that relates to matters that
20 were raised in the cross-examination, then just go
21 ahead and ask your question.

22 Q (By Mr. Bolomet): Okay. Do you know
23 anybody that's witnessed anything on this property
24 regarding the karst testimony?

25 MR. GEIGER: Here I would object. This is

1 getting cumulative. He's already been asked about the
2 karst system. It didn't have any -- there was no
3 cross-examination that would have opened up this
4 particular question. She's just attempting to get in
5 something that, the back door that she should have
6 gotten in on the direct.

7 MS. BOLOMET: He talked about burials.

8 PRESIDING OFFICER HELLER: I'm going to
9 allow this question. But we don't need to repeat
10 topics we've already gone over. So I'll allow this
11 but suggest you move on to your next topic pronto.

12 THE WITNESS: Yes. The man named Wilmont
13 Kahaiali'i did claim to have witnessed the karst with
14 the burials.

15 Q (By Ms. Bolomet) On the Project site?

16 A On the Project site.

17 Q Okay. And would you -- would you say that
18 Hawaiians, when they claim that a pueo is part of
19 their `aumakua, is it only one variety of pueo or all
20 varieties, or any variety?

21 A Well, we know that there's the western barn
22 owl that was brought in. And there's a difference.
23 One goes out in the day. One goes out at night. The
24 reason why pueos are very important and nobody tells
25 anybody the 'why' it's a kahuna thing -- it's because

1 we use their eyes to see through so we can see things.

2 Q The pueos that were talked about on this
3 property, what's the difference between a bird and an
4 aumakua that's and a pueo?

5 A It's a fair question. In Hawaiian cultural
6 practice we actually create our aumakuas. We feed the
7 flesh or the bone to the shark that we choose. What
8 happens is the spirit of the person that the bone or
9 the flesh is feed to now possesses that animal.

10 Q Okay. And that's for all the `aumakuas?

11 A Yes.

12 Q Again, a pueo is an aumakua?

13 A Yes, it is.

14 Q Is that protected under Article XII,
15 section 7 of the Hawaiian constitution?

16 A In religious cultural practice yes it is.

17 MS. BOLOMET: Okay. I'm complete.

18 PRESIDING OFFICER HELLER: I think this is
19 an appropriate time to take a break, give our reporter
20 5 minutes. Take a recess.

21 (Recess was held 10:20-10:40)

22 PRESIDING OFFICER HELLER: Okay. Back on
23 the record. Do any of the parties have essential
24 re-cross?

25 MR. GEIGER: Petitioner, no.

1 MR. GIROUX: County, no.

2 MR. YEE: Nothing from OP.

3 PRESIDING OFFICER HELLER: Ms. Lincoln?

4 MS. LINCOLN: Nothing.

5 PRESIDING OFFICER HELLER: Okay. Thank
6 you. Ms. Bolomet, are you going to be calling
7 yourself as a witness?

8 MS. BOLOMET: No.

9 PRESIDING OFFICER HELLER: Do you have any
10 other witnesses to present?

11 MS. BOLOMET: I do not.

12 PRESIDING OFFICER HELLER: So you're
13 concluded with your case at this time?

14 MS. BOLOMET: I am.

15 MR. LEE: Excuse me, Chair. Does anybody
16 have questions on your side?

17 PRESIDING OFFICER HELLER: I'm sorry. I did
18 forget to ask Commissioners. Commissioners, any
19 questions for this witness? Thanks for reminding me.
20 (Laughter)

21 In reference to the 1916 map you made a
22 comment about five different ahupua'a's part of the
23 watershed as I understood for Mala.

24 THE WITNESS: Yes.

25 PRESIDING OFFICER HELLER: So anything that

1 happens in any of the five ahupua'a could affect the
2 quality of the water and of the limu at Mala?

3 THE WITNESS: You're technically correct.
4 Specifically the major source of the two streams that
5 combine. Because if you cut them off completely you
6 will kill most of the limu because it needs that next
7 to continue its life. But you are essentially
8 correct.

9 The major portion of the concern for me are
10 the two major feeder streams that come down, even if
11 it's intermittent. Those are the source of the life
12 of the ocean. Cut that and you will see a drastic
13 effect with the diversity, the quality of seaweed and
14 even that will affect the fishery. It has a chain
15 reaction that goes through the whole Hawaiian cultural
16 resource.

17 PRESIDING OFFICER HELLER: And with respect
18 to your testimony about the impact of paving over
19 certain areas adding more impervious surface?

20 THE WITNESS: Yes.

21 PRESIDING OFFICER HELLER: Would it be
22 correct that basically covering up that much area
23 anywhere within the five ahupua'a would have some
24 cumulative impact?

25 THE WITNESS: Yes. Definitely. Because

1 when you cover it up the percolation doesn't happen
2 for the lens and other springs. You cut their source
3 off. Then you, again, channelize this water. And
4 then you have the drops of the oil and the brake fluid
5 and other things going on with the heavy rains will
6 wash it into the ocean, wherever the drain is going to
7 lead, it's going to lead to the sea.

8 PRESIDING OFFICER HELLER: But that would
9 be true not necessarily just for this Project site.

10 THE WITNESS: That is correct. That is
11 correct. But the mitigation that was asked if they
12 would do something to mitigate in the drain to
13 protect, you know, from those pollutants like a filter
14 or something that could, water quality testing or
15 whatever, that would add to the protection under
16 Article X11 section 7 as a concrete mitigation.

17 PRESIDING OFFICER HELLER: Thank you.
18 Commissioners? Commissioner Biga.

19 COMMISSIONER BIGA: Good morning, Kahu.

20 THE WITNESS: Good morning.

21 COMMISSIONER BIGA: My question is as to
22 this -- I've heard it several times in testimony from
23 Intervenor Bolomet and yourself. The question is:
24 You keep referring to Makila and Kahoma.

25 THE WITNESS: Hmm-hmm.

1 COMMISSIONER BIGA: What is the...?

2 THE WITNESS: Connection?

3 COMMISSIONER BIGA: Connection.

4 THE WITNESS: First it's the water between
5 the two places. And with that water as cultural
6 resource if you go across that whole bay from Mala to
7 Makila, those seven miles, you'll notice there's some
8 portions of land when you look into the ocean by the
9 shoreline you won't see limu. You'll see stones. But
10 there's no limu. The question is why? Why isn't that
11 place all limu from seven miles down? It's the water.
12 It's the springs.

13 So when you have these underground springs
14 that are -- you know, the ditches kinda channelize
15 because water runs in gravity from a higher level to a
16 lower level. So it's gonna take the easiest path of
17 least resistance. So where you have natural channels
18 and divots that are already grooves in the earth,
19 there's that much earth that isn't there, it just
20 sucks everything down into the channel even below the
21 channel underground, and it transports it to the sea.

22 So all these gulches have springs
23 underneath because it's easier for the water to drain
24 and to percolate into a system where it's much simpler
25 for it to travel.

1 So that's Makila and Kahoma Stream were
2 prolific with our cultural practice even today. If
3 you go to Makila tons of opihi by that new drainage
4 that they put. There's just, like, seven different
5 varieties of the opihis there. Hauokioki (phonetic)
6 which looks like a big -- for those who don't know
7 what it is -- a big purple roundish opihi that we use
8 for medicine. And the varieties of limu just are
9 incredible.

10 And then on top of it you have
11 non-Hawaiians on these paddle boards all out in that
12 one area. You're kind of like "why"? This is a big
13 place. Why are all these paddlers, 20 guys going like
14 this for health and recreation? It seems to draw
15 life.

16 There is this -- where the freshwater is --
17 what people don't know -- by the way, the only reason
18 why I can talk about these things I was released from
19 the kapu. There's no kahu in his right mind would go
20 into this much detail that I give you.

21 "The life of the land is perpetuated in
22 righteousness."But take away the water and you have no
23 life. You have a desert island. The reason why
24 ali'is when they walked around, always had the rainbow
25 over them. You've heard this countless times. It's

1 called pono ea.

2 Pono ea to put it in the most simplest
3 terms, is when someone does something really nice to
4 you, it's more than nice, they kind of -- it just
5 overwhelms you on an emotional visceral level that
6 they went out of their way.

7 They didn't have to do it and they did
8 something maybe at their expense to help you out.
9 Immediately your eyes well up with tears and just
10 start falling, the tears to come, like healing tears.

11 Well, when we listen to, through the aka
12 chord of our piko, our ancestors telling us in
13 integrity "do right versus wrong." And we follow
14 them. The rainbow stands behind us. And then their
15 tears come and it rains. That's why for the ali'i the
16 waiwai was his wealth. If he wouldn't produce the
17 waiwai then the land would dry up and war would come.

18 So this all goes to the wealth of that
19 particular area. And we see it in Mala. The kids are
20 out. Every time I go there's just families out there.
21 You got the old broken down wharf. The corals are
22 just growing beautifully. Fishermen are out there.

23 Wherever you have these springs that are
24 coming, life begins. All he'iaus are built over
25 springs because of the underground cave and life.

1 Even on Moku Manamana. The he'iau there covers the
2 karst -- not a karst system but a pahoehoe lava tube
3 with the Hawaiian gods down below and a water cache.

4 So that's how important water is. It's a
5 spiritual thing for us.

6 COMMISSIONER BIGA: Thank you. My next
7 question is that there was reference to the
8 archaeologist Mr. Dega.

9 THE WITNESS: Yes.

10 COMMISSIONER BIGA: Between Kahoma and
11 Makila. I didn't understand that.

12 THE WITNESS: That, you see when you're
13 doing a project site it should be about the Project
14 site. There's 7 miles difference because this Project
15 location has nothing to do with that site. But what
16 happened is portions of the TMK's boundary notes are
17 not mentioned that are very important to deal with the
18 Project Area site.

19 But the TMKs for the Makila are mixed in
20 that have no place in this. It makes it incomplete
21 because you can't get a scope of what you're talking
22 about for the relevance of Article XII section 7 and
23 Article XI section 1 if it's bifurcated.

24 And you can't see a complete picture of
25 what the Project Area in the historical reference is

1 culturally religious under Article XII section 7.

2 So the complaint is: What is it doing
3 there? It makes no sense. It probably is a mistake.
4 If it's a mistake it needs to be remedied which means
5 do it over again to get the correct picture. Because
6 if you're building in Waikiki you don't talk about
7 Kahala. You're talking about Waikiki in your hotel
8 Project Area. And that is the complaint.

9 COMMISSIONER BIGA: Thank you very much.

10 THE WITNESS: You're welcome.

11 COMMISSIONER INOUYE: Thank you, Chair.

12 Thank you, Mr. Lee for your testimony on the Hawaiian
13 culture. I heard two things about this Project that
14 may be okay with you. One of them is that you would
15 be okay with the Mala if the Project took mitigating
16 circumstances. Right?

17 THE WITNESS: Yes, yes.

18 COMMISSIONER INOUYE: Now, is the detention
19 basin that was brought up that's not enough for you?

20 THE WITNESS: That's not enough because
21 when we're talking about when you have a humongous
22 rain that I believe's going to happen at the end of
23 November, if this Project area is, it's going to
24 really add a negative impact. We have technology
25 today to have buffers and filters to, you know, do

1 what natural thing. It's gonna cost them a little bit
2 more.

3 But the intent of Article XII section 7
4 recognizes the host culture preexisting and the value,
5 and the value sets that makes us so unique from the 50
6 states. That's the reason why we have the tourist
7 industry because we're not like Bali, and we're not
8 the Philippines, and we're not Hong Kong, and we're
9 not Mexico or Chile.

10 So what makes us so attractive in our
11 biggest industry is Hawai'i, the Hawaiians, the
12 culture. How do we showcase a culture when it's Leis
13 Olé? You know, when it's a Las Vegas review? That is
14 not Hawai'i.

15 And the people of Hawai'i in 1978 decided
16 under the ConCon to put the value sets forward of what
17 is important to the state so much so that we decided
18 to invest in the future that Hawai'i would be Hawai'i
19 in the future. That's what's important. Protecting
20 with these mitigations.

21 COMMISSIONER INOUYE: Okay. The second one
22 I heard is that you would be satisfied if the libation
23 stone was surrounded by park.

24 THE WITNESS: By park. Yeah.

25 COMMISSIONER INOUYE: Is there anything

1 else in your Hawaiian culture besides those two things
2 that...

3 THE WITNESS: Like I said if you took care
4 of the pollution stuff that would --

5 COMMISSIONER INOUYE: Which is what you're
6 talking about.

7 THE WITNESS: Yeah. That takes that away.
8 But for, if they can't afford that, then a long-term
9 study that shows what is the effect in western lens
10 that's what everybody asks for. It's rules of
11 evidence that show finding of standing of eminent
12 harm. Well, there you have it.

13 COMMISSIONER INOUYE: But those are the
14 only two concerns you had.

15 THE WITNESS: The major concerns, yes.

16 COMMISSIONER INOUYE: Thank you.

17 PRESIDING OFFICER HELLER: Anything
18 further, Commissioners? Thank you.

19 THE WITNESS: Thank you.

20 PRESIDING OFFICER HELLER: Ms. Bolomet,
21 you're completed with your case?

22 MS. BOLOMET: Yes.

23 PRESIDING OFFICER HELLER: Petitioner,
24 rebuttal?

25 MR. GEIGER: We would offer Rory Frampton.

1 MS. BOLOMET: Are we going to talk about
2 submitting this now before?

3 PRESIDING OFFICER HELLER: If he wants to
4 offer the exhibit at this point he can talk about it.

5 MR. GEIGER: I was going to offer it during
6 Mr. Frampton's testimony. We can have it offered now
7 if you want. It doesn't make any difference.

8 PRESIDING OFFICER HELLER: Whenever in your
9 sequence it makes sense to get there that's fine.

10 MR. GEIGER: We'll go ahead and do it as
11 we're going through Mr. Frampton.

12 RORY FRAMPTON
13 being first duly sworn to tell the truth, was examined
14 and testified as follows:

15 THE WITNESS: Yes.

16 PRESIDING OFFICER HELLER: Please proceed.

17 REBUTTAL EXAMINATION

18 BY MR. GEIGER:

19 Q Mr. Frampton, welcome back again. Did you
20 provide written rebuttal testimony in this matter?

21 A Yes.

22 Q It's dated August 9, 2012, is that correct?

23 A Yes.

24 Q There were a couple of photographs that
25 were attached to that written rebuttal testimony?

1 A Yes.

2 Q Those were photographs that you took?

3 A Yes.

4 MR. GEIGER: First of all, we'd offer the
5 written rebuttal testimony of Mr. Frampton with the
6 two exhibits.

7 PRESIDING OFFICER HELLER: Any objections?

8 MR. GIROUX: No objections.

9 MR. YEE: No objection.

10 MS. LINCOLN: No objections.

11 MS. BOLOMET: When he says the "two
12 exhibits" is he including this one?

13 MR. GEIGER: I believe there are Exhibits
14 37 and 38 or 36 and 37 I'm not sure -- 37 and 38.

15 MS. BOLOMET: Okay. I'm going to object to
16 this. Do I have to give a reason why?

17 PRESIDING OFFICER HELLER: Yes.

18 MS. BOLOMET: Okay. In the Public Works
19 maps that we submitted it shows that the pipes are
20 underground and that they state that they did replace
21 some concrete pipes.

22 The pictures that Mr. Frampton includes in
23 here are of concrete pipes that were broken and
24 they're aboveground.

25 And so the pictures that he's showing there

1 is in conflict to what the Public Works maps are
2 showing is currently underground. That's why I'm
3 objecting.

4 PRESIDING OFFICER HELLER: Do you want to
5 ask any questions about the circumstances of when and
6 how the pictures were taken?

7 MS. BOLOMET: No, I don't. I talked to the
8 engineers. They told me those were remnants of what
9 was taken out of the ground. There are pipes under
10 there. So I'm going to go with the engineers for,
11 Maui County engineers and their maps because that's
12 what they use.

13 PRESIDING OFFICER HELLER: If you want to
14 question Mr. Frampton about the photographs you have
15 an opportunity to do that right now. If you want to
16 ask questions about what was in the ground, when it's
17 your turn to cross exam him you can do that.

18 But at this point I'm inclined to admit the
19 exhibits into evidence unless you have some specific
20 objection to the photographs.

21 MS. BOLOMET: Well, they're untrue. It
22 paints a different picture of what's the -- according
23 to the engineers of Maui County. If we could submit
24 this into evidence we're painting a picture that is
25 not accurate.

1 And that's what I'm concerned about is
2 submitting what's accurate so that decisions could be
3 made on accuracies, not on something trying to blur
4 the lines and make you believe that something else
5 could be possible.

6 I would think that Maui County Public Works
7 would only have accurate maps because they're doing
8 digging and they need to know what's under there if
9 they're gonna be putting, tapping into their pipes in
10 the future.

11 PRESIDING OFFICER HELLER: I think those
12 are topics that can be addressed in questions
13 regarding the photographs. I'm going to admit this
14 statement with the photographs.

15 MR. GEIGER: So these are admitted, is that
16 correct?

17 PRESIDING OFFICER HELLER: Yes. The
18 written testimony including Exhibits was 37, 38.

19 MR. GEIGER: 37, 38 are admitted. Thank
20 you.

21 Q Rory, first of all, I want to talk to you
22 about the irrigation pipes because that was in our
23 rebuttal testimony. So why don't you tell the
24 Commission what you learned concerning the irrigation
25 pipes or possible irrigation pipes that might have

1 been on the property?

2 A Thank you. When I prepared that exhibit
3 and took those photographs it was in response to
4 statements that there were existing irrigation lines
5 on the property. So the only lines that I've ever
6 seen on the property that I was aware of was the
7 former irrigation line that I took photos of.

8 There's remnant pieces of that pipe that
9 stretch along the border, runs in a mauka-makai
10 direction, parts of the length that sits on a wall.
11 And parts of it are in pieces, parts of it are still
12 connected. That's what I thought they were referring
13 to as former irrigation line. I was not aware of any
14 irrigation line on the property.

15 After that the Intervenors showed us the
16 maps, the As Built maps, from the Kahoma Flood Control
17 structure. And on those maps it depicts a former
18 irrigation line and it depicts an irrigation line that
19 was supposedly built underneath the channel.

20 I'm not aware of that line. I called -- I
21 don't know if -- it could have been built, it might
22 not have been built. I asked Pioneer Mill employees
23 if they've ever used that line after the construction
24 of the channel. They said they weren't aware of it.
25 They said that property had never been irrigated after

1 the construction of Kahoma, the flood control channel.

2 More importantly it was a friend of mine
3 and he goes, "Why are you even asking me this? 'Cause
4 there's no water available." And what he said the
5 source of water that used to irrigate that field as
6 well as everything north for quite a distance was a
7 pump up the hill called pump M and the Waihikuli
8 Reservoir. Both pump M and the Waihikuli Reservoir
9 are no longer in use.

10 So the source of the irrigation water,
11 which Pioneer Mill used for that whole field section
12 over there, they're no longer available. And at this
13 particular site it has not been irrigated with any
14 water since after the 1990 completion of the flood
15 control channel.

16 Q Mr. Frampton, you were at the site on
17 September 8th of this year, is that correct?

18 A Yes.

19 Q Mr. Lee was also there?

20 A Yes.

21 Q Okay. If you'd tell the Commission what
22 was it that Mr. Lee provided to you or information he
23 provided to you concerning the site?

24 A Well, when we first got to the site -- I
25 was also with Ian Bassford from the Archaeological

1 Company. And Ms. Bolomet was there as well. When we
2 first got to the site he -- at the time we had been
3 told there was a he'iau on the property. Mr. Lee took
4 myself and Mr. Bassford and showed us what is now he's
5 calling the libation stone. And the libation stone is
6 one stone on a whole series of similar-sized stones,
7 boulders that make up a push pile of the northern bank
8 of Kahoma Stream.

9 The sugar company had basically, like they
10 did throughout Hawai'i actually, they pushed boulders
11 and dirt, confined the flow of the streams. Basically
12 that's what that pile is, a portion of is the northern
13 bank of Kahoma Stream where the sugar company had
14 basically built it up.

15 Mr. Lee or Ms. Bolomet showed me the Kahoma
16 terraces map. They showed me a particular spot on
17 that map and said, "We are right here. This is where
18 that boulder came from." And I explained to them that
19 the Kahoma Terrace system was actually for the mauka.

20 I said there's physical features on the
21 ground that helps you locate where the Kahoma Terrace
22 system is. There's two maps in that report. The
23 first map, like Commissioner Inouye pointed out
24 several meetings ago, shows kind of a general regional
25 location. It shows the complex being above Kalena

1 Street.

2 And then in the more detailed map makes
3 reference to power pole No. 6. And it makes reference
4 to a bridge foundation. It says "railroad bridge
5 foundation" but it's really a bridge foundation.

6 So I went up. And I looked I found power
7 pole No. 6. I also found a bridge foundation. The
8 bridge foundation shows up on some of the historical
9 maps too, a place where people -- where the sugar
10 company crossed the river. Could I show that location
11 on one of these maps?

12 Q Yes. And please just so that we're clear
13 for the record, the maps that you're talking about
14 were in the Connolly report which is in evidence as
15 Petitioner's Exhibit 39 if anybody's following for the
16 record.

17 A Yes. So the Connolly report makes
18 reference to two physical features, one the bridge
19 foundation. And secondly is the power pole.

20 MR. YEE: I'm sorry. This may be a little
21 unfair, but I'm going to object to the use of the map
22 because it's not been admitted into evidence.
23 Mr. Geiger I know is a much more sophisticated
24 individual. So I'm going to have to object.

25 THE WITNESS: That's fine. I don't need to

1 show it on the maps. I have found on the historical
2 maps reference to a crossing of the stream in that
3 location. So I went up. I found the foundation.
4 There's two distances that they provide.

5 They say that the bridge foundation is
6 70 meters from the grinding stone. They say the power
7 pole No. 6 is a hundred and 15 meters from that area.
8 So the difference is about 45 meters.

9 So I paced off -- the grinding stone is no
10 longer there as far as I could tell. But I went from
11 the bridge and I paced the distance to the pole. And
12 I got 48 paces. I just did it once and I was very
13 close. It was at an angle. I said, wow. That's the
14 bridge foundation. That's the power pole. They're
15 located on Kalena Street. And it's above the Project
16 site.

17 So looking at the two maps and looking at
18 the location of Kalena Street and finding the bridge
19 foundation, finding power pole No. 6 I'm very
20 confident of where the -- oh, in addition they have
21 the -- we have the As Built maps that were shown today
22 that shows the location of the terrace basically
23 underneath that huge debris basin that we drove up
24 upon with the car. So I'm fairly certain that the
25 terrace location is mauka.

1 Getting back to the site visit. After I
2 went through a couple of those maps, Mr. Lee agreed
3 with me that the location of the terrace was mauka and
4 that somehow that stone made it down to the Project
5 site where we were.

6 He also said what was important was the
7 stone itself not the surrounding stones. He made no
8 reference of any subsurface features at that time. He
9 was saying basically it was the stone that was
10 important. And he didn't really care about all
11 remaining stones.

12 There's a groove on top of the stone. It
13 looks like to me like grooves on a lot of the other
14 stones. And we've included in some of the
15 archaeological photos, grooves that may have been
16 created by a machine because these boulders are huge.
17 And when the machines move 'em pieces break off and
18 there's scarring. And we have photos that we'll
19 probably get to a little bit later that shows some
20 boulders.

21 Do we talk about that now? Or am I going
22 way too far into answering the question?

23 Q Probably. So let me ask a couple
24 questions. You've identified this libation stone that
25 you were shown.

1 A Yes.

2 Q You've heard a lot of testimony about it
3 but nobody's ever described the size of this stone.
4 How big is it?

5 A It's big. It's probably --

6 Q You can't show by your hands. You've
7 gotta --

8 A It's probably 3 or 4 feet across. It's
9 probably 3 or 4 feet high. It's situated on top other
10 boulders of similar size. It could easily, if it was
11 toppled over, a person couldn't topple it over but at
12 the top it could easily kill you if you were smashed
13 or pushed by it. It's a big pohaku.

14 Q We've heard that there's this push pile.
15 Describe again, not using your hands or something, but
16 describe the size of the push pile for us.

17 A You know that takes away half of my
18 vocabulary.

19 Q Sorry. (Laughter)

20 A Sorry. The push pile in that area with
21 that, in that immediate area consists of, I don't
22 know, probably well over a hundred boulders of similar
23 size. It runs along parallel to and part of the bank
24 the Kahoma Stream.

25 Q As a result of this site visit on the 8th,

1 what, if anything, did the developer do?

2 A Well, so we did the -- we have contacted
3 the State Historic Preservation Division. The
4 archaeologist was there with us. I wrote up notes.

5 Another thing that happened at the site
6 visit was that Mr. Lee had mentioned in testimony that
7 there was a -- that there were iwi on the property.
8 So we asked Mr. Lee if he could show where he believed
9 the iwi to be, to be located.

10 He went up. And he was very specific. He
11 said there were three adults. He basically made a
12 circle of about a meter or a meter and-a-half. And he
13 said, "There's one here, there's one there, there's
14 one there." Very specific locations. We flagged
15 them.

16 We asked him if the location was correct.
17 He said yes. He said there was an additional burial
18 just off to the side. He called it an infant burial.
19 We marked that as well. We got GPS locations from --
20 the archaeologist recorded the GPS locations of those
21 features.

22 We then -- the archaeologist worked with
23 SH -- contacted SHPD, told 'em of the find -- of the
24 results of the field inspection of the boulder. And
25 also we informed them about the claim about the iwi.

1 We asked them what would be an appropriate way to
2 investigate further. Would subsurface testing be
3 appropriate? They felt it would be appropriate if we
4 were willing to do it.

5 So we had the archaeologist meet out there
6 with an equipment operator. This was all under the
7 concurrence of the State Historic Preservation
8 Division Cultural Resources division branch on Maui,
9 Hinano Rodrigues, who's in charge -- he's in charge of
10 the cultural resources section on Maui and basically
11 oversees all the stuff related to the burial section.

12 Mr. Rodrigues basically concurred that the
13 subsurface testing would be appropriate. It was
14 undertaken in that area and the immediate surrounding
15 area. The testing went all the way down to bedrock.
16 We heard testimony from Ms. Lincoln previously about
17 the work that was occurring. That's what's she saw
18 when she went out and she heard the boulder, the
19 machine doing the work.

20 There were no findings. The Historic
21 Preservation Division staff of Jenny Pickette as well
22 as Hinano Rodrigues confirmed they went to the site.
23 They looked at the pit. They looked at the work that
24 had been done and they also confirmed and concurred
25 that there were no iwi present in that area.

1 Q Did the developer receive a report from the
2 archaeologist concerning this additional work?

3 A Yes.

4 Q And if you would look at Petitioner's
5 Exhibit 41. You may not have it. The question will
6 be: Is Petitioner's Exhibit 41 a copy of the report
7 that was received?

8 A Yes, it is.

9 MR. GEIGER: We would offer Exhibit 41.

10 PRESIDING OFFICER HELLER: Any objections?

11 MR. GEIGER: No questions.

12 PRESIDING OFFICER HELLER: OP?

13 MR. YEE: No objection.

14 PRESIDING OFFICER HELLER: Ms. Lincoln?

15 MS. LINCOLN: No objection.

16 PRESIDING OFFICER HELLER: Ms. Bolomet?

17 MS. BOLOMET: I'm sorry. I didn't hear.

18 PRESIDING OFFICER HELLER: Exhibit 41 is
19 being offered (coughing heard) into evidence.

20 MS. BOLOMET: Is being what?

21 PRESIDING OFFICER HELLER: Is being offered
22 into evidence.

23 MS. BOLOMET: The thing that I objected to
24 earlier?

25 MS. LINCOLN: No.

1 PRESIDING OFFICER HELLER: This is
2 Petitioner's Exhibit 41.

3 MS. BOLOMET: (off mic) Yes, I objected to
4 this. I object.

5 PRESIDING OFFICER HELLER: The basis of
6 your objection?

7 MS. BOLOMET: (off mic) It's an incomplete
8 picture and it's also, some of it is untrue. The
9 reason I'm objecting is because it's an incomplete
10 picture. There's inaccurate information. There is
11 pictures of poles that doesn't show that it's right
12 next to the site, the actual site that he's referring
13 to.

14 There are -- in his own, on Page 6 -- it's
15 Page 5 -- they show that their Project Area does, in
16 fact, include the complex that we're talking about by
17 their own admission. But yet they say it's not there.

18 They talk about doing a dig on the property
19 with a backhoe but they've never -- they don't talk
20 about using any kind of sifting equipment to sift
21 through the dirt to find pieces of bone that might
22 have been -- that with all a hundred 50 years of not
23 being in an air tight coffin, would have certainly
24 biodegraded.

25 So this is very, very incomplete. And

1 they're trying to make this the whole truth. So for
2 that I object.

3 PRESIDING OFFICER HELLER: Do you wish to
4 ask Mr. Frampton any questions right now about the
5 circumstances under which the pictures were taken?

6 MS. BOLOMET: Yes.

7 PRESIDING OFFICER HELLER: You may do that
8 now.

9 MR. BOLOMET: Okay.

10 VOIR DIRE EXAMINATION

11 BY MS. BOLOMET:

12 Q Mr. Frampton, on page -- looking for the
13 telephone pole, page 7 figure 3. You took a picture
14 of a telephone pole with a number 6 on it.

15 A Yes, I did.

16 Q Can you -- in this picture other than
17 seeing the number 6 on the pole is there anything
18 showing us that it's near the site that you're
19 proclaiming it to be at?

20 A Other than the location of the wall right
21 next to it, which if you're familiar with the area you
22 know where that house is and where that wall is. So I
23 think that wall provides a distinctive mark that would
24 be easily referenced if you went out in the field.
25 But it's basically on Kalena Street.

1 Q I'm not familiar with this wall or this
2 house. And that's a stucco wall. Are you saying that
3 this is, this is the wall that's part of the rock
4 walls complexes?

5 A Absolutely not.

6 Q So how does that have anything to do with
7 the complex?

8 A I'm just saying it's a landmark that would
9 be a reference if you knew the area.

10 Q A reference to the complex site? I'm
11 supposed to get that out of this?

12 A No.

13 Q Okay. So this doesn't tell me anything
14 other than there's is a pole with the number 6 on it.
15 Do you agree in your, on Page 5 figure 1 that your
16 Project Area covers from what I'm assuming to be -- is
17 it called Mill Street where the railroad tracks is at?

18 It starts there and it goes past Lui Street
19 all the way up into the area, the neighborhood above
20 the area that I'm understanding is part of this
21 Project.

22 A I did not prepare this map. This is a
23 general vicinity map. I would agree with your
24 statement that on this map, which is a general
25 vicinity map, the yellow area does extend more mauka

1 than the Project site.

2 Q It says "Project Area".

3 A It says "Project Area" which is the general
4 vicinity.

5 MR. GEIGER: I think we're getting beyond
6 voir dire here and into cross.

7 PRESIDING OFFICER HELLER: Yep.

8 Ms. Bolomet, I offered you the opportunity to ask
9 specifically about the photographs. Have you
10 completed your questions on that?

11 MS. BOLOMET: No.

12 Q So on Page 14 figure 10 you have a finger
13 pointing to -- what is that? It's Page 14 figure 10.

14 A Yeah. This was a photo that was provided
15 by the archaeologist that shows a sample of a scarring
16 on top of a boulder.

17 Q Is this on the Project site?

18 A I'm not aware. I'm assuming this is from
19 the Project site.

20 Q But you don't know for sure?

21 A On this particular boulder I don't know for
22 sure.

23 Q Okay. So how are we supposed to conclude
24 anything from this picture?

25 A That picture shows a representative, a

1 representation of what scarring looks like from,
2 machine mechanized scarring would look like on top of
3 a boulder. And the previous page shows --

4 Q I'll get to the previous page but this one
5 here. Because this is discolored. So that's been
6 there quite a while versus, you know, other markings.
7 So are there any kind of metal striations that are
8 embedded in here showing that something's been left
9 behind, pieces of metal?

10 Because it would be straighter, I would
11 think not this arrow shape.

12 A What is the question?

13 Q Well, where is the signs that a bulldozer
14 did this? Wouldn't that be like those blades are
15 straighter, the teeth are straighter?

16 A No. It looks like -- it basically would
17 have been created by the tooth of a either on a blade
18 of a bulldozer or an excavator. They have those
19 tooth. And it happened that's the type of markings
20 that you'll see. They're not always the same.
21 They're different based on the size of the rock and
22 how it breaks apart.

23 Q So there's metal in here, pieces of metal
24 to make you believe that?

25 A I didn't say that.

1 Q So how do you know that this wasn't an
2 ancient Hawaiians sharpening tool where they were
3 sharpening their spears?

4 A The archaeologist would probably be best
5 to testify on that. But typically when you do
6 grinding like grinding stones or bait cups, that type
7 of stuff, you end up with a rather smooth, worn out
8 surface.

9 And this one has basically jagged edges and
10 it looks like it hacked into a one-time occurrence as
11 opposed to something that was continuously done over
12 time where you can actually see the patterns and the
13 smoothed up grooves or depressions, if you will.

14 Q Okay. So I'm looking at the stone and I
15 see that there's, it's pitted all the way around. And
16 that's smooth. And there aren't any broken pits.
17 It's smooth. So that means -- would you agree that if
18 this was being used as a grinding stone it would have
19 been used, maybe, a hundred 50 years ago before the
20 plantations came in there?

21 A I wouldn't agree with that.

22 Q So the plantations used the stones to
23 sharpen their spears?

24 A I wouldn't agree with that.

25 Q But you're still insisting that even though

1 there aren't any sharp edges from a bulldozer, which
2 is from current times, it would show a straighter
3 edge. These aren't straighter edges even for teeth.
4 I have a tractor. That does not look like something
5 that --

6 MR. GEIGER: Hold on just a second. Now
7 we're getting argumentative. She didn't like the
8 answer that he's given twice now so she's asking in
9 argument. I would object.

10 PRESIDING OFFICER HELLER: Ms. Bolomet,
11 basically what's happening right now is you have a
12 chance to ask about when and how the photos were taken
13 so that you can fully state your objections for the
14 record.

15 MS. BOLOMET: Okay.

16 PRESIDING OFFICER HELLER: Disagreement
17 about the conclusions is something you can go into in
18 cross-examination later. What we're talking about now
19 is just making sure that you've had the chance to
20 object based on an understanding of when and how these
21 photos were taken.

22 MS. BOLOMET: Okay.

23 Q When was this photo taken?

24 A It was taken by the archaeologist when they
25 were doing the field work, field work and the

1 excavation of the trenches. The date is provided.

2 Q What was the date?

3 A September 19th I believe.

4 Q What year?

5 A 2012.

6 Q Okay. And what trenches?

7 A The trenches -- it's the excavation that
8 occurred to investigate the claims of Mr. Lee. So
9 that occurred, I believe it was on September 19th
10 2012.

11 Q Of this year. So you're saying that this
12 mark was made on September 19th.

13 MR. GEIGER: I'm going to object because
14 that's argumentative. She's now trying to
15 cross-examine him on something else as opposed to what
16 and when.

17 MS. BOLOMET: I'm just trying to get
18 clarification on -- if the mark was made on
19 September 19th or if he's saying that this was
20 something that happened a long time ago 'cause he just
21 talked about trenches, September 19th, and he's got a
22 picture pointing to this.

23 PRESIDING OFFICER HELLER: That's a matter
24 you can go into on cross-examination later. Right now
25 we're just dealing with where these exhibits came from

1 and what they are.

2 MS. BOLOMET: Okay.

3 Q So can we move to figure 9 on Page 13? Are
4 you there?

5 A Yes.

6 Q So that's showing what it looks like when
7 you scar the rock with striations?

8 MR. GEIGER: Again I'm going to object.
9 She can ask a question. She doesn't have to testify
10 or argue.

11 Q (By Ms. Bolomet): Okay. What is this
12 picture depicting?

13 A When they were doing the excavation a
14 couple of the boulders were pulled out of the ditch on
15 the side. Someone looked at it and said, "Wow,
16 there's an example of what happens when big machines
17 move big boulders."

18 So the photo was taken as an example of the
19 type of scarring that occurs when large excavators and
20 bulldozers are moving large boulders. So that's what
21 that shows as an example. That photo was taken on
22 September 19th when they did the excavation based on
23 the claims of the iwi by Mr. Lee.

24 Q Okay. This was not done -- these
25 striations were not done on September 19th. They were

1 just photographs of what was already there. I just
2 want to get real clear.

3 MR. GEIGER: I'm going to object because,
4 again, that really doesn't go to the foundational
5 questions as part of the voir dire. This is now
6 getting into cross-examination argument.

7 PRESIDING OFFICER HELLER: Ms. Bolomet, for
8 purposes of making a ruling on whether or not this is
9 Exhibit 41 is admitted into evidence, you have the
10 opportunity to ask questions about how the exhibit was
11 put together and what it is.

12 MS. BOLOMET: Oh, not if it's true or not.

13 PRESIDING OFFICER HELLER: Not whether or
14 not you agree with it. Or whether it's true or what
15 conclusions we can draw from it. That will come
16 later.

17 MS. BOLOMET: Oh, okay.

18 PRESIDING OFFICER HELLER: This is just to
19 establish what the exhibit is and how it was put
20 together.

21 Q (By Ms. Bolomet): Okay. Could you please
22 tell me what figure 8 page 12 is?

23 A Figure 8 page 12 is the -- it's the -- it's
24 the boulder that is claimed to be the libation stone.

25 Q Were you taking the picture from the side

1 or is there an angle?

2 MR. GEIGER: I'm not sure what relevance
3 that has to a voir dire.

4 PRESIDING OFFICER HELLER: I think that's a
5 fair question. I'll allow it.

6 THE WITNESS: Yes, it's taken from the
7 side.

8 Q (By Ms. Bolomet): Is it listed in here
9 somewhere the angle that it was taken?

10 A No. The photo, I think, speaks for itself.

11 Q Well, it doesn't. That's why I'm asking
12 the questions. So figure 7 No. 11 what is that
13 Page 11?

14 A That's the soil profile of the area that
15 was excavated to determine the presence of iwi.

16 Q Okay. And is that a tape measure?

17 A Yes, it is.

18 Q And what's it showing?

19 A It's showing approximately how far deep the
20 area is. That in combination with the text
21 referencing the photo describes what this is.

22 Q Okay. So in there it'll say the depth.
23 It's not just the yellow stick.

24 A Yes. There's detailed descriptions of the
25 trenches and the depths and various strata, various

1 layers of soil.

2 Q What page would that be on?

3 A Page 3. If you look at three paragraphs
4 from the bottom it references figure 7. Says, "The
5 locale to trench was culturally sterile. No human
6 remains or cultural materials were found or observed
7 in the trench. Two stratigraphic layers were present
8 in the shallow profile. Bedrock protruding from the
9 outer edges of the excavation was common. Figure 7."
10 So it references figure 7.

11 Q Okay. Then so let's go to Page 9 figure 5.
12 I can't see what the writing is in this yellow area.
13 Can you -- that's showing where you excavated. And
14 you got that by a GPS you said?

15 A Yes. We have GPS locations for that and we
16 also show -- this red dot shows the approximate
17 location on this TMK map.

18 Q But aren't GPS exact?

19 A Yes, they are. The GPS location is
20 actually showed on a different map.

21 Q Okay. So why did you show this map if it's
22 on another map?

23 A It provides another source of information
24 so that the reader could reference where the location
25 was. The location where they put the GPS points, if

1 you look at figure 2 that's a -- it's a more of a
2 regional. It's a map from the USGS that doesn't -- I
3 don't think provides you with a clear indication of
4 where this site would be in relation to the Project
5 site.

6 So they provided another map. The
7 archaeologist prepared this map. And it shows the
8 location where the test excavation had taken place.

9 Q Okay. All right. And then this No. 8 you
10 said you folks had a bigger map to show us. Figure
11 8 -- figure 4 page 8 you folks said you had a bigger
12 map to show us.

13 A Yes, there is one available.

14 Q Okay. Are you going to put that up there
15 when you're talking so we can look at it?

16 A If we need to we can.

17 MS. BOLOMET: All right. I do have
18 objections but I don't what to do at this point other
19 than saying I object to it. But I think it's based on
20 my arguments that I have to object to it, is that
21 correct?

22 PRESIDING OFFICER HELLER: If you have
23 anything to add regarding the basis of your objection
24 now is the time to state.

25 MS. BOLOMET: I just don't think that

1 there's one side of a picture being shown, and not the
2 whole story when I look through the whole exhibit with
3 the explanations.

4 PRESIDING OFFICER HELLER: Those are
5 matters you can deal with in cross-examining
6 Mr. Frampton. Exhibit 41 is admitted over the
7 objection of Intervenor Bolomet.

8 MR. GEIGER: Thank you, Chair.

9 CONTINUED DIRECT EXAMINATION

10 BY MR. GEIGER:

11 Q Mr. Frampton, obviously we've been through
12 quite a bit of the report already. But if you could
13 just highlight for the Commissioners what the bottom
14 line or the result of the summary of the report was.

15 A The summary of the report was -- well,
16 there were two basic things that they investigated.
17 One was the claim that there was a he'iau which turned
18 out to be a single boulder.

19 And there was a conclusion that this was
20 not a historic site, that it was not a -- well, it was
21 not a he'iau. And that it was conferred with SHPD
22 that that was the case.

23 The second claim about the iwi, the
24 conclusion was that there were no iwi present in the
25 area. This, again was, concurred upon by SHPD.

1 Q If you know, why did the developer go to
2 this step to do a further investigation?

3 A You know there were -- I've heard different
4 claims about a he'iau on this property. One
5 description was a huge expansive site that I think the
6 statement was "how could you possible miss it?" I
7 hear toady that it's supposed to be subsurface.

8 I think in short we want to do everything
9 we can to provide evidence on the record that -- about
10 these claims. The claims we found to be baseless. We
11 think they're serious claims.

12 We felt that it was important enough to go
13 through the time and the expense to investigate them.
14 Unfortunately, we had the time because this process
15 keeps being extended by a month and a month and a
16 month. Every time claims have come up we have done
17 our best to investigate and pursue these claims. And
18 that's what we did.

19 Q Thank you. I want to focus you a little
20 bit back to irrigation again. Specifically there's
21 been questions about water quality. So if you could,
22 could you address some of those issues that have come
23 up concerning water quality and specifically what the
24 Project's going to do to address water quality.

25 A Okay. So this is water quality, not

1 related to irrigation.

2 MS. BOLOMET: He's -- objection. He's not
3 an expert on water quality. How can he answer that?

4 PRESIDING OFFICER HELLER: Let me make sure
5 I understand the question here. Actually can you
6 rephrase --

7 MR. GEIGER: I'll reask it.

8 Q Okay. Rory, there's been some questions
9 come up, particularly this morning, there were
10 questions that came up that there were concerns about
11 how the Project is going to address water quality so
12 that runoff would not impact anything offsite.

13 So can you address that for the Commission
14 what the Project's going to do, not from the
15 standpoint of scientifically, but what is the Project
16 going to do to address questions of water quality?

17 A Thank you. Every project that I've worked
18 in over the last 20 years we have to address runoff
19 and drainage. There's two -- there's two things to
20 think about when you're thinking about rainfall and
21 runoff. One is dealing with the effects of
22 stormwater, the damages that storms may have on the
23 property.

24 And more and more so in recent years,
25 rightfully so, there's also a question about the

1 impacts on water quality from runoff. We designed a
2 feature on this property, a retention basin to control
3 the stormwater runoff.

4 The storm was a 1-hour, 50-year storm. 50
5 years the old way they talk about it now I think it's
6 more appropriately talked about a storm that has a
7 2 percent chance of occurring like Ms. Knox talked
8 about.

9 Anyways, that facility was designed to
10 capture the runoff for stormwater purposes to retain
11 it so that there's no net increase on downstream
12 properties. But the basin was also going to have the,
13 very important function of collecting runoff from
14 smaller storms and not letting it leave the site.
15 It's a detention.

16 We've heard about the new stormwater
17 quality rules that Maui County has been looking at.
18 They make a big point when you're trying to deal with
19 the water quality you're not so concerned about the
20 once every 50 years or the 2 percent chance storm.

21 You're concerned about the storms that
22 happen fairly frequently, the more frequent, a little
23 bit less in terms of the intensity, but the 3-month
24 storm, the 4-month storm that will come in and wash
25 out the roads and wash into the yards and in the

1 ocean. So it's those lower frequency storms that
2 really are the focus when you deal with water quality.

3 I'm just going to read to you from the
4 general provisions of the draft Department of Public
5 Works Water Quality Rules. They say, "The water
6 quality of the ocean and other receiving waters would
7 be impacted more by the runoff from smaller frequent
8 storms or rainfall events rather than infrequent flood
9 events." So rather than these ones that come along in
10 force, in big lengths of time, whatever.

11 "Consequently, water quality measures for
12 development should be designed to mitigate water
13 quality impacts from small frequent storms."

14 And then the rules suggest that you use a
15 1-inch storm as a measure to, or a design criteria to
16 capture the water. There's a couple different ways
17 you can mitigate the runoff. One is by detention.
18 The other is by running through filtration areas like
19 grass, planters that type of stuff.

20 But detention is an appropriate mechanism
21 as long as you allow the water to be retained for at
22 least 48 hours. So our basin size before it reaches
23 the spillway, it could handle over 50,000 -- I'm using
24 rough numbers, but it could handle over 50,000 cubic
25 feet of water before it starts spilling over into the

1 channel.

2 The 1-inch storm would generate 35,000
3 cubic feet of water. So if there's a 1-inch storm on
4 the property that will generate 35,000 cubic feet of
5 water. It would go into this detention basin. It
6 would sit there. It would not leave the property. It
7 wouldn't be until there's 56,000 cubic feet of water.
8 Then it would then start going over the top. There
9 would still be water in the basin.

10 But once it spilled over and there's less
11 than 56,000 cubic feet of water, the water would be
12 retained. And that basically allows the pollutants
13 and everything to settle out. And it won't go into
14 the ocean water.

15 So, again, just reading from these rules it
16 says: "Either detaining stormwater for a length of
17 time that allows stormwater pollutants to settle, a
18 detention treatment for such measures as detention
19 wet/dry ponds are created." I'm sorry. The first
20 sentence was, "Criteria for sizing stormwater
21 facilities can be met by either detaining of the water
22 or by use of filtration or infiltration methods" or
23 whatever. It goes on to list the other ones.

24 So we're doing the first one that they
25 list. We're detaining the water. And for a 1-inch

1 storm which doesn't happen too often in Lahaina. You
2 might see a quarter inch storm, a half inch storm, all
3 of those smaller events that are more frequent that
4 pose threats, that pose the real threats to water
5 quality we're going to be totally, totally detaining
6 the water for these (coughing heard) to allow the
7 pollutants to settle out.

8 Q Thank you, Rory. I have nothing else.

9 PRESIDING OFFICER HELLER: County?

10 MR. GIROUX: We have no further questions.

11 PRESIDING OFFICER HELLER: OP?

12 CROSS-EXAMINATION

13 BY MR. YEE:

14 Q I just want to be clear. You understand
15 that Michael Dega has informed you that the Kahoma
16 complex is off the Petition Area, correct?

17 A I came to that based on my own conclusions
18 and reading the maps, reading the two maps in that
19 report and finding physical features on the ground.

20 Q The figure of the telephone -- or the
21 picture of the telephone pole is an accurate copy of
22 the telephone pole you had seen in identifying --
23 well, what was that a picture of?

24 A It was -- it was -- I knew that, um, well,
25 we have a topographic survey. So when they were -- I

1 looked at the archaeological map. They said they
2 measured this distance to pole No. 6. I said, "Well,
3 where the heck is pole No. 6?" The first thing I did
4 was I looked at our topographic survey. We had a pole
5 No. 7 that's situated on the topographic survey.

6 MR. GEIGER: For the record, the
7 topographic survey is figure 7 of Exhibit 7 of the
8 engineering report of Exhibit 7.

9 THE WITNESS: Right.

10 A So on figure 7 near the intersection of
11 Kalena Street there's a little mark on there PP No. 7.
12 And it's hard to see on this scale. I have a much
13 larger figure that shows it. So I said, wow, maybe
14 there's a figure 6 in there, a pole 6. Pole 6 is
15 actually -- it's not shown on this photo -- it's not
16 shown on this diagram, this topographic survey, but I
17 could locate it the survey because it kinda covers the
18 area. But I went out there and I found pole No. 6.

19 THE REPORTER: Excuse me, Mr. Frampton,
20 would you slow down, please.

21 THE WITNESS: I'm sorry.

22 THE REPORTER: Thank you.

23 THE WITNESS: Sorry. Also on this map down
24 at the bottom we saw references to poles 12 and pole
25 13. So the MECO, or the basic utility companies, keep

1 track of their poles by putting numbers on 'em. And
2 basically that photo is pole No. 6 that I found right
3 on Kalena Street near the intersection of Kahena.

4 Q (By Mr. Yee) Then pursuant to Exhibit 41
5 the conclusion was that the libation stone was not a
6 he'iau. Is that your understanding?

7 A Yes. The he'iau's typically a form of
8 architecture, if you will, or a complex series of
9 stones rather than one boulder.

10 Q Was there a conclusion as to what I'm going
11 to call the libation stone? Was there a conclusion
12 about what it was?

13 A The conclusion was that it was one of many
14 boulders on top of a large push pile that was created
15 by the plantation.

16 Q Well, was there a conclusion that this was
17 or was not an archaeological site?

18 A I'll read to you. "Given the size, shape
19 and context of the boulder it's very unlikely that the
20 boulder is or was part of a he'iau. The site consists
21 of a single boulder in the midst of a larger boulder
22 field. The boulder had a clear mechanical scar on its
23 top exhibiting that it was moved by machine.

24 "This boulder sits on a large mechanical
25 push pile running along the boundary of the Kahoma

1 Project area near its existing residences. It is the
2 assessment of SCS that the site is not a he'iau. The
3 SHPD Hinano Rodrigues and Jenny Pickette on September
4 19th agreed with the assessment."

5 Q And I guess, I was trying to read into that
6 whether or not there was conclusion that it was any
7 other type of archaeological site. That is was
8 there -- do you understand the question?

9 A Hmm-mmm.

10 Q I'm sorry "read that it's not a he'iau.
11 And I'm trying to figure out whether there's
12 another -- is there also a conclusion that it is not a
13 native Hawaiian archaeological...ah..?

14 A I think that's accurate that it's not a
15 native Hawaiian. It could technically qualify as an
16 archaeological site if it's over 50 years old. But
17 they didn't really go there. They concluded that it
18 was not a native Hawaiian

19 Q Feature?

20 A Feature.

21 Q Are you expecting anything from the State
22 Historic Preservation Division in writing on this
23 issue?

24 A I believe there was a letter that came in
25 from the State Historic Preservation Division on this.

1 Q That would conclude or confirm whether or
2 not this boulder was or was not a native Hawaiian
3 cultural or native Hawaiian feature.

4 A I believe the conclusion that it had to do
5 with whether or not there needed to be any update on
6 the archaeological assessment. And based on all this
7 evidence the SHPD found no basis to require any
8 additional work be done.

9 Q Okay.

10 MR. YEE: Thank you. I have nothing
11 further.

12 PRESIDING OFFICER HELLER: Ms. Lincoln.

13 CROSS-EXAMINATION

14 BY MS. LINCOLN:

15 Q I didn't know we were going to revisit the
16 site about the retention basin. But since we did and
17 you said that there's, it's to hold not just major
18 rain but rain throughout the year. So there will be
19 standing water in there throughout the year whenever
20 there's rain as it percolates?

21 A I wouldn't say throughout the year. The
22 rainfall in Lahaina comes frequent, as you know. I've
23 seen other basins in Lahaina. One, they don't fill up
24 too often because there's not a lot of rain. I think
25 this area gets about 10 to 15 inches of rain a year,

1 which is not a lot. When it does happen it will
2 percolate. It will settle out.

3 Q Okay. So it will be a possibility of a
4 mosquito breeding area which does not have that issue
5 right now because of the natural absorption?

6 A I'm not an expert at how long water has to
7 sit before mosquitoes start. I know that the water --
8 well, I would expect that the water wouldn't be
9 sitting for that long and that it would percolate out.

10 I don't know the chances or likelihood of
11 mosquitoes breeding.

12 Q Dengue right now is quite big in the news
13 'cause it is on our island right now. So that could
14 be something that the Petitioner would be willing to
15 look into as far as the safety issue in our community
16 since we're not having that problem right now so much
17 in Lahaina as there is in, say, in Kahului?

18 Is that something the Petitioner would be
19 willing to look into by adding a retention basin to a
20 area that has not had that in the past? So we haven't
21 had that issue with mosquitoes.

22 A I'm sorry. Was that a question?

23 Q I'm saying would the Petitioner be willing
24 to look into the safety issue of that or

25 A If it's deemed. I mean I think it's -- I

1 think it's a stretch. We could make a few calls to
2 the Department of Health if they were concerned about
3 it. You know, I've seen other basins like this in
4 Lahaina that have been installed. And they haven't
5 been problem areas.

6 So there are basins like this in newer
7 projects in the Lahaina area. To my knowledge there
8 hasn't been -- I haven't heard of any problems with
9 mosquitoes and I haven't seen standing water in these
10 things.

11 Q Okay. But that could be looked into
12 because we're adding more concrete. Lahaina keeps
13 growing. So we can't just keep saying, well, it
14 happened in the past. Lahaina does keep growing.

15 So that would just be a good thing as we
16 keep developing and having less natural absorption.
17 It would just be a good thing to check with the health
18 department just to make sure.

19 And we were talking this property's near a
20 senior, our senior center. And they're the ones more
21 apt to have negative complications due to mosquito
22 infestations.

23 So would you agree that because it's by a
24 flood channel and that you are taking away the natural
25 absorption, that that could just be something that

1 could be looked into as a possible health risk?

2 A I don't see how -- I don't connect the dots
3 on the statement that you just made. You said that
4 because it's next to a storm channel that there's now
5 an increase in the chance of mosquitoes? I don't
6 understand.

7 Q Well, no. Because it was natural
8 absorption right there. That whole area has been for
9 years. When there's rain there's natural absorption.
10 Now you're going to put in a retention basin that's
11 going to percolate and hold the water and could cause
12 for more mosquito infestation.

13 And this area is close to where our senior
14 center is. And seniors are more susceptible to dengue
15 fever and the results of that and the negative
16 impacts. I'm just asking is that something that you
17 would look into just to make sure that it will be
18 safe?

19 A I guess I'm hesitating just because of some
20 of the statements that you made that I'm not totally
21 comfortable with about the runoff from the property,
22 the infiltration. Large sections of this property are
23 not vegetated. And when you don't have vegetation you
24 tend to get a lot of surface runoff from bare ground.

25 And so to say, to make a comparison that

1 the existing situation there'll be more percolation or
2 there was more percolation now than what's occurring
3 when the place gets vegetated, I don't know if that's
4 true. It hasn't been -- so, anyways -- but your
5 question is: Would we be willing to look at whether
6 or not the creation of this detention basin creates
7 potential adverse health impacts due to the potential
8 for mosquito breeding?

9 I would think we could look at that and
10 look at ways to, if it's necessary, what kind of
11 mitigation measures might be put in place in the
12 management plan for the detention basin.

13 This detention basin will have to be
14 cleaned out from time to time. So there will be a
15 management plan. And we can certainly look into
16 whether or not there are appropriate measures that
17 need to be put in place, yes. Sorry that took so
18 long.

19 Q No, that's good. And then on page -- I
20 don't know what page number it is -- but it's your
21 Exhibit 37. There's a shadow of you taking a picture
22 of the pipes above water, above the ground, I'm sorry.
23 So there's some pipes there. You might have to look
24 at the picture to know what I'm going to reference.

25 A Do you want me to look at the one I've got?

1

2 Q (By Ms. Lincoln): What I'm referencing,
3 just to let you all know, is on Exhibit 37. It's kind
4 of on the left-hand side. It's in between the shrub
5 there. There is a gray, vertical post right there.
6 That is a power pole from the early 1900s.

7 Then on the corner of Kale and Aki Street
8 is a wood power pole which is a block away and further
9 away from this property. That is the same era and
10 pole construction as your No. 6 was taken.

11 How do you know that what was referenced
12 was not the cement power pole that is actually closer
13 to this property and has been on -- by this property
14 for much longer?

15 How do you know that that's not the No. 6
16 or one like that referenced in the document? What
17 makes you think that the wooden pole up above this
18 Project is the No. 6?

19 A Because there's a number of other features
20 in the area that also suggest that that's right where
21 it should be located. The figure immediately
22 preceding the figure that references the power pole in
23 the archaeological report shows the general vicinity
24 of the site and it references Kalena Street. So it
25 shows it above Kalena Street.

1 When you look at that and you do
2 approximations of where the pole should be, and you go
3 out and you look and you find No. 6 right there, and
4 then you find a concrete bridge foundation 48 paces
5 away when it suggests they will be about 45 to 48
6 paces away, I think all those factors together lead me
7 to believe that that pole No. 6 is pole No. 6 that's
8 referenced in the archaeological report.

9 Q But you also, from what I remember in your
10 testimony just now, said they referenced it as a
11 railroad bridge. And you said, well, it was just a
12 concrete bridge.

13 A Can --

14 Q Can I finish? (pause) From what I
15 understand you said that you eliminated the railroad
16 part of it. How can you accept some of the criteria
17 but you won't accept all of the criteria? If they
18 said it was a railroad bridge, why do you get to
19 modify that?

20 But it could not be a chance that it's
21 maybe one of these cement power poles that are
22 referenced rather than a wooden power pole that's
23 referenced?

24 A It says "bridge foundation". And what I
25 found was a bridge foundation.

1 Q And it didn't say "railroad" at all in
2 there?

3 A There's no indication that there was or was
4 not a railroad track on top of the bridge. But there
5 certainly is a bridge foundation and it comports with
6 the location of the historical crossings that the
7 plantation used in that area.

8 Q Can I have you reference this right here
9 where it says "railroad bridge foundation is about 70
10 meters"?

11 A Yeah, that's what I'm referring to, yes.

12 Q How can you eliminate "railroad" then?

13 A There's oftentimes assumptions being made.
14 I don't know what led the person back then to believe
15 it was a railroad bridge foundation. But it certainly
16 is a bridge foundation.

17 Q Okay. So, but you don't know for a hundred
18 percent -- you do not know a hundred percent that that
19 No. 6 pole is the No. 6 pole in this. It could be the
20 concrete power poles that are actually by this
21 property, not a block away from this property.

22 And these concrete poles have been there
23 since the early 1900s which would have been maybe more
24 of a land markings rather than wooden poles which I'm
25 sure when those were implemented. But we know the

1 cement one's been since the early 1900's.

2 A You haven't suggested anything to me in
3 your statements right there that says those poles are
4 more likely to be pole 6 than the one I found.

5 Q All I'm saying it's just your opinion.

6 A Yes.

7 Q Okay. So when we look at this and it says,
8 "that's pole 6" it's just Rory Frampton's opinion?

9 A Yes.

10 Q Okay. Thank you.

11 PRESIDING OFFICER HELLER: Anything else?

12 Q (By Ms. Bolomet): Continuing on with
13 this --

14 PRESIDING OFFICER HELLER: Just in terms of
15 scheduling, do you have a time estimate for your
16 cross-examination?

17 MS. BOLOMET: No. But can I just ask a few
18 questions? Because you want to break for lunch? I
19 hope not to be long but depends on his answers.

20 PRESIDING OFFICER HELLER: Are there
21 further witnesses planned for rebuttal? County?

22 MR. GIROUX: Not from the County.

23 PRESIDING OFFICER HELLER: OP?

24 MR. YEE: No.

25 PRESIDING OFFICER HELLER: Ms. Lincoln?

1 MS. LINCOLN: No.

2 PRESIDING OFFICER HELLER: This is the only
3 rebuttal witness we have.

4 MS. BOLOMET: Yes.

5 PRESIDING OFFICER HELLER: Let's go another
6 10 or 15 minutes and then we'll take a lunch break.

7 MS. BOLOMET: Okay.

8 CROSS-EXAMINATION

9 BY MS. BOLOMET:

10 Q Okay. So following through on the
11 telephone poles. The map that you are referring to,
12 what year was that map made, the MECO map?

13 A The topographic survey that we have in our
14 exhibit?

15 Q That you found this pole No. 6 at.

16 A Pole No. 6 is referenced in the
17 archaeological report that was done for the Kahoma
18 Stream Channel. So I believe that was either late
19 '70s or early '80s, but it was before the construction
20 of the Kahoma flood control. So that map that
21 references pole 6 I don't know the exact date, but I'm
22 sure it's in the record.

23 Q Okay. Well, that's not quite what I'm
24 asking. The pole that you have -- I mean the picture
25 that you have here of No. 6 --

1 A Correct.

2 Q -- you referred to a MECO map.

3 A No. I referred to our topographic map
4 shows power pole No. 7. I said in reference to MECO
5 that Maui Electric or the utility companies typically
6 number their poles.

7 Q Okay.

8 A And on most of their major poles you can go
9 and find the pole. And surveyors locate pole numbers.
10 They actually -- they don't just say "power pole".
11 They'll have power pole with the pole number because
12 it means something to people who look at those things.

13 Q Okay. Being a person than doesn't look at
14 those things, can you tell me what year that
15 topographic map was made?

16 A It was done for this Project. Again, the
17 topographic map references power pole No. 7. And that
18 survey was done, my guess is sometime around 2004,
19 2005 when this Project was being originated.

20 It would have been one of their first parts
21 of the engineering study that was done for the
22 Project. So it was done. The topographic survey was
23 done for this property.

24 Q In 2004?

25 A 2004, '5ish.

1 Q Okay. Can you remind me again what year
2 Robert Connolly's survey was done?

3 A I told you the general year. If you want a
4 specific I'm -- (individual coughing)

5 Q Is it 1997, I mean 1974?

6 A I would -- that sounds about right.

7 Q Okay. So the map you're referring to in
8 2004 are you saying that's the accurate map that
9 Robert Connolly used in 1974?

10 A Mr. Connolly, that was created in 2004.

11 Q Okay. I don't know if you know but
12 Mr. Connolly's not alive. And, and that means that he
13 may have been using a map that had the poles that's in
14 the picture that Ms. Lincoln is referring to, is that
15 correct?

16 A I don't agree with that at all.
17 Mr. Connolly wasn't using the topographic map. He
18 referenced a pole that he saw. He was giving a point
19 for a future that people -- and typically they'll give
20 two points with two measurements so that, you know,
21 you can do the measurements and basically find out
22 where the start of the Kahoma Terrace was.

23 So he said that this grinding stone was 70
24 meters from the bridge foundation and it was a 115
25 meters from the power pole.

1 And I went out and found a bridge
2 foundation and I found a power pole. They were
3 basically the difference between the two.

4 Q So 48 paces is that 70 meters?

5 A No. It's 48 meters roughly. I'm, I'm, I'm
6 pretty accurate with my pacing and I can do a pretty
7 good estimate of it. And it's not exact but it sure
8 was close.

9 Q But it says -- the things that you're
10 referencing, a No. 6 pole that was, that could be a
11 modern day pole from a different map versus a pole
12 that we obviously show there. It says "railroad
13 70 meters".

14 You take the measurement from the railroad
15 bridge that crossed Kahoma to that area, it's
16 approximately 70 meters.

17 And it says "railroad". It's a railroad
18 bridge. So why should we believe that your assumption
19 is that a bridge that didn't have a railroad on it is
20 the same as this that was 48 paces away, not 70 meters
21 away?

22 Why should we jump to that conclusion that
23 we're even talking about the same area?

24 A What's the question? Why should we....?

25 Q Why should we adopt your assumptions that

1 your 48 paces and your bridge that is *not* a railroad
2 bridge is the same poles and location that
3 Mr. Connolly that made up this the map, the Kahoma
4 Stream Terrace System Complex that you just testified
5 puts two different points of reference. One he put
6 "railroad bridge foundation is 70 meters southwest
7 west tip of arrow" off of the map.

8 So we went 70 meters. You're talking about
9 a pole. Now, there's not any, any numbers on these
10 poles. However, there's poles there. And the numbers
11 could have changed over time from 1974 to 2004. Do
12 you agree that things change between 1974 --

13 PRESIDING OFFICER HELLER: Ms. Bolomet, I
14 think we've got several different questions in there.
15 It would be helpful and clearer for the record if you
16 could break them up and ask them one at time.

17 Q (By Ms. Bolomet): Okay. First question.
18 Is it possible that poles numbering systems changed
19 from 1974 when Robert Connolly made his map, to 2004
20 when you made your topography map? Could the pole
21 numbers have been changed?

22 A It could have. But given all the other
23 pieces of the information that I described earlier,
24 and in addition where you're claiming the railroad
25 bridge would have been the old historic bridge in

1 1924, it would have been the historic railroad bridge
2 that's shown and it would have gone over the old
3 streambed that's located makai of the power poles.

4 If the references on that map -- so there
5 are -- so there's the old historic railroad bridge
6 down below. Then there's power poles up above it more
7 mauka. That map that Connolly refers to says that the
8 bridge is mauka and the poles are further down.

9 It's 115 meters to the power pole, and then
10 70 meters to the bridge. The difference is about
11 45 meters.

12 Where you're suggesting the bridge it's the
13 flip flop. And if you go 70 meters -- the power poles
14 are written in a reverse direction. So given the fact
15 that the power pole's down below where you think it is
16 a reverse, given the fact that 70 meters from the
17 bridge --

18 THE REPORTER: Mr. Frampton, would you
19 please slow down.

20 THE WITNESS: Sorry. Given the fact that
21 the historic bridge is at the bottom of the site where
22 you think it is is actually located makai of the power
23 poles that exist in that area.

24 And the Connolly map suggests otherwise.
25 That it's 45 meters, that the pole is actually on the

1 bottom side of the bridge as opposed to being above it
2 which is what the case is down below.

3 Given the fact that it's on the -- the
4 terrace system is shown on the As Built drawings for
5 the Kahoma Flood Control Channel. Given the fact that
6 the archaeological figure references Kalena Street,
7 all the facts that I've already repeated, I'm
8 repeating myself.

9 Q Yes, you are.

10 A The collection of information leads me
11 firmly to believe that it's too much of a coincidence
12 for pole 6 not to be pole 6.

13 Q Okay. But you just testified that the old
14 Kahoma River or stream was what Mr. Connolly was
15 referring to which would have made the bridge --
16 because the Kahoma Channel was not built 'til 1990, is
17 that correct?

18 A That's correct. You're misunderstanding my
19 statement.

20 Q No, no, no, I'm not. And the Kahoma Stream
21 was right below all these terraced areas -- or the
22 terraced areas are along the Kahoma Stream. The
23 Kahoma Stream went down.

24 And if there's a stream that's in the
25 Project site, the only way to get over the stream with

1 the railroad would be a bridge. Is that not correct?
2 There's a bridge that goes over the stream?

3 A There's another important factor that leads
4 me to believe that I'm correct in my location. If
5 you're referring to figure 2 in Connolly's report, all
6 the archaeological features are on the south side of
7 the stream.

8 If we were to believe your account, all of
9 us, for some reason the archaeological terraces would
10 have to be on the north side of the stream. This map
11 that shows the terraces, shows the stream running
12 along the north side of the complex and the terraces
13 being here.

14 You're suggesting that maybe this is wrong
15 and that the terrace system is actually on -- that
16 somehow the archaeologists flip flopped it and that
17 the terraces are actually on the north side of the
18 stream? (coughing)

19 Q No, I'm not suggesting that at all.

20 A If we're following your logic that's what
21 you'd have to think that the archaeologist flip
22 flopped the terrace in relation to the Kahoma Stream.

23 Q No. You're misunderstanding what I'm
24 saying. I just look at maps. The maps show and my
25 grandfather's land shows there's a lo'i terrace on the

1 south side of the Kahoma Stream which corresponds with
2 the different terraces that are on the south side of
3 the Kahoma Stream.

4 There's also development on one side.
5 Hawaiians didn't just make loi's and develop one side
6 of the stream. They used both sides. So this is
7 showing one side. It shows -- it goes into some of
8 what was happening on the other side. But primarily
9 this is focusing on one side on the south side, of the
10 stream.

11 So we agree that this terrace is showing on
12 the south side. We also agreed that this was above,
13 part of it was above the Project site, but it was in
14 the archaeological report on figure 2 that was showing
15 that the Project site extending beyond this, what I
16 thought was the Project site. This is part of the
17 confusion that's in these archaeological reports.

18 PRESIDING OFFICER HELLER: Ms. Bolomet, do
19 you have a question that you want to ask the witness?

20 MS. BOLOMET: Yes.

21 PRESIDING OFFICER HELLER: Please do that.

22 Q (By Mr. Bolomet): Okay. So can you prove
23 to us that one of the poles in this picture was not
24 called No. 6 in 1974?

25 A I cannot prove that.

1 Q Okay. And can you prove to us that a
2 railroad bridge foundation was up where you're calling
3 your bridge foundation?

4 A I can -- I know there are historical maps
5 that show a --

6 Q That's not the question.

7 A -- a stream crossing in that area.

8 Q But can you show anything that says that
9 that was a railroad bridge foundation?

10 A I can show that there was a crossing of the
11 stream in that area, historical crossing of the
12 stream.

13 Q But the question is: Can you show that it
14 was a railroad bridge?

15 A No, I can't.

16 MS. BOLOMET: Okay. Thank you. Do you
17 want me to go on or do you want us to break? It's a
18 different line of questioning.

19 PRESIDING OFFICER HELLER: Do you have any
20 estimate of how long you're going to be over all?

21 MS. BOLOMET: Hopefully no more than a half
22 hour depending on the answers.

23 PRESIDING OFFICER HELLER: Okay. My
24 inclination if we're talking about a half hour would
25 be to take a five minute break for the benefit of our

1 reporter and then just plow on through so we get done
2 today.

3 MS. BOLOMET: Okay.

4 PRESIDING OFFICER HELLER: So let's take a
5 5-minute recess and then we'll come back.

6 (Recess was held. 12:05-12:15)

7 PRESIDING OFFICER HELLER: Okay. Back on
8 the record. Ms. Bolomet, you may continue.

9 CONTINUED CROSS-EXAMINATION

10 BY MS. BOLOMET:

11 Q Okay. Regarding Page 11 figure 7.

12 MR. YEE: What exhibit?

13 MS. BOLOMET: It's the one with the yellow
14 sticker, tape measure.

15 Q My question is can you tell me the exact
16 depth of that?

17 A Yeah, I'm referring to Page 3 and the 1, 2,
18 3, 4th paragraph down talks about the trench. It says
19 that "the trench was excavated to bedrock, the lowest
20 depth being about 5.74 feet down."

21 So I'm assuming that that's -- well, not
22 assuming -- that figure 7 shows the trench. And
23 that's gonna be about 5.74 feet.

24 Q Okay. "Feet" not "meters", correct?

25 A Correct.

1 Q Okay. Did you not testify before that
2 there was at least 8 feet of fill on this property?

3 A I may have. But there's, the depth to
4 bedrock varies over that property. And that
5 information's been provided in the soils report.

6 Q Okay. So if there is 8 feet of fill and
7 you go 5.4 feet below the fill line, would you agree
8 that you would never get to the original grade that
9 was there 150 years ago?

10 A No, I don't agree. Because as I just said,
11 the depth to bedrock over that site varies. And in
12 some places it was 8 feet and some places it was
13 shallower than 8 feet. It was not -- it was not that
14 much more than 8 feet as I recall but it varied.

15 Q Okay. I'm formulating a question. In
16 Mr. Dega's report, his archaeological report, do you
17 agree that it said there were 20 documented floods
18 since the '60s?

19 A If you're telling me that that's what the
20 report said I have no reason to doubt it.

21 Q Okay. Do you agree that debris, including
22 rubble and stone and silt and dirt, comes down from
23 the upper mountains and fills the lower plains with
24 big floods?

25 A You're talking generally about how streams

1 kinda tend to shape the topography or the features of
2 the land, yes. Streams over time, as Mr. Lee talked
3 about, over time, over millennia deposit debris at the
4 bottom of the stream and create alluvial fence, yes.

5 Q So do you also agree that West Maui Land
6 allows the county to fill up or take the silt and all
7 the different things they take out of the Kahoma
8 Channel and dump it onto this Project site?

9 A I'm aware of the recent occurrence where
10 that happened, yes. And I believe it happened in the
11 past before. But I think that happened before West
12 Maui Land was the owner. I am aware that recently the
13 county needed to put the debris someplace and they put
14 it on the property.

15 Q Okay. So if we've had debris put onto the
16 property with silt that comes down with just normal
17 rains that go into the Kahoma, if we have that dumped
18 onto the site -- and it's been done more than one
19 time -- if we have 20 major floods since the '60s put
20 onto this land, if we have the Kahoma Channel, all the
21 dirt that was taken out filled onto this land, would
22 you still conclude that 5.4 feet would have been an
23 adequate dig to find iwi that was probably several
24 feet below the original surface?

25 A I do feel it's adequate because they dug

1 down, both of these trenches, until they hit bedrock.
2 They went down 'til they hit bedrock 'til they
3 couldn't go any further. So, yes, I'm very
4 comfortable that they went as far down as the
5 Hawaiians would have been.

6 Q Okay. Next the Page 13 figure 9?

7 MR. YEE: For the record, this is, I
8 believe Petitioner's Exhibit 41.

9 PRESIDING OFFICER HELLER: You're talking
10 about?

11 MS. BOLOMET: Exhibit 41, page 13, figure
12 9.

13 PRESIDING OFFICER HELLER: Go ahead.

14 Q (By Ms. Bolomet): Okay. In this picture
15 you said they represent striations, is that correct,
16 from the tractor?

17 A Yes.

18 Q Okay. There was multiple striations. Is
19 that because of the forks on the bucket?

20 A Yes.

21 Q So do most buckets have multiple teeth on
22 it that would make these kinds of striations?

23 A Yes.

24 Q Okay. And why is it -- why is it kind of,
25 it's light like a light grey, right?

1 A Yeah. This, this photo was taken of a
2 boulder that was excavated that day. So you can see
3 the kind of fine powdery marks that were done by the
4 scraping. If you scrape over time all that kind of
5 fine powder and that color would disappear.

6 Like on the next photo on Page 14 shows an
7 older scar that had been weathered. So you see the
8 weathering of it. You don't see the evidence of
9 recent scraping. Page 13 figure 8 shows a boulder
10 that was recently scraped.

11 Q But you said that this was -- these marks
12 earlier, before our break, you said these marks
13 weren't made during the September 19th dig. Is that
14 correct?

15 A That's not correct. If you're referring to
16 figure 9 which is on Page 13...

17 Q Mm-hmm.

18 A that boulder was pulled out of the
19 ground as part of the excavation on September 19th.
20 So those marks on that boulder were created right
21 there. They figured, wow, this might be a good shot,
22 photograph, to take to show how boulders when they're
23 being moved, how they can get scarred.

24 Q How big is this boulder, approximately?

25 A That's about, it's a pretty big boulder.

1 Probably about 3 or 4 feet long and probably 2 or 3
2 across.

3 Q So about the same size as the libation
4 stone.

5 A It looks like it's a little smaller.

6 Q And this is just kind of, like, short,
7 short marks. What would you measure this length of
8 the marks?

9 A I'm not sure. But, you know, every boulder
10 is going to be, depending on how it was situated when
11 the machine hit it, it's gonna have different marks.
12 You might have had only one tooth hit it. You might
13 have had multiple teeth hit it. It all depends on the
14 context of where the boulder was when the machine
15 encountered it.

16 It might have only encountered the tip of
17 the top. In this case they had to actually excavate
18 it with the bucket. So that's why you see the
19 multiple scarring from the teeth of this bucket.

20 The machine that -- the machine that was
21 used to create or the machines that were used to
22 create the large boulder piles could have been big
23 bulldozers. It would have been -- I'm not sure what
24 machines were used, but you could have had a whole
25 variety of different types of scarring.

1 When we're on the site that morning on
2 September 8 Ian Bassford, the archaeologist, showed a
3 number of different markings on the boulders that
4 occurred that are just common.

5 Q Okay. So this was -- these are multiple
6 fork marks. My question was: How long do you think
7 that is in measurement?

8 A They look to be about 12-inches.

9 Q How wide do you think that is?

10 A About 3 or 4 inches.

11 Q Okay. So now we go to figure 10, page 14
12 on that rock. You are suggesting that that is made
13 from a machine, is that correct?

14 A Yes.

15 Q And you're suggesting that it is, that it
16 was made a long time ago because of the discoloration.

17 A Yes.

18 Q To the left of where the hand is pointing
19 to the so-called striation, there's another line
20 there, is that correct, off to the left that looks
21 like kind of a curved striation. Is that correct?

22 A There's another discolored or there's
23 another kind of an orange colored feature on that to
24 the left?

25 Q Yes. It's kind of curved.

1 A Yes.

2 Q So would you agree that on the buckets that
3 are made out of metal there is a -- the teeth are
4 spaced very specifically apart. There's, like --
5 there's -- if it would be 2 inches, then it would be 2
6 inches, then a tooth mark, then a 2-inch space,
7 another tooth mark, is that correct?

8 A As I said earlier the markings on a boulder
9 are gonna be created by -- I mean the machine and how
10 it hit that boulder you could've hit it at different
11 angles. They could have been picking it up or trying
12 to pick it up from different angles. There could be
13 multiple scarring from multiple attempts to move the
14 boulder.

15 Q Okay. But you agree that they're both
16 discolored with the same color, the same type of
17 weathering?

18 A Yes.

19 Q So if this was a machine that made this it
20 was probably made at this time, is that correct?
21 These two marks.

22 A Those two marks were probably made at the
23 same time or near the same time.

24 Q So have you ever seen a tractor? I have a
25 tractor. Have you ever seen a tractor where there's a

1 tooth that goes in this direction and one that goes in
2 this direction?

3 A Yeah. I'm not suggesting that those two
4 marks were made by the same strike of a machine. I
5 said it just a little bit earlier, that it probably
6 was the result of Multiple strikes by a machine. So
7 that would suggest that the angles could be -- they
8 don't have to be parallel to each other.

9 Q Okay. But are you suggesting that teeth on
10 tractors have curves?

11 A No. I'm not suggesting that.

12 Q Okay. So it's possible that a machine did
13 not make this.

14 A I didn't say that either.

15 Q So you're insisting that a machine made
16 this.

17 A That looks conclusively to me that a
18 machine carved out those two pieces.

19 Q Okay. So now let's go to Page 12 of
20 Exhibit 41 figure 8. My first question is: Why did
21 you take a picture of only one side of the stone?

22 A I took multiple pictures. This is the
23 picture the archaeologist included in his exhibit.

24 Q Why didn't you see the value in showing the
25 other sides of the stone?

1 A I think this is a good photo representative
2 of what the top of the stone looks like with the long
3 scar on the top.

4 Q Okay. And if you had shown all sides of
5 this rock -- this is the libation shown that you're
6 suggesting? Is the libation stone here?

7 A Yeah, that's the claimed libation stone.

8 Q Okay. So if you had shown the full picture
9 you would have had to have shown that on the other
10 side of the rock was also this line that continued in
11 one full motion all the way across.

12 MR. GEIGER: I'm going to object because
13 she's testifying as to something that *she* believes
14 exists. She should either show the witness or should
15 ask the witness to describe what *he* sees.

16 PRESIDING OFFICER HELLER: Ms. Bolomet, if
17 you can ask it in the form of a question without
18 making a statement that would be better.

19 Q (By Ms. Bolomet): Okay. Why is this
20 striation so long and not broken?

21 A It likely had to do with the circumstances
22 of when the boulder was being moved. It could have
23 been created by the blade of a machine. It could have
24 been created by the tooth on a blade. It could have
25 been created by a number of different interactions

1 with a large heavy piece of machinery and the stone
2 when it was being moved.

3 Q So this just shows one striation. And the
4 other pictures shows other striation marks. But this
5 one doesn't have any. So can you tell me, since we're
6 establishing there's only one striation, what do you
7 think that length is of this line that's on a 3-foot
8 by 4-foot boulder?

9 A That looks -- that line looks about, I'm
10 guessing it's about 2 feet, maybe a foot and-a-half,
11 2 feet long.

12 Q Okay.

13 A Might be a little bit longer.

14 Q Okay. And can you explain why there aren't
15 striations on both sides of that mark if it was made
16 by a machine?

17 A I wasn't present when the machine moved
18 that boulder. But I can easily envision that scraping
19 done by a blade moving over the top of the boulder or
20 any number of circumstances where only a portion of a
21 blade or a bucket or something would have hit the top
22 of that.

23 Q So if the portion of the blade moved over
24 it, how would it have gotten down below and gotten up
25 above and up and around? Can you explain that?

1 A When you're moving big boulders with big
2 machinery there's a lot of things that happen in terms
3 of how the boulders are moving and when they're
4 falling. And if you've ever been around a big site
5 like that you hear the boulders clumping and falling
6 and all.

7 I mean there could have been a variety of
8 situations in which a line like that would have been
9 created. Like I said I wasn't there when the scar was
10 created. I find it entirely likely that a line of
11 that size and shape could have been created by a
12 machine.

13 Q Okay. And if this rock would have had a
14 striation mark, wouldn't it stand to reason that
15 there's, there'll be marks on both sides of this
16 striation mark plus there'll be scars or striation
17 marks on all the other surrounding rocks to show that
18 was a push pile that was made by a mechanized machine?

19 A Well, there were two questions there. The
20 first one: Why isn't there multiple scarring on that
21 boulder? I kinda already went over that. There could
22 have been a number of different scenarios where only
23 one scrape would be done.

24 In terms of the second question: Why don't
25 the other boulders exhibit those marks? They do.

1 There's a number of boulders that have those marks.
2 We pointed them out on site that there were numerous
3 marks and nicks and chunks taken out of machines
4 that're around that's not available. They're not
5 exactly in this shape and format, but similar.

6 Q So once again you want all of us to jump to
7 the assumption and take your word for it that there
8 were other rocks around, but you didn't take the time
9 to take a picture of all the other rocks around that
10 had the other striations; is that correct?

11 MR. GEIGER: I'm going to object to the
12 extent it's argumentative and there's testimony there
13 on behalf of the questioner. If she wants to ask a
14 question she can do that. But this question's
15 objectionable.

16 Q (By Ms. Bolomet): Okay. Why didn't you
17 take pictures of all the other rocks that you're
18 suggesting is there that has striation marks?

19 A I did take multiple pictures of the rocks
20 with those. The archaeologist chose to just include a
21 few sample photographs. This one included the one on
22 the following page which shows a recent striation.
23 And then he showed one on the page after that shows an
24 old one.

25 So in this report I think the archaeologist

1 felt it was obvious enough, given those three photos
2 that we didn't need to include all of the others.

3 Q Okay. Well, these three photos are in
4 three separate locations. Do you agree with that?

5 A Yes.

6 Q Okay. But you're still wanting the
7 Commissioners to think that there's striation marks on
8 all the rocks around here that you did not provide
9 pictures to prove, is that correct?

10 A Yes. I want the Commission to believe that
11 when the large machines are moving big boulders you
12 often have scars in 'em and chunks taken out. That's
13 what I'm -- and it happens. It doesn't have to be in
14 one particular place. But all these boulders showed
15 signs of them being moved by large machines.

16 Mr. Lee agreed and I think in his words,
17 but he agrees 100 percent that we were standing on a
18 push pile of boulders. He also agreed 100 percent
19 that this stone had been moved there and somehow found
20 its way to this site from where he believed it
21 originally occurred to where it's situated at the
22 Kahoma Terrace. So that's what I'm asking the
23 Commission to understand.

24 Q I don't think I have to form this question.
25 Were you here when Mr. Lee was, was saying his

1 testimony for the whole, entire testimony?

2 A Today?

3 Q Yesterday.

4 A Yesterday I was here the entire time
5 yesterday, yes.

6 Q So did you hear him say the conditional
7 "if" certain conditions existed?

8 A Yes.

9 Q That he would agree with that?

10 A Yes. I also heard him say -- now all of a
11 sudden -- when we were out there he said the boulder
12 was the only thing that was important. It was on top
13 of the pile. And I heard him say yesterday that now,
14 for some reason, he thinks there's a subsurface system
15 of sites.

16 I heard you say that there's a whole
17 complex down there with -- anyway, I've heard a lot of
18 different things said, yes.

19 Q Okay. Yeah, we heard a lot of different
20 things as well.

21 A Yeah, sorry.

22 Q So you're suggesting that this stone could
23 have been moved by a boulder from the complex area
24 that you're saying is way above this Project site and
25 brought down here, is that correct?

1 A I didn't say that.

2 Q Okay. So what are you suggesting --

3 A Mr. Lee --

4 Q -- on how this got down here?

5 A Mr. Lee believes that this boulder
6 originated from a location that's shown on the Kahoma
7 Terrace map.

8 Q Did he testify to that yesterday?

9 A No. He told me that in person when we met
10 on the site that he believed -- he pointed. He says,
11 "This is where that stone came from." And he pointed
12 to the location on the map, very specific location.
13 It actually shows there's a small series of boulders
14 and one larger boulder.

15 And I believe it was a particular boulder
16 that he was showing me. But I'm going based on what
17 he told me on the site visit. That he believes that
18 stone originated in the Kahoma Terrace system.

19 Q Okay. Did you just not -- did we just not
20 establish that there were different poles and
21 different railroad tracks that would bring this
22 terrace down into this area?

23 MR. GEIGER: I'm going to object. That's
24 argumentative. Whether she established it or not is
25 up to the Commission to decide.

1 PRESIDING OFFICER HELLER: I think it is
2 both argumentative and repetitive. I'm going to
3 sustain the objection.

4 Q (By Ms. Bolomet): Okay. You're trying to,
5 to imply that there's -- are you trying to imply that
6 there's no he'iau here and this is not a libation
7 stone, a ceremonial libation stone?

8 A It is clearly not a he'iau. Whether
9 Mr. Lee believes it's a libation stone or not I think
10 that's up to him. I believe that it's a stone that
11 was -- it's part of a larger pile of stones. I
12 believe that there's machine marks on it. And that's
13 what I believe.

14 Q Okay. So, so, um, you're an expert in
15 cultural -- Hawaiian culture?

16 A I have a degree in cultural anthropology.

17 Q Hawaiian cultural anthropology?

18 A No, just in general. And I have a lot of
19 experience in workin' with archaeological and
20 cultural reports. I'm not a -- I've done cultural
21 assessments. So I have a lot of experience in the
22 field. I wouldn't call myself a cultural practitioner
23 or an expert in Hawaiian culture.

24 Q Are you Hawaiian?

25 A No, I'm not.

1 Q So everything that you base your decisions
2 on and your assumptions on are based on book knowledge
3 and what people -- what you were allowed to experience
4 and what you were allowed to hear up to the point, is
5 that correct?

6 A I have a whole collection of life
7 experiences that provide me with my experience.

8 Q Would you consider yourself equally as
9 educated and knowledgeable in cultural practices and
10 he'iaus as Kumu Lee?

11 A That's a multipart question.

12 Q Would you consider yourself as much of an
13 expert on Hawaiian culture and Hawaiian cultural
14 practices as Kumu Lee?

15 A In terms of culture and cultural practices,
16 no.

17 Q So could you please tell me why your
18 expertise over his can definitively and clearly make
19 you come to the assumption that there is not a he'iau
20 there?

21 A Well, a he'iau is -- this is certainly not
22 a he'iau. A he'iau -- I've worked with projects that
23 have he'iaus and archaeological features. They
24 involved stones that people can move. And they're
25 usually or they're built upon fixed fixtures, but this

1 is clearly not a he'iau.

2 Q Based on what you know from what you've
3 been told, is that correct? In your experiences?

4 A Total learned and experience, yes.

5 Q So can you tell me who all your teachers
6 were that taught you about the kauna and how to read
7 the rocks and how to determine what is a he'iau that
8 is not from the western world but Hawaiian?

9 A I'm referring to, you know, specific
10 archaeologic and physical features that lead me to
11 conclude this is not a he'iau or a historic site that
12 was created pre-contact.

13 Q Isn't it true that Kumu Lee agreed with you
14 that there were rocks that were in front that were
15 pushed up to this area we're calling the he'iau. Is
16 that not true? That's what he agreed to.

17 A He said that, um, he agreed that we were
18 standing on a push pile, yes.

19 Q But he didn't agree that all the rocks, all
20 the pohaku that was in that area behind us and where
21 the libation stone was sitting, he didn't agree that
22 that was a push pile, is that correct?

23 MR. GEIGER: I think this is cumulative at
24 this point. We've been through this several times.

25 PRESIDING OFFICER HELLER: I think

1 essentially the same question has been asked and
2 answered already, Ms. Bolomet.

3 MS. BOLOMET: Okay. I'm trying to
4 establish that he really can't make the assumption of
5 he'iaus because he has no experiences to do that. But
6 he's trying to show to you that that's...

7 PRESIDING OFFICER HELLER: You can make
8 arguments. You'll have your chance to do that. But
9 asking essentially the same question repeatedly
10 doesn't get us anywhere.

11 MS. BOLOMET: Okay. Oh, can I ask one more
12 question about the libation stone?

13 Q So did you witness the line that you took a
14 picture and the picture shows one side of the libation
15 stone, is that correct?

16 A This picture shows that one side, yes.

17 Q Would you agree that that line continued
18 all the way across to the other side of the libation
19 stone?

20 A It may go just a little farther than what's
21 in this photo. But I don't, I don't recall it
22 extending around the entire perimeter, but could
23 happen.

24 When they're pushing boulders sometimes
25 the boulders are rolling so you could get a scar being

1 created by a blade pushing a boulder and it rolling.
2 So it could very well have extended across half or
3 more of the boulder.

4 Q Okay. But wouldn't there be multiple
5 striations at that point from the teeth?

6 A Not necessarily, no.

7 Q And could you explain how, if this was
8 pushed over there or placed over there from a storm,
9 how was it that Mr. Lee was able to place the little
10 stone on top of the bigger stone and it nestled in
11 perfectly? Can you explain that?

12 A I've tried to or attempted to build dry
13 stack walls before, not as good as some experts, but
14 rocks. And I always find it kind of cool when rocks
15 fit neatly into each other. So I'm not surprised that
16 that very small stone fit, nestled into that crack.
17 I'm not surprised at all.

18 Q And wouldn't you find it a coincidence that
19 this little stone would fit into that groove very
20 perfectly? And when you would pour liquid over the
21 stone it very meticulously surrounded the stone? Do
22 you think that's a coincidence made by a tractor?

23 A I think it's a coincid -- I think it's --
24 I'm not surprised that when you pour water and you
25 place the stone in that location that that would be

1 the flow of the water.

2 Q Okay. Let's go back to the bones. So you
3 said you dug.

4 A I did not dig.

5 Q Okay. You witnessed it?

6 A No.

7 Q You weren't on the property when it was
8 happening?

9 A No.

10 Q So why are you testifying for the dig?

11 A I'm testifying on the submission of this
12 report for Mr. Dega.

13 Q Okay. So you know all aspects of this
14 report?

15 A Yes.

16 Q Okay. So in here I didn't see where they
17 were talking about sifting, what they dug out.

18 A The nature of the material was very rocky.
19 And I asked Mr. Dega, you know, you do sifting
20 sometimes especially when you're in sandy soils or
21 when there's a lot of soil there. But in this case
22 there was a lot of big boulders.

23 The sifter can't hold big boulders like
24 that. It just wasn't a practical thing to do. They
25 did take -- they're very experienced in looking at

1 these things. You basically go down at levels and you
2 don't take the whole chunks out at a time.

3 You basically go down and in this case I
4 believe Mr. Dega didn't use a sifter because that's
5 not what the soil profile conditions had dictated.

6 Q Okay. So on Page 11 figure 7 of the
7 Exhibit 41 can you show me where all the big boulders
8 are that the tractor or the sifter couldn't handle?

9 A That photo actually shows some portions of
10 bedrock and a section of the trench that had soil
11 profiles.

12 Q So why didn't you sift the soil profiles?

13 A I deferred to the archaeologist. And they
14 took their standard protocol of excavating, you know,
15 in increments.

16 Q Is it standard protocol to not call the
17 cultural practitioner that was pointing out where the
18 burials were at?

19 A The archaeologist called the State Historic
20 Preservation officer. And I believe when we were at
21 the site with Mr. Lee the suggestion of excavation was
22 brought up.

23 Q But Mr. Lee was not present?

24 A He wasn't present when the excavation was
25 occurring, no.

1 Q Can you explain to me why he wasn't called
2 or I wasn't called to arrange for him to be there?

3 A The archaeologist -- my instructions to
4 them was follow the appropriate protocol and make sure
5 you run by Hinano Rodrigues at the state and make sure
6 everything you do is consistent with the established
7 protocol the state has for doing these types of
8 things.

9 Q Okay. But Mr. Lee was the one that brought
10 this to your attention. That's correct, right?

11 A Correct.

12 Q So shouldn't it be Mr. Lee that's there
13 helping with the digs and directing where the digs
14 would be according to what *he* was pointing out?

15 A We, you know -- we had very precise
16 locations identified by Mr. Lee. Mr. Lee didn't claim
17 that he was a descendant of these individuals or in
18 any way related to them. He basically said that he
19 just felt this is where they were located.

20 He has certain indicators that are unique
21 to him that gives him signals or signs where these iwi
22 are supposed to be located.

23 Q Okay.

24 A And I'll just add I asked him if there was
25 anything on the surface of the ground that provided an

1 indication that there might be iwi there.

2 And he said there was nothing on the
3 surface. And it was a feeling that he had when he
4 walked over the area that told him that those iwi were
5 present.

6 Q When you took your precise measurements of
7 where the digging was gonna happen, did you give those
8 precise GPS measurements or points to Mr. Lee at the
9 time so that he would know that when you dug you
10 actually dug where he told you?

11 A No. What we did was we flagged the site.
12 We put ribbons exactly where he told us. We asked
13 him, "Is this exactly where?" And he confirmed that
14 we marked with the ribbons where the precise locations
15 of where he felt the iwi were. Then when we did the
16 excavation, that's where it occurred.

17 I did visit the site after the excavation.
18 And the area that was excavated was a much larger
19 area, much larger footprint than the location. It
20 covered a much larger area than just the precise
21 locations that were flagged by Mr. Lee and confirmed
22 by Mr. Lee.

23 Q Okay. But Mr. Lee wasn't there to confirm
24 that where you were digging was actually where he had
25 pointed out, is that correct?

1 A He wasn't there but that area more than
2 covered the area. It covered a much larger area than
3 where Mr. Lee had pointed out. The area that was
4 excavated clearly included the sites that Mr. Lee
5 pointed out.

6 Q Okay. But we have no proof that what
7 you -- where you dug was actually where he was at
8 because neither I or Mr. Lee was invited to be there
9 at the time, is that correct?

10 MR. GEIGER: I'm going to object. This is
11 cumulative and argumentative.

12 PRESIDING OFFICER HELLER: Ms. Bolomet,
13 this is becoming argumentative.

14 Q (By Ms. Bolomet): All right. But you
15 agree there wasn't any sifting of -- going on,
16 correct?

17 MR. GEIGER: Objection cumulative.

18 PRESIDING OFFICER HELLER: Been asked and
19 answered.

20 MS. BOLOMET: Okay.

21 Q So do you agree that over a hundred 50
22 years or more that there could have been the bones,
23 the kapa, everything that would have been with the
24 burials could have biodegraded?

25 A I'm not prepared to answer the question of

1 what state of decay the human bones would be after
2 that long a period of time.

3 Q Okay. But there wasn't a way that you
4 could even collect anything if you did nothing, no
5 fine sifting, is that correct?

6 MR. GEIGER: I'm going to object. Again
7 it's cumulative and argumentative.

8 PRESIDING OFFICER HELLER: Sustained.

9 Q (By Mr. Bolomet): Let me move on. In this
10 report you talk about there was a site visit by Jenny
11 Pickette and Hinano Rodrigues.

12 A Yes.

13 Q And during that time they went to the area
14 that I submitted to the burial or to SHPD, saying
15 there was a burial, is that correct?

16 A Yes.

17 Q They did a visual inspection, is that
18 correct?

19 A Yes.

20 Q They did no digging, is that correct?

21 A Yes.

22 Q And do you know what they were looking for
23 when they were looking for burials?

24 A (off mic) There's a number of different
25 indicators that will tell you, surface indicators,

1 that archaeologists are trained to kind of look for.
2 There were, I believe there were two archaeologists
3 present as well as the two representatives from State
4 Historic Preservation Division.

5 They used their experiences, and their
6 knowledge to look for clues on the surface as well as
7 based on the information that he provided to them.

8 Q Okay. Do you agree, again, that the
9 surface today is 8 to 12 feet of fill above the
10 original surface?

11 A I don't agree.

12 MR. GEIGER: I'm going to object.
13 Cumulative. We've been through this before.

14 PRESIDING OFFICER HELLER: It's already
15 been answered. It was repetitive.

16 Q (By Ms. Bolomet) Okay. So was the -- so if
17 they're looking for something on the surface, isn't it
18 true that you would have to look at the original
19 surface grade where somebody would have set pohaku or
20 anything that would have distinguished this grave?

21 A I'm sorry. Could you repeat the question?

22 Q Would you agree that in order for them to
23 find -- the markings of a grave is usually marked out
24 by pohaku. Do you agree with that, or some kind of
25 marker?

1 A Oftentimes there are pohaku demarcating
2 where a burial would be, yes.

3 Q Okay. So would you agree that 150 years
4 ago it was most likely put on a grade that's below the
5 fill?

6 A I can't say that for certain in that
7 location. I haven't investigated historically what
8 happened on that particular piece of land. I do know
9 it has been extensively altered over the last 150
10 years, including significant amounts of both
11 excavation and fill associated with the sugar
12 plantation, as well as the construction of the flood
13 control channel.

14 So it's very likely that the surface that's
15 there right now is not the surface that existed 150
16 years ago.

17 Q So a site -- would you agree that a site
18 visit looking for something on the surface that's
19 probably not the surface that was there 150 years ago,
20 would yield zero results?

21 A Yeah. But I believe they felt it was
22 worthwhile to check out. But I also -- they came to
23 their conclusion, let's say, based on all the
24 information that has been provided to you and all the
25 discussions that you've had with them. I think

1 collectively that led them to their conclusion.

2 Q Would you be surprised to know that part of
3 my discussions with them was: How are you gonna
4 identify burials that are 8 to 12 feet below fill?

5 A If you're suggesting that I mean -- most,
6 most of this site the bedrock was encountered about
7 8 feet below. I don't think there was many places
8 where it was much below that. So ...

9 Q So you testified that there has been
10 alterations there.

11 A Hmm-hmm.

12 Q You testified that there's been storms
13 there, great, 20 great floods at least.

14 MR. GEIGER: I'm going to object. He
15 didn't testify to that. She asked him if it was in
16 Mr. Dega's report. And he said if she said it was he
17 wouldn't dispute her.

18 PRESIDING OFFICER HELLER: Regardless I
19 think this has been covered before.

20 MS. BOLOMET: Okay. I'm trying to make the
21 point that there's no way that a site inspection could
22 yield any results if the actual original grade is
23 8-12 feet below what they're inspecting.

24 MR. GEIGER: It's cumulative. It's
25 argumentative and it's probably at this point

1 irrelevant.

2 MS. BOLOMET: It's relevant in making this
3 report.

4 PRESIDING OFFICER HELLER: Ms. Bolomet,
5 regardless of whether or not it's relevant, you will
6 have the opportunity to make arguments in this case.
7 Asking the same question again and again is not a
8 substitute for making your arguments.

9 MS. BOLOMET: Okay.

10 Q Did you contact -- oh, let me go back to
11 this page. On your map you show where you dug. I'm
12 trying to figure out what page that's at. Okay.
13 Page 6, figure 2 you show a dot there for where you
14 dug. Then also on Page 9 figure 5 you show a dot
15 showing the approximate area. On there it lists what
16 I think are the LCAs, yeah the LCAs.

17 Would you agree that what's written in the
18 yellow area where the dig is at that's LCA probably
19 312?

20 MR. GEIGER: You know, the document does
21 speak for itself. If she's asking him to just read it
22 this doesn't get us anywhere. It's cumulative of
23 evidence that's already in.

24 THE WITNESS: And could I add I didn't do
25 the digging.

1 Q (By Ms. Bolomet) It doesn't matter if you
2 didn't do the digging. My question --

3 PRESIDING OFFICER HELLER: Please restate
4 the question.

5 Q (By Ms. Bolomet): The question is: Does
6 that say LCA 312?

7 MR. GEIGER: Same objection. It's
8 cumulative. This is already in evidence.

9 MS. BOLOMET: I'm trying to get to a point
10 but we have to make sure that we're agreeing that
11 we're looking at the same thing to establish a
12 foundation.

13 PRESIDING OFFICER HELLER: Fine.
14 Ms. Bolomet, I'll allow the question as a foundation
15 or predicate for whatever point you're trying to get
16 to. Please move on to your main point.

17 Q (By Ms. Bolomet): Okay. Do you agree with
18 that?

19 A The red dot on figure 5 page 9 is located
20 within an LCA. On this figure right here I can't tell
21 which number it is but there's a variety of figures.
22 If you're telling me that's what the LCA number is,
23 I'll trust that you're referencing the correct map
24 that shows that number a little more clearly. Yes,
25 the red dot is within that LCA.

1 Q The LCA 312 belongs to Timoteo Keaweiwi.
2 That's who was awarded that piece of land. Are you
3 aware of that?

4 A I'll take your word for it.

5 Q Okay. In your testimony just a few
6 questions ago you said that Mr. Lee said that he was
7 not related to the burials. So you didn't feel the
8 need to contact him.

9 Did you contact anybody of the Timoteo
10 Keaweiwi family lineage to let them know that you were
11 going to be digging on the burials with their
12 descendants?

13 A To my knowledge the archaeologist and the
14 state cultural specialist did not attempt to contact
15 family members. But, like I said, I asked the
16 archaeologist to consult with the State Historic
17 Preservation Division officer as well as the cultural
18 specialist to follow the proper protocol.

19 Q Are you aware that Hinano Rodrigues, who is
20 the Maui SHPD person, speaks to one of the heirs
21 regarding the iwi on their properties on a regular
22 basis because they're trying to find some? Are you
23 aware of that?

24 MR. YEE: Sorry. At this point I think I'm
25 going to object on the basis that if her point is

1 something about the propriety or compliance with some
2 other requirement with respect to how they did the
3 dig, that's not relevant to whether or not this
4 property should be reclassified.

5 What's important, I think, is whether or
6 not the information obtained is accurate or
7 representative in that sense. But whether they
8 conducted -- whether there might have been something
9 they should have done better on the dig pursuant to
10 some other rule 6E or chapter 6E requirement is not
11 relevant to this reclassification question.

12 PRESIDING OFFICER HELLER: Ms. Bolomet, is
13 your point that there was some failure to comply with
14 either SHPD or Burial Council rules or procedures?

15 MS. BOLOMET: Part of it, yes. Part of it,
16 yes.

17 PRESIDING OFFICER HELLER: I agree that's
18 irrelevant.

19 MS. BOLOMET: Okay. But the relevance that
20 I'm trying to get to is that there are family members
21 that we're not direct descendants. We're related to
22 them sideways so we're familiar with conversations
23 that are going on because there are burials that the
24 families are trying to identify.

25 And they're not being -- there's no

1 communication going on until after the fact. And if
2 part of these proceedings is to protect burials and
3 important sites, then shouldn't the people that are
4 looking for their burials be involved in this?

5 Maybe they have information that can help
6 locate, you know, these burials. So in that sense I
7 think it's important. I might be going about it in
8 the wrong way. But I'm trying to establish, you know,
9 if there's important sites here.

10 PRESIDING OFFICER HELLER: If you have a
11 question that deals directly with the accuracy of the
12 information and the exhibit that's fine. But if where
13 you're headed is to show that there were failures to
14 comply with SHPD or Burial Council procedures, that's
15 irrelevant and we're not going to go into that.

16 MR. YEE: Can I also add: Based upon her
17 offer of proof, what I'll take to be an offer of,
18 proof, the issue on rebuttal was simply to demonstrate
19 that additional informational was obtained. If this
20 is going further into more should have been done for
21 an adequacy of an Archaeological Assessment, that
22 should have been done at the time either Mr. Frampton
23 or Mr. Dega was testifying.

24 So as I understood her offer of proof,
25 she's I think trying to argue or demonstrate that more

1 should have been done to identify burials. That's not
2 an issue of rebuttal that was not raised by the
3 information obtained or any of the cross-examination
4 by the parties.

5 MR. BOLOMET: Can I get instructions on
6 what -- I'm sorry. I'm lost where I'm supposed to go.
7 All I'm trying to establish is that there are things
8 that we need to protect on the site because this is
9 based on an archaeological report. And I just see
10 more inaccuracies.

11 Partial pictures are shown which gives
12 partial truths, explanations that change, you know,
13 boundaries. And there's just a lot of presumptions
14 that are being put upon you folks to make decisions
15 based on half truths. I'm just trying to get a whole
16 truth on the record.

17 PRESIDING OFFICER HELLER: When you submit
18 proposed findings and conclusions you can deal with
19 these issues. For purposes of questioning *this*
20 witness at this time, if you have specific questions
21 dealing with the accuracy of the information in the
22 exhibits that's appropriate.

23 If you have questions that go into whether
24 or not other things should have been done under SHPD
25 procedures or under Burial Council rules that's not

1 relevant to what we're here to do.

2 MS. BOLOMET: Okay. For this portion?

3 PRESIDING OFFICER HELLER: Yes.

4 MS. BOLOMET: For this portion. Okay. All
5 right.

6 Q Can we talk about the Public Works maps and
7 the remnant pipes? Is this an appropriate time to
8 talk about that?

9 PRESIDING OFFICER HELLER: If it relates to
10 the testimony Mr. Frampton just gave today, yes.

11 Q (By Ms. Bolomet) Okay. So we submitted
12 some Public Works maps. Do you have access to Public
13 Works maps? This was from Clare Apana's August 19th
14 submission, her public testimony Exhibits 2A, B, C,
15 C2, D, and E. Do you have access to these maps?

16 A I don't have them in my hands right now,
17 but I have looked at the As Built drawings that I
18 believe you're referring to.

19 Q Okay. On one of these maps it's a profile
20 showing the, what's below surface. So did you have a
21 chance to look at that one? I believe it's
22 Exhibit 2A.

23 He's going to give you a copy so you can
24 look at it. So I'm going to start with D. On D there
25 are, there's a diagonal. Are you at D?

1 A I believe so.

2 Q There's a pipe that's running diagonal. I
3 believe it would be considered northwest to southeast
4 approximately. And it says it's a 4-inch cast iron
5 waterline existing. Do you see where it's point --
6 there's a box in the upper left corner. It says
7 "area. See sheet 85."

8 A My copy's kinda blurry but I believe
9 there's a --

10 Q It's a red line.

11 A Is it right under it says "note for
12 utility"?

13 Q It's the one that has the red line.

14 A Right. "See sheet 88" right below that.
15 Okay, yes, I see that. Yes, and it runs parallel to
16 what's labeled as the cane road.

17 PRESIDING OFFICER HELLER: Ms. Bolomet,
18 Mr. Frampton, please for the benefit of our reporter
19 only one person speaking at a time.

20 Q (By Ms. Bolomet) Okay. So the line that
21 I'm referring to it's numbered 2 in the upper left
22 corner. There's a line under the number 2. So that's
23 showing that it's an existing 4-inch cast iron
24 waterline.

25 MR. GEIGER: If she wants to ask him if he

1 understands that she can do that. She's asking him to
2 confirm her interpretation. That would not be
3 appropriate. So I think it's an improper form of the
4 question.

5 PRESIDING OFFICER HELLER: I think this is
6 just preliminary to get to what it is specifically
7 that you're going to ask about?

8 MS. BOLOMET: Yes, yes. I'm just reading
9 what's here. I'm not asking him to assume anything.

10 Q I'm asking you to, if you're on D, page D,
11 there's a D down below.

12 A Okay. Thank you. There was another D.

13 Q Okay. If you're at D and then the upper
14 left corner.

15 A Yep.

16 Q In a box it says "area. See sheet 85".
17 Below that it says "exist" or "existing 4-inch cast
18 iron waterline see sheet 85".

19 A That's what this says on the map, yes.

20 Q Yes. And then there's an arrow pointing to
21 the actual waterline.

22 A That's what's shown on this map, yes.

23 Q At the top of the waterline there's a
24 number 2 with a line underneath it, the upper left
25 corner.

1 A My copy has that portion off, chopped off.

2 Q Cut off?

3 A But, you know...

4 Q All right. So I'm just trying --

5 A I see the number 2 -- I see the number 2 on
6 my other Exhibit D.

7 Q Okay. So when you follow this down to the
8 lower part --

9 A Hmm-hmm.

10 Q Okay. It doesn't show that it hooks to
11 anything, is that correct?

12 A This doesn't show everything that existed
13 in that area. But I know that this road and this
14 waterline comports to the top of a field that was
15 previously irrigated in sugarcane.

16 Q Okay.

17 A So, so I'm not surprised that it terminates
18 at the top of the field.

19 Q Okay. And then at the -- below this
20 running parallel there's nother diagonal line. And
21 that one says, "new 36-inch drain line see sheet 85."
22 Do you know where I'm at?

23 A Yes, the county drain line, yes.

24 Q Okay. And then going north to south we
25 have another -- there's one line, then half way up it

1 breaks up into two lines. So on the right side it
2 says "existing 4-inch irrigation water" then "see
3 lights" I'm not sure what it's saying after that.
4 "plan sheet 85".

5 Then if you go above this description
6 there's an arrow pointing to an elbow. And it'll say
7 "1, 4 and a quarter or 4-inch" then it says "a quarter
8 bend, PVC connected to existing 4-inch water line
9 PVC". Do you see that?

10 A Yes. I see that on this figure, yes.

11 Q Then next to this there is another
12 description. It says, "New alignment 6-inch water
13 line with concrete jacket". Is that correct?

14 A I see this on that map, yes.

15 Q And let's see. I think that's basically
16 all the things. So when I walk on the property I
17 don't see any of the new alignments or any of these
18 new pipes visible from the surface of the property.

19 Is this representing something?

20 A I do -- I do -- there is an indication of
21 the drain line that you mentioned. One of the
22 diagonal lines is a new drain line. Basically the old
23 drain line used to dump into the old -- the drain line
24 collects the runoff from the neighborhood just, just
25 off this figure.

1 So when they built it so the drain would
2 collect the runoff from the subdivision, dump it into
3 the stream. When they relocated the Kahoma Stream
4 Channel, they built this new line that talks about
5 here, this new line that was built, goes across the
6 property and there's a manhole on the property that
7 most of us have seen.

8 So the answer is yes, I've seen an
9 indication of the drain line that exists on that
10 property. But no, I have not seen any indication
11 whatsoever of any type of irrigation lines.

12 Q Okay. So you would agree that everything
13 that the Public Works map has on their maps is most
14 likely underground? Is that correct?

15 A I would not agree with that.

16 Q So you're indicating that some of these
17 pipes are above the surface?

18 A I would agree that the map represents that
19 the lines are underground, yes.

20 Q Okay.

21 A I do not know for certain whether or not
22 they exist. I testified to that earlier.

23 Q Oh, oh, if they exist. But you agree
24 they're underground.

25 A I know that the map depicts those lines as

1 being, at least most of 'em, as being underground.

2 That's what the map depicts.

3 Q Okay. And the pictures that you submitted,
4 is that a 4-inch diameter?

5 A No. That was a -- those, as I talked about
6 earlier, all I had heard was you guys mentioned it you
7 thought you found indications of irrigation lines. My
8 only knowledge of irrigation lines that would have
9 been physically found were the pipes, the big concrete
10 pipes that are more, like I'd say either 12 or 16-inch
11 in diameter that runs along the alignment of the old
12 stream.

13 So my photos were taken at the time of what
14 I thought you guys were representing. 'Cause that's
15 an irrigation. That's an old irrigation line that
16 exists on the property. It's in disrepair. So when
17 you guys claimed -- and I didn't have anything -- I
18 didn't know what you basis for the claims were.

19 So I went out and I'd been all over the
20 site before. And I said I gotta go see what they're
21 talking about. I was aware of the pipe that runs
22 along the south border of the property. And so that's
23 what I took the photos of.

24 'Til today that's still my only knowledge
25 of anything I've seen, factually that I've seen other

1 than the drain line, which is separate from
2 irrigation, those pipes were the only pieces of
3 remnant irrigation pipe that I'm aware of on the
4 surface.

5 So I, at the time I believed that that's
6 what you guys were referring to. I wasn't aware of
7 the As Built maps. I've investigated whether or not
8 anyone from Pioneer Mill knew that those lines
9 existed. Nobody knows if they existed or not.

10 They do know, and as I testified earlier,
11 they've never been used. And right now I mean I don't
12 know what the relevance is because there's no source
13 of water for those lines, even if they do exist. They
14 haven't been charged or filled with water or used for
15 irrigation since prior to 1990.

16 They were never used ever, as far as I can
17 tell, the new lines, from the investigation that I did
18 when I asked Pioneer Mill, like I said earlier, we
19 take all the claims that you guys make seriously. And
20 I did do my best to try to figure out what was going
21 on. Are there irrigation lines available? I think
22 this goes to the point of is there irrigation water
23 available at the site.

24 And there hasn't been irrigation on the
25 site since after the construction of the flood control

1 channel.

2 If these lines are present, I don't know if
3 they are, there's no source of water to feed them
4 because pump M is no longer in service. It's been
5 dismantled. Waihikuli Reservoir is actually being
6 dismantled as we speak, much to the chagrin of this
7 landowner. But that's a whole 'nother story.

8 Q (By Ms. Bolomet): Okay. But you agree
9 that this Public Works map, I believe on age -- I
10 think I exploded it so you could see real clearly. On
11 one that says C2 it has a date on there. Do you see
12 the C2? It says As Built.

13 A I'm trying to refer to the one. Okay. Let
14 me see here.

15 Q Can you just read what year it says these
16 Public Works maps were made?

17 MR. GEIGER: Again, that's cumulative of
18 questioning that's gone on before. We've already been
19 through this as to when the As Builts were.

20 MS. BOLOMET: I'm trying to establish that
21 there's no way those pipes that are 12 to 16 inches
22 are the same pipes that the Public Works, the County
23 of Maui, has underneath the surface.

24 THE WITNESS: Excuse me for interrupting.

25 PRESIDING OFFICER HELLER: Wait. Wait.

1 THE WITNESS: But I can agree with that?

2 PRESIDING OFFICER HELLER: I think we've
3 been over most of this ground before. I think he just
4 said he's not asserting that the pipes that he took
5 the pictures of are the same ones shown on these maps.

6 MS. BOLOMET: Okay.

7 PRESIDING OFFICER HELLER: So that point is
8 not in contention anymore.

9 MS. BOLOMET: Okay. I thought I was having
10 to make this foundation so I can ask my questions.

11 Q All right. So it's your assumption, based
12 on just the people that you interviewed, that there's
13 no water on this -- no water access to this land.

14 A There's no source of what's called, what's
15 called non-potable irrigation water to this property
16 as there had been historically supplied by the
17 plantation. There were lines that connected to this
18 area that were irrigated. And the sources of water I
19 mentioned earlier.

20 And it's my contention that today there are
21 no irrigation lines available on the property that
22 could be used for non-potable irrigation.

23 Q But can you say that this didn't go to an
24 area where there was a spring?

25 A I think that's highly unlikely. The

1 sources of these, the water for this irrigation were
2 well documented by the plantation. I referred to two
3 reports. One done in 19 -- I believe it was '74 or
4 '75 by Mr. Bert Hatton. And it was called Hydromania.
5 It was a report that extensively documented all the
6 sources of water and the irrigation systems for
7 Pioneer Mill. And it provided about 70 years of
8 history for waterflows.

9 I also looked at an updated study that was
10 done -- it was done by, in 1999, by Tom Nance that did
11 a summary of the irrigation system at the time.

12 And it showed -- it did not -- it excluded
13 this property as being irrigated lands. So that told
14 me that once they built the flood control channel that
15 they were no longer irrigating this remnant piece of
16 property.

17 So, in addition to my discussions with the
18 people who currently work for Ka'anapali Land
19 Development, that's what led me to my conclusion and
20 looking at aerial photos and a whole bunch of the
21 other stuff that I've done, it leads me to believe
22 that there's no irrigation water available for use.

23 There's no agreement. There'd have to be
24 an agreement in place with whoever's gonna supply you
25 water. So there's no agreement in place, there's no

1 lines, there's no source of water. It is my position
2 that this property doesn't have access, current access
3 to non-potable water for irrigation.

4 Q Okay. And so does agriculture use more
5 water than subdivisions?

6 A Depends on the crop.

7 Q Okay. If there's no water how are you
8 proposing to get water to the subdivision?

9 A Okay. So I was referring to non-potable
10 water. There's potable water available on the
11 perimeter of the site through the county system. And
12 we plan on hooking up with the county system for the
13 drinking water, and the consumption for the people who
14 reside in the homes.

15 Q Are you familiar with any farms that are
16 hooked up to meters --

17 A Yes.

18 Q -- to the county water?

19 A Yes.

20 Q So it's possible that a meter can be put in
21 for irrigation water, is that correct?

22 A Yes.

23 Q Okay. Have you done any long-term -- or
24 are you aware of any long-term studies for the hard
25 surfaces versus an open space percolation that would

1 tell you how the water percolating through the grounds
2 would affect Mala Bay, Mala Wharf area?

3 A Could you repeat the question.

4 Q There were -- Mr. Lee was talking about
5 there might be, we might need a long-term study to
6 understand how the percolation versus having a
7 subdivision in the area would affect the limu and the
8 life down at Mala. Are you aware of any that's been
9 done in this area?

10 MR. YEE: I'm sorry. I'm going to object.
11 Although I believe this might relate to Mr. Lee's
12 testimony, I don't believe it relates to the broad
13 testimony given or at least I could ask why it relates
14 to something that was said by Mr. Frampton today.

15 PRESIDING OFFICER HELLER: Ms. Bolomet, do
16 you have any questions that focus specifically on the
17 testimony given by Mr. Frampton earlier today?

18 MS. BOLOMET: Maybe I'm getting the
19 testimony's mixed up. I thought we talked about
20 something like this because I was taking notes as we
21 were asking questions.

22 PRESIDING OFFICER HELLER: Well, let me
23 remind you that it's our intent to be finished with
24 the evidentiary portion of this hearing today. And we
25 have Commissioners who need to leave no later than

1 2:00 o'clock.

2 MS. BOLOMET: Okay. Well, can I ask this
3 question?

4 PRESIDING OFFICER HELLER: Go ahead. But
5 please try to --

6 Q (By Ms. Bolomet) So just want to know -- I
7 only have, like, two more questions based on his
8 answer. So do you know of any reports?

9 A What I'd like to respond, the question is,
10 really relates to what type of impacts that this
11 Project might have on offshore water qualities. And
12 my first thought is the quality of the water offshore
13 is determined by a huge number of variables. And ot's
14 a very large land area that's draining into this area.
15 Our 16 acres is a very, very, very small portion of
16 that entire drainage basin.

17 But the second point is I think we need to
18 do, we need to make sure that whatever comes off of
19 our property doesn't contribute or add to or make
20 worse. Like Mr. Lee pointed out, I agree with his
21 testimony, that it can be mitigated. I think I've
22 presented in my testimony that we not only are
23 attempting to mitigate stormwater, but we will be
24 mitigating water quality impacts by having the
25 detention basin.

1 And that from the more frequent storms
2 that happen a couple times a year, we're going to be
3 capturing all the runoff from the roadways and from
4 the Project. If you look at our drain system the
5 water -- it takes in all the water off the roadway,
6 collects it, puts into this drain system.

7 So the concerns about heavy metals, the
8 concerns about oils, the concerns about things being
9 deposited downstream from this Project and potentially
10 impacting limu or other types of important things in
11 the water, I think we've demonstrated that we're not
12 going to contribute to that.

13 And I would even argue we're going to
14 probably make things better because right now there is
15 no detention basin. Right now there's a lot of
16 uncovered dirt in that area. And when it rains stuff
17 just kinda flows all over the place.

18 So I would argue that I think when you deal
19 with a piece of property you don't want to make things
20 worse. You want to try to mitigate it or even maybe
21 make it a little better.

22 I think that's what we're certainly trying
23 to do. I think the Maui County's rules on water
24 quality that they have developed supports those
25 contentions.

1 Q Okay. But both Robin Knox, my water
2 expert, and Kumu Lee voice concerns. I believe both
3 of them asked about a long-term study. So I was
4 asking: Did you have -- do you know of any long-term
5 studies on the effects of how this could affect the
6 Mala Bay area? Or if there's another study that's,
7 say, in Lahaina somewhere else? Are you aware of any
8 kind of studies like that that would show us what the
9 effects would be?

10 A I don't know if there's been studies
11 looking at other impacts from other projects or other
12 development scenarios. But I can tell you that we
13 have in our Project incorporated measures to mitigate
14 potential negative impacts to offshore water quality.
15 I can tell you from our Project that we've taken very
16 prudent steps to mitigate impacts to water quality.

17 Q Well, you weren't referring to any
18 long-term studies, is that correct?

19 PRESIDING OFFICER HELLER: Ms. Bolomet, I
20 think you've asked that question about four times.

21 MS. BOLOMET: But did he answer it? He
22 keeps saying all these other things. I want to know a
23 specific yes or no because I'd like to look at the
24 study.

25 PRESIDING OFFICER HELLER: The question has

1 been asked and answered. Please move on to your next
2 point.

3 Q (By Ms. Bolomet): Okay. Would you agree
4 that everyday small contributions of pollutants like
5 washing cars, using oils from streets, fertilizers
6 coming off of yards would be more toxic than perhaps a
7 storm that would come every few years to the Mala Bay
8 area?

9 A I think I've testified that the
10 conventional wisdom as well as the county rules, other
11 rules talk about trying to mitigate the impact from
12 lower volume higher frequency storms. So that means
13 the types of rainfall events that occur maybe a couple
14 times a year, that's the events that are the important
15 ones to mitigate.

16 Those are the ones that can have the
17 problems because you get buildup of potential
18 pollutants on the road or in the driveways of, you
19 know, a quarter inch rain comes and potentially
20 flushes it into the ocean.

21 Those are the types of storms that
22 generally you're worried more about when you're
23 dealing with water quality as opposed to the large
24 storm events that you're also concerned about.

25 But in terms of water quality you are

1 looking at the more frequent storms. And I think I've
2 gone over the fact that our facility can accommodate
3 all of the water from those more frequent, lower
4 volume storms.

5 MS. BOLOMET: Okay. That's all the
6 questions I have.

7 PRESIDING OFFICER HELLER: Mr. Geiger, any
8 redirect?

9 MR. GEIGER: No. No redirect. (audience
10 sighing and laughing and applause)

11 PRESIDING OFFICER HELLER: I hesitate to
12 ask but do any of the parties have any essential
13 re-cross questions?

14 MR. GIROUX: Not from the County.

15 MR. YEE: No.

16 MS. LINCOLN: No.

17 MS. BOLOMET: No.

18 PRESIDING OFFICER HELLER: Commissioners,
19 any questions for this witness?

20 COMMISSIONER INOUYE: I have one real
21 quick. Figure 4 Exhibit 7 is your subdivision plan.

22 THE WITNESS: Our subdivision plan?

23 COMMISSIONER INOUYE: Yeah.

24 THE WITNESS: Okay.

25 COMMISSIONER INOUYE: Can you give us the

1 approximate location of where the libation stone is on
2 that? Because I've seen something that's really...

3 THE WITNESS: Okay. Do you have lot
4 numbers on figure 4? Are there parcel numbers?

5 COMMISSIONER INOUYE: Yes.

6 THE WITNESS: Okay. So the approximate
7 location would be right around where, I'd say right
8 around lot 56.

9 COMMISSIONER INOUYE: Okay. Thank you.

10 THE WITNESS: You're welcome.

11 PRESIDING OFFICER HELLER: Anything
12 further?

13 COMMISSIONER INOUYE: No, that's all.

14 PRESIDING OFFICER HELLER: I had a quick
15 question.

16 THE WITNESS: Yes.

17 PRESIDING OFFICER HELLER: You mentioned
18 that in connection with going out to look at the
19 libation stone and doing the follow up digging, that
20 someone from SHPD had indicated that no further action
21 was required in your view. And you said you thought
22 there was a letter to that effect?

23 THE WITNESS: Yes.

24 PRESIDING OFFICER HELLER: Is that
25 something that you'd be willing to provide to us?

1 MR. GEIGER: If and when we get it, yes,
2 we'd happy to provide it to you.

3 PRESIDING OFFICER HELLER: Okay. I'd
4 simply like to ask that if -- *if* you get a letter from
5 SHPD confirming their position no further action is
6 required, that you submit a copy to us.

7 MR. GEIGER: We will be happy to supplement
8 the record.

9 PRESIDING OFFICER HELLER: All right. That
10 brings the evidentiary portion of this hearing to a
11 close. Given that the parties have completed their
12 presentations before the Commission, I declare the
13 evidentiary proceeding to be completed subject to the
14 receipt of any follow-up reports or answers to any
15 questions that may have been requested during the
16 course of this hearing.

17 I direct that the parties draft their
18 individual proposed findings of fact, conclusions of
19 law and decision and order based upon the record in
20 this docket, and serve of the same upon each other and
21 the Commission.

22 The proposed findings of fact must
23 reference the witness as well as the date, page and
24 line numbers of the transcript to identify your facts.
25 In addition to the transcript, the exhibits in

1 evidence should also be referenced. Please contact
2 Ms. Hackett, our reporter, to arrange for copies of
3 transcripts.

4 I note for the parties that the Commission
5 has standard conditions which we would like the
6 parties to consider in preparing the proposed orders.
7 A copy of the standard conditions may be obtained from
8 the Commission staff.

9 Of course, should any of the parties desire
10 to stipulate to any portion, or all of the findings of
11 fact, conclusions of law and decision and order they
12 are encouraged to do so.

13 I'd also like to encourage the parties, to
14 the extent they can, to submit joint proposed findings
15 or joint proposed conclusions to the extent you're in
16 agreement.

17 Regardless of whether the parties pursue a
18 partial or fully stipulated order, I direct that each
19 party file its proposal with the Commission and serve
20 copies on all of the other parties no later than the
21 close of business on October 31, 2012.

22 All comments or objections to the parties'
23 respective proposals shall be filed with the
24 Commission and served upon the other parties no later
25 than the close of business on November 14, 2012.

1 Any responses to the objections must be
2 filed with the Commission and served on the other
3 parties no later than the close of business on
4 November 21, 2012.

5 I would ask the parties to consult with
6 staff early in the process to ensure that any
7 technical or non-substantive formatting protocols
8 observed by the Commission are adhered to. Oral
9 argument will be scheduled after receipt of the
10 parties' respective filings.

11 Are there any questions with respect to our
12 post-hearings procedures? Mr. Yee.

13 MR. YEE: The Office of Planning would
14 request that we be waived from the requirement to
15 submit a D&O on 10-31. And we would only be
16 submitting a comments or objections on November 14th,
17 2012. We say that because we anticipate being in
18 agreement on almost all provisions of the D&O.

19 So it would not be helpful, I think, to the
20 Commission or efficient for the parties to submit a
21 separate D&O between Petitioner and the Office of
22 Planning.

23 PRESIDING OFFICER HELLER: Do any of the
24 other parties object to that request?

25 MR. GEIGER: No objection.

1 MR. GIROUX: No objection.

2 PRESIDING OFFICER HELLER: Ms. Lincoln?

3 MS. LINCOLN: No objection.

4 MS. BOLOMET: No objection.

5 PRESIDING OFFICER HELLER: Okay. Request
6 is granted.

7 MR. YEE: We'd also ask if there be a time
8 limit on the time of the oral argument.

9 PRESIDING OFFICER HELLER: That's a good
10 suggestion. I'd like to encourage all the parties to
11 keep it to about 15 or 20 minutes. But we'll set an
12 absolute limit of 25 minutes.

13 MR. GEIGER: Thank you.

14 MR. YEE: Thank you.

15 MS. BOLOMET: When is that going to be?

16 PRESIDING OFFICER HELLER: The oral
17 argument will be scheduled after we've received all of
18 the written filings.

19 MS. BOLOMET: And would that require flying
20 back to Maui for the oral arguments?

21 PRESIDING OFFICER HELLER: Yes. the oral
22 arguments will be scheduled here.

23 MS. BOLOMET: Would the vote come right
24 after that? Or would there be a timeframe?

25 PRESIDING OFFICER HELLER: Normally there

1 are deliberations at the conclusion of the arguments
2 because we would already have your proposed findings
3 and conclusions at that point. Any further questions
4 regarding our procedures?

5 MR. GEIGER: None from Petitioner.

6 MR. GIROUX: We're good.

7 MR. YEE: Nothing further.

8 MS. LINCOLN: Just one for me. Maybe Scott
9 or Dan can answer it for me. If I don't have access
10 to the transcripts, then if it's not financially
11 feasible for me, then how can I reference for findings
12 of facts? It's not available online.

13 PRESIDING OFFICER HELLER: No.

14 MS. LINCOLN: I don't live on O'ahu.

15 PRESIDING OFFICER HELLER: Part of the
16 burden that you accepted by becoming an intervenor is
17 compliance with the rules and procedures of the
18 Commission.

19 MS. LINCOLN: Okay.

20 PRESIDING OFFICER HELLER: That concludes
21 today's proceedings on this docket. Hold on for just
22 a second. Just note on the agenda for today we had an
23 item for discussion on proposed amendments to Land Use
24 Commission Administrative Rules. We don't have time
25 to get to that today. And I don't think there's

1 anybody here at the moment who was planning to testify
2 about the amendments to the rules, am I correct? Is
3 there anyone in the room who came today to testify
4 about proposed amendments to our Administrative Rules?
5 Okay. Hearing none we will reschedule that to a later
6 time. Motion to adjourn?

7 COMMISSIONER BIGA: So moved.

8 COMMISSIONER INOUYE: Second.

9 PRESIDING OFFICER HELLER: Any opposed?

10 We're adjourned.

11 (The proceedings were adjourned at 1:40 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 5th day of October 2012

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 _____ 2012

HOLLY M. HACKETT, HI CSR #130, RPR
Certified Shorthand Reporter