

LAND USE COMMISSION MEETING

HELD ON DECEMBER 7, 2015

COMMENCING AT 10:18 A.M.

MAUI ARTS & CULTURAL CENTER

MCCOY STUDIO THEATER

ONE CAMERON WAY

KAHULUI, MAUI, HAWAI'I 96732

VOLUME 2

A10-786

LOWALU TOWN LLC

and

LOWALU EKOLU LLC

Action to consider acceptance of the FEIS

Before: Jean Marie McManus, CSR #156

1 APPEARANCES:

2 EDMUND ACZON, Chairperson
3 JONATHAN SCHEUER, VICE CHAIR
4 ARNOLD D. WONG, VICE CHAIR

5 COMMISSIONERS:

6 NANCY CABRAL
7 AARON MAHI
8 LINDA ESTES
9 KENT HIRANAGA

10 DIANE ERICKSON, ESQ.
11 Deputy District Attorney

12 STAFF:

13 DANIEL ORODENKER, Executive Officer
14 SCOTT A.K. DERRICKSON, AICP-Planner
15 RILEY K. HAKODA, Planner/Chief Clerk

16 BRYAN YEE, ESQ.
17 Deputy Attorney General
18 RODNEY FUNAKOSHI, Office of Planning

19 For the State of Hawaii
20 Office of Planning

21 RICHELLE THOMSON, ESQ.
22 Deputy Corporation Counsel
23 WILLIAM SPENCE, Planning Director

24 For the County of Maui

25 JENNIFER LIM, ESQ.
ONAONA THOENE, ESQ.
Carlsmith Ball, LLP
ASB Tower, Suite 2100
1001 Bishop Street
Honolulu, Hawaii 96813

For Petitioner

BEFORE THE STATE LAND USE COMMISSION

STATE OF HAWAII

In the Matter of the) Docket No. A10-786
Petition of)
)
)
OLOWALU TOWN LLC and)
OLOWALU EKOLU LLC)
)
To Amend the Land Use)
District Boundary of) VOLUME 2
Certain Lands Situated at)
Olowalu, Island of Maui,)
State of Hawaii,)
Consisting of)
Approximately 320 Acres)
From the Agricultural)
District to the Rural and)
Urban Districts, Portions)
Of Tax Map Key Nos. (2))
4-8-003:084, 098, 099, 100)
101, 102, 103, 104, 105,)
106, 107, 108, 109, 110,)
111, 112, 113, 114, 115,)
116, 117, 118 and 124.)
-----)

ACTION HEARING

Was held on December 7, 2015, commencing at 10:18
a.m. at the Maui Arts & Cultural Center, McCoy Studio
Theater, One Cameron Way, Kahului, Maui, Hawaii
96732.

Before: Jean Marie McManus, CSR #156

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1 CHAIRPERSON ACZON: Good morning, this is
2 the December 7th, 2015 Land Use Commissioner Meeting.

3 The first order of business is the adoption
4 of the November 18-19th, 2015 minutes.

5 Any corrections or comments on that? If
6 not, is there a motion to adopt the minutes?

7 COMMISSIONER MAHI: So moved.

8 COMMISSIONER ESTES: Second.

9 CHAIRPERSON ACZON: It's been moved by
10 Commissioner Mahi AND seconded by Commissioner Estes
11 to adopt the minutes. All in favor say "aye".
12 Opposed?

13 The next agenda is the tentative meeting
14 schedule. Mr. Orodener.

15 EXECUTIVE OFFICER: Thank you, Mr. Chair.
16 December 10th, we will be back here at the Maui Arts
17 & Cultural Center in this room to adopt any order
18 that may come out of these proceedings.

19 Also for Status Report of Ka'ono'ulu Ranch.
20 January 13th and 14th on Kauai. January 13th for
21 Special Permit Hearing on Kauai Solar Project,
22 January 14th, here on Maui again for site visit to
23 Ma'alaea Plantation, departing from Courtyard
24 Marriott, Kahului, and hearing on motions to
25 intervene on that matter.

1 January 27th we will be also here on Kauai
2 for Special Permit Adoption Order. We're actually
3 going to do that video conference.

4 February 13th and 14 reserved for 201 H
5 Ma'alaea Plantation District Boundary Amendment
6 matter. As is February 24th and 25th.

7 Also for Oahu, Oahu for Ko'olina Motion
8 consideration.

9 March forward is to be announced.

10 CHAIRPERSON ACZON: Any questions on the
11 schedule? Thank you, Mr. Orodenger.

12 This is an action meeting on Docket No.
13 A10-786 Olowalu Town LLC, Olowalu Ekolu LLC to
14 consider the acceptance of the Final Environmental
15 Impact Statement.

16 Will the parties please identify
17 themselves?

18 MS. LIM: Good morning, Chair,
19 Commissioners, this is Jennifer Lim representing the
20 Applicant Olowalu Town and Olowalu Ekolu.

21 To my right is Onaona Thoene. And I'd also
22 like to acknowledge that to my left is Mr. Bill
23 Frampton, to Ms. Thoene's right is Dave Ward
24 representative of the Applicant. And, of course, in
25 the audience we have several of the consultants who

1 prepared reports on the EIS. I'll introduce them
2 later.

3 CHAIRPERSON ACZON: County.

4 MS. THOMSON: Richelle Thomson, Deputy
5 Corporation Counsel for County of Maui.

6 MR. SPENCE: I'm William Spence, Planning
7 Director for County of Maui.

8 MR. YEE: Good morning. Deputy Attorney
9 General Bryan Yee. With me is Rodney Funakoshi from
10 Office of Planning.

11 CHAIRPERSON ACZON: Thank you.

12 Let me update the recent record in this
13 docket.

14 On November 18th and 19, 2015, the
15 Commission met on Maui to consider the acceptance of
16 the Final EIS.

17 On November 18th, 2015, the Commission
18 received Petitioner's Request for Extension of the
19 30-day Acceptance Period under HAR 11-200-23(d). The
20 Commission concluded the Public Testimony portion of
21 the Agenda and also received additional written
22 testimony and a Petition regarding the acceptance of
23 the FEIS from individuals and organizations whose
24 names are on file.

25 On November 19th, 2015, the Commission

1 considered and granted Petitioner's Request for
2 Extension of the 30-day Acceptance period and
3 determined that a hearing on the acceptance of the
4 FEIS would be conducted prior to December 10, 2015.

5 On November 20th, 2015, the Commission
6 mailed a letter to OEQC advising it of the 15-day
7 extension.

8 From November 18th through December 6th,
9 the Commission received additional written testimony
10 on the EIS from individuals and organizations whose
11 names are on file.

12 On November 30th, 2015, the LUC mailed the
13 December 7, 2015 agenda notice to the Parties, and to
14 individuals and entities on the Statewide and Maui
15 County mailing lists.

16 On December 3rd, 2015 the Commission
17 received Maui County's Comments and Concerns
18 Regarding Docket No. A10-786 to Consider Acceptance
19 of a FEIS.

20 Let me briefly describe our procedures for
21 today on this docket.

22 First, Petitioner will make its
23 presentation.

24 MS. LIM: Thank you, Chair. In reviewing
25 the documents that have been filed, I don't believe I

1 heard you mention the Applicant's December 4th letter
2 that we filed with the Commission responding to the
3 questions that the Commissioners asked on the meeting
4 on the 19th.

5 I wanted to note that for the record.

6 CHAIRPERSON ACZON: I believe we saw that.

7 MS. LIM: Thank you.

8 The December 4th letter, we just saw it on
9 Friday.

10 CHAIRPERSON ACZON: I saw that.

11 MS. LIM: Thank you.

12 CHAIRPERSON ACZON: After the completion of
13 the Petitioner's presentation, we will receive any
14 comments from the County of Maui Planning Department
15 and the State Office of Planning on Petitioner's
16 Final EIS.

17 Those individuals desiring to provide public
18 testimony will have the opportunity to do so after
19 the Petitioner, the County of Maui and the State
20 Office of Planning have had the opportunity to make
21 their presentations to the Commission.

22 The reason for setting the public testimony
23 after the Petitioner, County and OP presentations is
24 to allow the Commission to make progress in hearing
25 the Petitioner's evidence today, since the Commission

1 has a limited time to hear this matter.

2 When public testimony begins, I will call
3 for those individuals desiring to provide public
4 testimony to identify themselves. All such
5 individuals will be called in turn to our witness box
6 where they will be sworn in prior to their testimony.

7 The public testimony today should be
8 limited to the Petitioner's Final EIS and should not
9 go into the merits of the petition for district
10 boundary amendment. Prior testimony on this matter
11 is already part of the record and does not need to be
12 repeated.

13 Also, if you have written testimony or
14 other documents you would like to submit, please give
15 them to the Chief Clerk, Riley Hakoda, so they can be
16 file-stamped and made part of the record.

17 In addition, the three-minute time limit on
18 testimony will be enforced. Don't feel that you have
19 to use the three minutes.

20 After completion of the public testimony
21 portion of the proceedings, the Commission will then
22 conduct its deliberations.

23 The Chair would like to remind the parties
24 and the public that per HAR 11-200-23(d) - In the
25 event that the agency fails to make a determination

1 of acceptance or non-acceptance for the statement
2 within 30 days of the receipt of the Final EIS, or
3 within the 15-day extension period, then the
4 statement shall be deemed accepted. The 15-day
5 extension expires on December 10th, 2015, Thursday.

6 Chair would also note for the parties and
7 the public that from time to time will be calling for
8 a short break.

9 Are there any questions in our procedure
10 for today?

11 Good morning, Ms. Lim, will you be
12 reserving any time for rebuttal of comments from
13 County or OP?

14 MS. LIM: I would like the opportunity to
15 provide closing remarks at the completion of our
16 presentation of our witnesses, and also to have an
17 opportunity to provide rebuttal to any comments that
18 Mr. Yee or Ms. Thomson may have.

19 In terms of reserving time, I'll reserving
20 five minutes for rebuttal. And may I assume that I
21 will have 15 minutes for closing?

22 CHAIRPERSON ACZON: Sure.

23 MS. LIM: Thank you.

24 CHAIRPERSON ACZON: Please make your
25 presentation.

1 MS. LIM: Thank you. As a starting point,
2 if I may, I want to just lay out the order of
3 witnesses and let you all know the number of
4 witnesses that we have.

5 We certainly didn't bring every consultant
6 who prepared each one of the numerous reports, but --

7 CHAIRPERSON ACZON: Thank you.

8 MS. LIM: But we did try to bring in the
9 ones that we thought, based on questioning and
10 general knowledge, would be of most concern. I will
11 mention their names and call them up.

12 First, Mr. Michael Manekiyo, who is the
13 planner and the gentleman who signed the EIS
14 certifying that, as far as he's concerned, it fully
15 met the legal requirements.

16 Tanya Lee-Greig will address historic
17 archeological and cultural issues.

18 Craig Levken who is an engineer who will be
19 addressing stormwater quality issues and also
20 wastewater treatment plant issues.

21 Mark Matsuda, a civil engineer who will be
22 addressing all matters falling under engineering,
23 particularly best management practices, construction
24 and matters along that line.

25 Tom Nance, who will address water

1 resources, meaning the water system improvement to
2 the existing water system assessed under the EIS.

3 Steve Dollar, who you may recall, was not
4 available at the last meeting. We are very grateful
5 that we have an opportunity to come back today. He's
6 is the marine resource and he will discuss impacts to
7 the reef or lack thereof.

8 Roger Dyar, who prepared the traffic
9 report; and then finally, Mr. Bill Frampton, who is
10 the Applicant would like to offer some closing
11 comments to the Commission, and make himself
12 available to questions.

13 So in light of all of these witnesses, I
14 would like to ask the Commission's permission to
15 allow both Ms. Thoene and myself to alternate asking
16 questions of witnesses. Only one of us will speak to
17 any one particular witness, but we're going to trade
18 back and forth.

19 CHAIRPERSON ACZON: Give us some idea so we
20 can schedule this, how long do you think it's going
21 to take for your presentation?

22 MS. LIM: I would say for each one of our
23 witnesses, about a half hour. Of course, if the
24 Commissioners have a lot of questions, or the others
25 have a lot of questions, it could go longer.

1 I'd say the direct questioning from us
2 would take about a half hour.

3 So we would like to call Mr. Michael
4 Manekiyo, please.

5 CHAIRPERSON ACZON: Do you swear that your
6 testimony that you're about to give will be the
7 truth?

8 THE WITNESS: Yes.

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

13 CHAIRPERSON ACZON: State your name and
14 address, and you can proceed.

15 THE WITNESS: My name is Michael Munekiyo.
16 My address is 305 High Street, Wailuku.

17 CHAIRPERSON ACZON: Please proceed.

18 DIRECT EXAMINATION

19 BY MS. LIM:

20 Q Good morning, Mike.

21 A Good morning.

22 Q At the risk of stating the obvious, why are
23 you here today? What role did you have in this
24 Environmental Impact Statement?

25 A I oversaw the preparation and processing of

1 the Environmental Impact Statement process.

2 CHAIRPERSON ACZON: Can I interrupt for a
3 minute? I would like to establish protocol for this
4 meeting for the benefit of the public.

5 This meeting will be conducted in
6 accordance to part one of Chapter 92 Hawaii Revised
7 Statutes, otherwise known as Sunshine Law. Sunshine
8 Law allows the public access to attend and
9 participate as public witnesses on matters relevant
10 to our agenda. Please, however, note that a lot of
11 public questions or interruptions during our
12 proceedings -- if members of the audience have
13 concerns or questions regarding our proceeding,
14 please direct them to LUC staff, primarily our Chief
15 Clerk, Riley, and he will communicate to the Chair
16 and all the Commissioners at the earliest time.

17 It is my expectation as Chair that all
18 members of the public in attendance adhere to these
19 proceedings in order that the Commissioners can
20 devote its full attention to the matters at hand.

21 Failure to adhere will result in the matter
22 to be found out of order per our rules, and the
23 presiding executive officer may rule that any person
24 who willfully disturbs the meeting or other
25 proceedings before the Commission is out of order.

1 Mahalo in advance for your corporation.

2 Continue, Ms. Lim. You can proceed.

3 MS. LIM: Thank you.

4 Q Mike, as you were saying, you prepared or
5 oversaw preparation of the EIS?

6 A Yes, I did.

7 Q Have you worked on any EIS's in the past?

8 A Over the course of my working career,
9 approximately 15 to 20 EIS documents.

10 Q And what about Chapter 323 documents in
11 general?

12 A In general, if we have environmental
13 impact -- I'm sorry, Environmental Assessments and
14 EIS documents, I would say roughly, 250 documents.

15 Q Thank you.

16 What about the NEPA documents?

17 A NEPA documents, I've worked on about 15 to
18 20.

19 Q So in your opinion, the Final EIS that was
20 submitted to the Commission, do you believe it meets
21 the contact requirements under Hawaii Administrative
22 Rule 11-200-17 and 11-200-23?

23 A I do.

24 Q Can you please describe to the
25 Commissioners briefly the process that was followed

1 in preparing this Final EIS?

2 A Yes.

3 The community based planning process for
4 the project started in 2005, and that was -- that
5 allowed for a full public engagement in the planning
6 for the community.

7 That was followed by the preparation of the
8 343 EIS process in 2010. And that EIS process began
9 with the preparation of an Environmental Impact
10 Statement Preparation Notice in 2010, which was filed
11 with the Land Use Commission, and ultimately
12 published in the OEQC Environmental Notice in July of
13 2010.

14 After the EIS prep notice was prepared, of
15 course, there was an opportunity for public comment,
16 agency comments, and those comments were received.

17 And using those comments as a scoping tool,
18 the Draft EIS was prepared. The Draft EIS was
19 completed in early 2012 with all of the studies that
20 we felt were appropriate at that time. And was filed
21 with the Land Use Commission for review, approval.
22 And ultimately it was published in the OEQC
23 Environmental Notice in March of 2012.

24 Again, we went through the public comment
25 protocol. Distribution of the document was made to

1 federal, state, county agencies, as well as
2 organizations and individuals. We received, I think
3 during the EIS process, about 35 comments which I
4 think would be deemed substantive.

5 We addressed those comments. We prepared
6 revisions to the EIS document to address those
7 comments. And the EIS then was completed and filed
8 with the Land Use Commission on October 26th of this
9 year.

10 Q Thank you, Mike.

11 To give the Commissioners some context on
12 the project -- and, again, this is not a hearing
13 about the project, it's just a hearing about the
14 sufficiency of the EIS -- but could you describe a
15 little bit the location of the project, what the
16 proposed action is that's being assessed, and some
17 details about the project?

18 A Just maybe a general overview of the
19 project. It is located in Olowalu. And the Olowalu
20 region, just from a geographic standpoint, is located
21 about four miles South of Lahaina Town. The area
22 encompasses about 636 acres.

23 Olowalu Town historically, as many of us
24 understand was sugar plantation town, and when
25 Pioneer Mill ceased operations in 1999, lands were

1 either left fallow, or some lands were actually put
2 to diversified agriculture uses.

3 There were a couple of subdivisions
4 implemented, the Olowalu Mauka, a 14 lot subdivision.
5 And Olowalu what Makai subdivision, a seven lot
6 subdivision. So since the termination of sugar, some
7 diversified ag, couple of subdivisions, but to a
8 large extent lands have been left fallow.

9 The project itself calls for a new town
10 which would include residential components,
11 agricultural lots, rural lots, what the document
12 refers to as large town home lots, medium town lots,
13 and small town lots, as well as side yard lots,
14 townhouses and apartments, all meant to provide a mix
15 of land use which would help to satisfy housing need
16 for Maui families.

17 In the document we note that there would be
18 up to 1,500 units. In addition to the residential
19 component, there are, of course, parks and open space
20 areas for public amenities, such as school, fire
21 station, so forth, and a commercial land use
22 allocation, which is identified as 300,000 to 375,000
23 square feet of space. That's generally the project.

24 One component I should mention is the
25 proposed realignment of Honoapiilani Highway from its

1 current coastal alignment to a more mauka alignment,
2 and that would allow for, of course, providing some
3 traffic mitigation measure, as well as address some
4 of the issues that the community is concerned with
5 respect to coastal erosion.

6 Q Mike, you mentioned 1500 residential units.
7 There's been questions about ohana units, and
8 certainly the EIS mentions ohana units, or with
9 accessory dwelling units.

10 Can you explain to the Commission if the
11 1500 units includes ohana or is it 1500 plus a
12 certain number of ohana units?

13 A Maybe I can clarify by going back to what
14 the Maui Island Plan provides for 1500 dwelling
15 units. Dwelling units are deemed units which have
16 independent utility in terms of having its own
17 kitchen, as an example.

18 So really the studies and the EIS was based
19 on a total of 1,500 units which would include with
20 accessory dwellings.

21 Q So just to make sure that point is really,
22 really clear.

23 If there's one lot, and that lot has a
24 primary residence and with accessory or ohana
25 residence, how many residential units are on that

1 lot?

2 A One.

3 Q If you recall, when there are -- when there
4 are two separate units, each with their own kitchen,
5 maybe that's how I should clarify.

6 When it's two separate kitchens, then
7 there's two dwelling units on the lot?

8 A That's correct.

9 Q I'm sorry, this is such an important point
10 I just want to make sure that I'm not leaving any
11 confusion here.

12 So the 1500 units that were assessed under
13 the EIS, that means that there are possibly 1000
14 primary units and 500 ohana units, period? No more
15 than 1500 units, meaning dwellings of separate
16 kitchens assessed under this EIS; is that correct?

17 A Correct.

18 MS. LIM: I hope that point is clear
19 because the term "ohana" is used throughout the EIS.

20 Q You mentioned the relocation of the
21 highway, and maybe I think one of the best figures to
22 refer to is Figure 4 of the EIS.

23 Do you have that?

24 A I have it as 4 on the board.

25 Q Yeah, this is Figure 4 from the EIS. This

1 is what?

2 A Figure 4 is the depiction of the Master
3 Plan for the preferred alternative.

4 Q You mentioned, as is shown on Figure 4,
5 that the EIS assesses the impacts from relocating the
6 highway.

7 Now, we know the Mr. Dyar will discuss the
8 traffic impact, but I want to talk about other
9 possible impacts or other issues that may arise from
10 that.

11 So who owns the highway, Mike?

12 A The right-of-way is owned by the
13 Petitioner.

14 Q And who owns the existing highway?

15 A Existing highway is under the jurisdiction
16 of the State Department of Transportation.

17 Q So the land where the Applicant is
18 proposing to place the relocated highway, that's
19 privately owned land?

20 A Yes.

21 Q Does the EIS in any way suggest that that
22 land falls under any kind of federal jurisdiction?

23 A It does not.

24 Q Are any federal funds discussed in the EIS
25 with respect to any topic, specifically with respect

1 to relocating the highway from its current makai
2 alignment to the proposed more mauka alignment?

3 A There is no reference to federal funding in
4 the EIS.

5 Q Are there any federal permits anticipated
6 relating to the highway?

7 A At this point we really can't say if there
8 are going to be permits, but certainly there is no
9 representation in the document that makes reference
10 to federal aid.

11 Q So just to make it very clear. When you
12 prepared this EIS, was it your understanding that
13 there would be any federal involvement whatsoever
14 relating to the highway?

15 A Not when we prepared the EIS document, no,
16 no assumption.

17 Q Going on with that point. In the EIS, as
18 you know -- I can identify the exact appendices --
19 but in the EIS there is an analysis that Robert Hobdy
20 prepared with a preliminary idea of where water to
21 the US, United States jurisdictional waters may be
22 located. And this is Appendix F-1 in the EIS.

23 Are you familiar with that study?

24 A I am.

25 Q So that it's called Aquatic Resources

1 Survey. Can you explain, please, why that survey was
2 done and also what it means?

3 A That survey was done in response to a
4 comment letter received from the United States
5 Department of Army on the EIS preparation notice
6 document. And in the army's comment letter, they
7 recommended that, as part of the EIS preparation
8 phase, that we identify potential waters of the
9 United States.

10 And so Mr. Hobdy did that for the document.
11 And essentially what he did was he went to the site,
12 identified potential areas where waters could be
13 classified as waters of the United States, and
14 completed the Department of Army's forms which
15 documents criteria which would facilitate the review
16 on whether or not that particular water body is
17 indeed water of the United States.

18 Those forms are all part of Appendix F-1.

19 Q Was the jurisdictional determination
20 formally submitted to the Department of the Army?

21 A There was no formal jurisdictional
22 determination request submitted to the army. What
23 was submitted to the army was the Draft EIS, and, of
24 course, in the Draft EIS was Mr. Hobby's Aquatic
25 Resources Survey which included his analysis of the

1 potential water bodies which may be deemed waters of
2 the United States. But there was no formal request,
3 nor did we get any response from the Army Department
4 on that particular study.

5 Q Can you explain, please, why you have
6 prepared, or have Mr. Hobdy prepared those
7 determination, or do that review at this stage of the
8 EIS process?

9 A From an EIS disclosure standpoint, I think
10 it's important to understand at least from an agency
11 and public understanding standpoint, that there may
12 be waters, water bodies within the project area which
13 might be sensitive, and which might be subject to
14 permitting.

15 And I think that was a very practical and
16 useful study to allow us to understand where those
17 bodies are.

18 Again, it's more for future planning
19 purposes that we need to be aware that there areas
20 that could potentially be deemed by the Army as under
21 their jurisdiction.

22 Q Why would you want to know that at the
23 planning stage, if you're not actually seeking a
24 permit? What's the point?

25 A As the planning for the project progresses,

1 of course, plans become more specific and detailed.
2 There needs to be an understanding what some of the
3 constraints are as we get into more detailed studies,
4 and certainly understanding where sensitive water
5 bodies are located on the property is important as we
6 continue the planning process.

7 Q If you have an approximate idea of where
8 waters may be located. At this planning stage, does
9 that allow the opportunity to avoid those waters?

10 A I think at this early planning stage, we
11 really haven't defined specific locations of housing
12 units, as an example, nor do we know specifically
13 where infrastructure components might be located,
14 but, again, just to reiterate what I said previously,
15 as we progress through the planning process and plans
16 are refined, we understand where the sensitive
17 constraints are. Certainly that would give us an
18 opportunity to avoid those areas.

19 Q You know, Mike, when I looked at Chapter 9
20 of the EIS list of permits and approvals, and you
21 broke it down into federal, state and county permits.
22 And, of course, listing permits and approvals as
23 requirements of the EIS law.

24 So I see for State of Hawaii you indicate
25 District Boundary Amendment, period, no equivocation

1 on that. Coastal Zone Management consistency, that's
2 applicable.

3 When I look at Section 401, Water Quality
4 Certification it says: "Applicable". When I look at
5 the federal, it says: Jurisdictional Determination
6 by Department of Army. Well that's not applicable.
7 But then the second one, Department of Army permit
8 says: "Applicable".

9 So can you explain to the Commissioners,
10 please, what this list of permits and approvals mean?
11 Why are some as applicable, and others are more
12 affirmatively stated?

13 A Some of the regulatory process or permits
14 that are identified in Chapter 9 do not -- we
15 wouldn't understand the specifics of whether or not
16 they would be required until we progress further into
17 the planning process, as I mentioned.

18 So if it is that, we certainly would get a
19 formal jurisdictional determination as we get closer
20 into design, but whether or not one would need an
21 army permit, would depend on whether or not there
22 could be potential impact to a water body.

23 With respect to 401 and Coastal Zone
24 Management Section 401 approval and Coastal Zone
25 Management approval by Office of Planning are really

1 an outcome of the Department of Army Permit.

2 In other words, if we follow Department of
3 Army Permit, then the other two permits would be
4 required.

5 So at this point we really don't know. The
6 hope is that we could really come up with a design
7 that uses the alternative.

8 Q I wanted to get clarification on why
9 certain permits were applicable. We've kind of
10 beaten that issue, so I'm going to move on.

11 Can you explain the difference, or that
12 ohana units and primary units, each one counts as a
13 unit. But I would like to talk about the number of
14 affordable housing units as discussed in the EIS.

15 For instance, page 31, there is a
16 discussion of the number of affordable housing units.

17 Do you recall the percentage?

18 A I recall in the Final EIS what the document
19 states is that the Applicant would comply with the
20 Maui of County's affordable housing policy, and
21 that's Chapter 2.96. And that the current
22 requirement under the Maui County's policy is
23 25 percent affordable.

24 But I think we also represent that that's
25 just what the county requires, and the Applicant is

1 certainly seeking to provide more than that minimum.

2 Q If I could, please, provide Mr. Munekiyo a
3 paper in front of him, may I provide him page 31 from
4 the EIS?

5 CHAIRPERSON ACZON: Sure.

6 Q (By Ms. Lim): So just to clarify, there
7 was some suggestions that there was a bait and switch
8 on the number of affordable units.

9 So is the Applicant going to provide more
10 affordable units than what the county code currently
11 requires?

12 A What we stated here on page 31 is that the
13 Applicants are committed to providing affordable
14 housing beyond the required 25 percent, yes.

15 Q So the exact number is uncertain. But with
16 respect to the nature of the project, is there any
17 suggestion in the EIS that this project is made for
18 rich out of state or international buyers?

19 A When you look at the product types, and
20 those product types are listed on Table 2 in Chapter
21 1, there are diverse mix of housing types from larger
22 two-acre ag lots, one-half acre rural lots, but the
23 majority of the residential units are reserved for a
24 product which would be more in line with what might
25 be considered work force housing type of products.

1 We have medium lot products, small lot
2 products, side yard products, which are really units
3 constructed on smaller lots. I think on the side
4 yard product, we cite minimum lot size of 2400 square
5 feet. Of course there are town homes and apartments.

6 So when you look at the project overall,
7 and the product mix, and really the objective of the
8 Applicants, the idea is to provide units which really
9 fit in with the income character of our Maui
10 residents.

11 Q I'm going to wrap up with a few questions
12 that we will try to move through more quickly.

13 In the hotel plan, does the EIS discuss a
14 hotel being built within Olowalu Town Master Plan?

15 A In Chapter 1 we do describe that part of
16 the plan could include larger units. And I think the
17 intent here is really to provide facilities which
18 more resemble inns, a small scale type of lodging
19 facility.

20 And Mr. Dyar can probably clarify. He did
21 assume a small amount of hotel units in his traffic
22 study. But, again, it's not of an a nature of resort
23 of type of facility, more small town boutique.

24 Q So this study, because you oversaw the
25 preparation, didn't assess the impact of doing a

1 resort or large hotel?

2 A In our alternatives chapter, we do mention
3 the resort residential alternative as part of our
4 alternatives analysis. But, you know, again, that
5 really wasn't in line with what the Applicants are
6 hoping to provide in terms of housing for Maui's
7 families.

8 Q Affordable is what the consultant study
9 said in their assessment?

10 A Sure.

11 Q Can you talk briefly about schools? Where
12 will the children who live in Olowalu Town, where are
13 they going to school?

14 A The Master Plan sets aside areas for what
15 is referred to as public amenities, and these are
16 really public facilities, whether they be schools,
17 fire stations, but I think there is opportunities to
18 provide educational facilities.

19 Initially as the project is in its early
20 stages, of course, the children who reside in Olowalu
21 would need to attend schools in Lahaina. As the
22 project matures and as demand warrants, I think there
23 is that opportunity to provide an education facility
24 within the boundaries of the Master Plan itself.

25 Q Is the Master Plan within an existing

1 Department of Education Impact B District?

2 A There is a West Maui Impact B District
3 established, and so the applicants would need to
4 comply with those requirements.

5 Q Turning now to shoreline access, again, I
6 do want to move through this part quickly, but there
7 has been lots of concerns about how shoreline access
8 may have been described in the EIS.

9 Certainly on page 74, discussion of
10 shoreline access. Can you explain, based on your
11 best recollection, to the Commissioners whether
12 shoreline access will be provided should this project
13 go through and how it was assessed in the EIS?

14 A First of all, what we recognize in the EIS
15 document is that under existing conditions, there is
16 a government beach reserve which spans a good portion
17 of the Olowalu coast.

18 There are some breaks in the government
19 beach reserve, so it's not a continuous lateral
20 access beach reserve that is provided. But for those
21 areas where there aren't government beach reserve
22 designation, those private properties have set aside
23 lateral easements.

24 So effectively there is a continuous
25 lateral access from north to south with respect to

1 mauka-makai access. The Master Plan of course
2 reflects a number of parks and open space areas makai
3 of the existing Honoapi'ilani Highway, and that would
4 allow for further access as well as development of
5 recreational facilities along the makai side of the
6 highway.

7 Q There were questions raised about whether
8 the project assessed impacts to surfers, which
9 implied that if this project were to be developed, it
10 would somehow cut off or impede access to the surf
11 break.

12 Can you address if that was discussed at
13 all in the EIS?

14 A It is. The surf spot I think that everyone
15 is referring to is located just to the north of
16 Olowalu. And if we refer to Figure 4, the Master
17 Plan, in that area we show a public open space park
18 area, and that would, of course, part of that would
19 be encompass -- at that future point would encompass
20 the right-of-way for existing Honoapi'ilani Highway.

21 And so what hasn't been defined are the
22 specific geometrics or configuration of how access to
23 the park would be provided, but certainly it would be
24 needed to be provided.

25 Parking areas, other recreational amenities

1 but I think with that park just adjacent to the surf
2 spot, there should be sufficient access provided for
3 recreational users.

4 Q Again, the access that people are afraid of
5 losing, is the existing highway climate on that far
6 Lahaina end is just showing green right now, and a
7 little piece where it says segment of existing
8 highway to be removed.

9 Who owns that segment of the existing
10 highway?

11 A That's part of the DOT's jurisdiction.

12 Q Does the Applicant actually have the
13 ability right now to turn -- to remove that segment
14 of the highway?

15 A Not right now.

16 Q So right now, although that's what is on
17 the concept plan, in fact, will there be impact to
18 the existing access until the DOT were to abandon or
19 sell or dispose of that property?

20 A No.

21 Q And if the project goes forward, and the
22 DOT were ever to abandon that property, would
23 there -- is the understanding in the EIS that parking
24 would be available within that area?

25 A The understanding is that for all parks,

1 park areas throughout the Master Plan, that those
2 would be accompanied by the associated amenities, and
3 whether they be parking, restrooms, picnic tables,
4 but certainly those would need to be provided as
5 required by our approximate playground ordinance, but
6 we are not at that point of defining the specifics of
7 what or where they may be.

8 Q Are rest rooms and showers for the existing
9 conditions --

10 A At the surf spot?

11 Q Correct.

12 A No.

13 Q Do you know -- maybe I'll just stop there
14 and see if anybody else has questions for you.

15 Thank you, Mike.

16 CHAIRPERSON ACZON: Commissioners, any
17 questions? County.

18 CROSS-EXAMINATION

19 BY MR. SPENCE:

20 Q Just for clarity. You mentioned hotel
21 units. I know that can't you clarify how many units
22 you're talking about. There is a description of an
23 inn or something like that.

24 Can you just say how many units were
25 envisioned?

1 A Again, at this point of the master planning
2 process, land uses and spatial allocations are fairly
3 conceptual. I think there were certain assumptions
4 that -- there needed to be certain reasonable
5 assumptions.

6 Again, I think this is something that Mr.
7 Dyar can address, but in his traffic study, for trip
8 generation purposes, I think 60 or 70 for these is a
9 reasonable assumption.

10 Q Thank you.

11 I do note in the traffic study note that in
12 the TIAR it does mention 58 units (inaudible). I
13 understand it's conceptual (inaudible) to put on the
14 record sort of a range that is envisioned or that is
15 not envisioned for resort.

16 A Yes.

17 CHAIRPERSON ACZON: OP.

18 CROSS-EXAMINATION

19 BY MR. YEE:

20 Q Just to clarify your discussion on the
21 accessory dwelling units, have you assumed in the EIS
22 maximum number of accessory dwelling units that would
23 be constructed on each site, each lots, or have you
24 calculated some percentage?

25 A Mr. Yee, could you repeat the question,

1 please?

2 Q Let's go back.

3 If I recall your testimony correctly, you
4 said only maximum of 1500 dwelling units on the site,
5 correct?

6 A Yes.

7 Q And you said that that number includes with
8 accessory dwelling units, correct?

9 A Yes.

10 Q When you did that calculation, are you
11 assuming that every lot will have a maximum number of
12 with accessory dwelling units in that 1500
13 calculation?

14 A No. Maybe I can just clarify the use of
15 the term with accessory dwelling units in the EIS
16 document is more of a zoning concept.

17 In other words, we acknowledge that there
18 could be with accessory dwelling units, and as we
19 progress through the entitlement phase, zoning code
20 issues would need to be clarified, and we would want
21 with accessory units to be part of certain kinds of
22 products.

23 But it's not necessarily that all
24 purchasers would choose to implement an accessory
25 dwelling unit. So we didn't do any type of

1 calculation. All we assumed was that 1500 would be
2 our maximum unit count for analysis purposes.

3 Q Is that then based upon the provision Maui
4 Island Plan rather than analysis of any lot
5 configuration then?

6 A I would say so, yes.

7 Q So then 1500 is simply the assumption
8 you're using for the project, rather than a
9 calculation of maximum potential use?

10 A That's correct.

11 MR. YEE: Thank you. Nothing further.

12 CHAIRPERSON ACZON: Commissioners?
13 Commissioner Estes.

14 COMMISSIONER ESTES: I'm interested in the
15 work force housing. And I wonder just what kind of
16 occupations do you see making up the work force
17 that's going to be housed there?

18 THE WITNESS: Not sure if it's something I
19 can describe in terms of occupation, but I can
20 certainly describe in terms of what the earning
21 potential would be. And there's a lot of varied
22 occupations here on the island, but right now as
23 example 2015, the median average for families is
24 \$75,000 roughly. And the work force housing code
25 requires -- again, we're just talking minimum and

1 applicant will certainly do more, but for minimum,
2 25 percent would need to be followed within the work
3 force housing category.

4 And within that 25 percent, there are
5 certain allocations, so 30 percent, as an example,
6 would need to be allocated for families earning what
7 they call below moderate income groups, so 80 to
8 100 percent of median income.

9 So, again, families who could be, for
10 whatever source of lifestyle they choose, earning in
11 the \$75,000 range per year.

12 There is a certain amount, 50 percent that
13 needs to be allocated to families earning between 100
14 and 120 percent of the median income, and another
15 20 percent to families earning 120 to 140 percent.

16 So the range of income groups that would be
17 encompassed by our work force housing policy is quite
18 broad. And I think there's a lot of families who
19 could fit within those income brackets.

20 COMMISSIONER ESTES: I just wondered what
21 occupation entailed when you're looking at this and
22 planning. Are we talking about teachers, truck
23 drivers, small shop owners?

24 THE WITNESS: I think the range, it would
25 include those types of occupations.

1 COMMISSIONER ESTES: Thank you.

2 CHAIRPERSON ACZON: Commissioner Hiranaga.

3 COMMISSIONER HIRANAGA: First of all, I
4 guess this being relatively new for me, so as far as
5 protocol, we're now asking questions of the
6 Petitioner's witness, which sometimes they question
7 of Commissioners themselves or would those be
8 everything he says represents (inaudible).

9 CHAIRPERSON ACZON: We can --

10 COMMISSIONER HIRANAGA: Whatever answers he
11 provides to questions, is that basically binds the
12 Petitioner in agreement?

13 CHAIRPERSON ACZON: Yes.

14 MS. LIM: Yes, it does. And as the Chair
15 said, actually the last witness that is on call was
16 Bill Frampton who is the actual Applicant and he will
17 be able to further respond to questions.

18 But everything that the consultants are
19 saying is as though it's been said by the Applicant.

20 COMMISSIONER HIRANAGA: Thank you.

21 Follow up to Office of Planning's question
22 regarding 1500 units. How do you intend to regulate
23 that if you're not calculating the maximum build out
24 possible based upon lot size and lot configuration?
25 Because are you going to have someone maintaining

1 account as to development progress, and so you hit
2 1500 and you're going to notify the future lot owners
3 that within the deed ohanas are no longer allowed
4 because you hit 1500 maximum. How do you regulate
5 that?

6 THE WITNESS: I think what might be a
7 workable process is that -- again, this kind of gets
8 along in the regulatory process, but what might be
9 workable is a process where the Applicant works with
10 the Planning Department to maintain a kind of log,
11 unit count as the project is implemented.

12 But there needs to be some kind of
13 monitoring I think to ensure that we respect that
14 1500-unit maximum.

15 COMMISSIONER HIRANAGA: And that relates to
16 the area designated urban and rural?

17 THE WITNESS: Yes.

18 COMMISSIONER HIRANAGA: Agricultural?

19 THE WITNESS: There are a few agricultural
20 lots identified in that EIS, and those would be
21 permitted with accessory units. Those with accessory
22 units which may be built on ag lots would also be
23 subject to the count.

24 COMMISSIONER HIRANAGA: And I actually
25 have -- I'm limited to questions.

1 So why in this draft -- Final EIS, I look
2 at page 8 of the Executive Summary, and it says
3 existing highway corridor and Monkeypod trees will be
4 reserved and converted to secondary coastal roadway.
5 In Figure 4 you mentioned earlier, it says segment
6 existing highway to be removed.

7 Those two statements are contradictory.

8 THE WITNESS: I think the sections to be
9 removed refer to those areas where Monkeypod trees
10 are not planted, so I think the goal is to respect or
11 maintain that landscape character, and then remove
12 those segments of the highway which wouldn't affect
13 the trees.

14 COMMISSIONER HIRANAGA: The section that
15 you're talking about removing Lahaina side. As
16 you're driving towards Lahaina basically there is
17 land, you can't really see the ocean, and then comes
18 to the point where you can see the ocean, and that's
19 the beginning of the surf spot.

20 In that area, that's surf spot fronting the
21 section that you're proposing to remove, and then
22 moving making access available from the relocated
23 mauka highway corridor.

24 Is that the intent that is being displayed
25 by Figure 4?

1 THE WITNESS: Access to the park area and
2 hence the surfing spot could be provided between
3 probably the connector road between existing
4 Honoapi'ilani Highway and the future realigned
5 highway.

6 Again, we're not sure how the specifics of
7 the internal roadway system is going to look like,
8 but there is going to be access provided probably
9 through internal roadway system.

10 CHAIRPERSON ACZON: Commissioner Scheuer.

11 VICE CHAIR SCHEUER: Aloha. I also have
12 more than two questions, but I'll stick to two for
13 now.

14 So to follow up on Commissioner Hiranaga
15 and Office of Planning's questions. There's nowhere
16 in the EIS -- I know there is a list, table of types
17 of units, but there is nowhere a list of the counts
18 of potential range of units, numbers that would be
19 built.

20 THE WITNESS: In Table 2 of the Chapter 1
21 there are ranges. And so I believe, as an example, I
22 think there is a range of -- I can't recall -- 4 to
23 600, and single family 4 to 800, but basically since
24 we don't know how the product types are going to
25 evolve, fairly broad ranges are provided.

1 VICE CHAIR SCHEUER: But you could
2 calculate from that who might be entitled to build an
3 ohana unit under existing lot proposed lot sizes
4 based on the product type and existing county codes?

5 THE WITNESS: Repeat that again,
6 Commissioner.

7 VICE CHAIR SCHEUER: Based on those numbers
8 you could calculate the potential number of ohana
9 units that could be built for each unit type?

10 THE WITNESS: If we were to say consider
11 the large, medium and small town lots which could be
12 permitted with accessory dwellings, I think that
13 range is 4 to 800, and so potentially you could come
14 up with a theoretical count.

15 VICE CHAIR SCHEUER: Follow up, or your
16 statement that monitoring somehow by the county
17 Planning Department could address the cap on the
18 number of units. If I was purchasing a unit,
19 however, that had a legal entitlement to build an
20 ohana unit, how would that be enforced against me?

21 Would you like me to repeat the question?

22 THE WITNESS: No, I know the question.

23 I'm not sure how enforcement could be --
24 what form an enforcement program could look like.
25 But as we get close to a threshold, as an example,

1 then I think somehow there has got to be both in the
2 sales documents or deed documents some provision that
3 alerts the owner that if Planning Department has the
4 process applications deemed that, you know, going to
5 hit the threshold and that no more ohana units --
6 what we're looking at is a project district concept.

7 Project district basically as each
8 development increment is proposed, that development
9 increment would be subject to a project district
10 Phase II approval, which is an approval of the Maui
11 Planning Commission.

12 So the applicant at that point, together
13 with the Planning Department, should understand where
14 it is in the total unit count they are up to that
15 point in time, and so they, as they come in for their
16 project district Phase II approval, probably from the
17 get-go we are going to be hitting the threshold, so
18 lets not allow for any more ohana units.

19 VICE CHAIR SCHEUER: That's it for now.
20 I'll come back.

21 CHAIRPERSON ACZON: Commissioner Wong.

22 VICE CHAIR WONG: I have a question about
23 the EIS itself in general since you were the
24 consultant on the EIS.

25 In terms of when you do the EIS, you have

1 to send out letters to the different organizations
2 and agencies?

3 THE WITNESS: Yes.

4 VICE CHAIR WONG: So I see a lot of
5 reviewers from the state and the county, but I only
6 saw two agencies that really responded, NOAA. Did
7 you send any to EPA, or let's say U.S. Corps of
8 Engineers or DOT for their information and response?

9 THE WITNESS: We did send the EIS prep
10 notice to I think six or eight federal agencies. The
11 Draft EIS I think was sent to about six federal
12 agencies, can't recall, but, yes.

13 VICE CHAIR WONG: The second thing I was
14 going to ask is, did you send to State Historic
15 Preservation Department?

16 THE WITNESS: Yes.

17 VICE CHAIR WONG: And they didn't respond
18 or they had no inclination of what is about this
19 issue about what is happening in that area?

20 THE WITNESS: The State Historic
21 Preservation Division did receive a copy of both the
22 Preparation Notice and the Draft EIS.

23 Concurrently, of course, we had our
24 archeologists coordinating with that agency. But
25 there's was no formal response provided.

1 VICE CHAIR WONG: I guess the reason I'm
2 asking these questions, just for the fact that you
3 stated previously in your testimony about you don't
4 need to get highway approval, that you're thinking
5 about doing, it's owned. Private owned. You're
6 thinking about the portion of your amount of land?

7 THE WITNESS: Yes.

8 VICE CHAIR WONG: And it's at this point in
9 time not federally funded or not state funded, is
10 that correct?

11 THE WITNESS: Yes.

12 VICE CHAIR WONG: So the question, is even
13 though it's not state or federally funded, but it's
14 going to be a public use, shouldn't there be some
15 sort of trigger with federal guide?

16 THE WITNESS: I think, as the right-of-way
17 is better defined and design parameters or criteria
18 are agreed upon, and all this needs to be coordinated
19 with the state and certainly with the federal
20 government as well, there's going to be that
21 coordination. And so it's a matter of at what point
22 do we start that process? And I think it gets to
23 again this whole process of how do we refine the plan
24 as progression entitlement phase, and as that kind of
25 planning progresses. Then the coordination with

1 other agencies becomes a little bit more intense.

2 VICE CHAIR WONG: I have a question
3 because, you know, the issue more is I know you don't
4 have a crystal ball to see this is what is going to
5 happen ten or 15 years, we can plan for it, that's
6 why we are doing the EIS, but wouldn't you think that
7 you should at least say we are doing a highway, so
8 shouldn't we at least say meet with them and say this
9 is what is going to happen, the traffic issues?

10 THE WITNESS: Yes, indeed the Applicants
11 and traffic engineer have been meeting with the DOT
12 over the course of the EIS process.

13 VICE CHAIR WONG: I'll bring that up more
14 with the traffic study person. I just wanted to know
15 how it's set out and who gets these letters. Thank
16 you.

17 CHAIRPERSON ACZON: Just a follow up on
18 Vice Chair Wong's question. You mentioned that you
19 sent letters of communication to eight federal
20 agencies. Did you receive any comments back from any
21 of them?

22 THE WITNESS: Yes. We sent the EIS prep
23 notice to nine federal agencies. We did receive
24 responses from the Army and the U.S. Geological
25 Survey.

1 CHAIRPERSON ACZON: What kind of responses
2 did you get?

3 THE WITNESS: The Army response you might
4 recall was that we prepared an Aquatic Resources
5 Survey, and that is Appendix F-1 that was prepared as
6 a result of that comment.

7 Off the top of my head I can't recall the
8 US Geological Survey's comments. I can check.

9 CHAIRPERSON ACZON: We can get back to that
10 later. Commissioner Cabral.

11 COMMISSIONER CABRAL: Yes.

12 I am getting kind of hung up here on your
13 accessory dwellings and count of 1500 and just kind
14 of pictures you're going to have townhouses and
15 multi-family units as those are a set number. But
16 you're going to be selling vacant land lots that
17 could be developed in a future date.

18 So if your maximum number that you keep
19 saying we're not going to go have more than 1500 no
20 matter what happens. I've got a problem in the
21 future because if somebody buys a lot, land that they
22 plan on building in the future, and then too many
23 other people build an accessory dwelling, then your
24 count is going to be maximized and somebody -- I'm
25 going to sit there, and I'll build a house in ten

1 years or whatever when I retire, and instead now I'm
2 told on this land that I paid well for, and I can's
3 build anything on it because the maximum number has
4 already been consumed.

5 And I think that's a concern that the
6 county department should have or that the community
7 is going to have on keeping that count under control,
8 because of the idea of accessory dwelling ohana.

9 I don't have an answer, I'm just saying
10 that you're going to say no more than 1500, you could
11 get yourself into a math problem here, I don't know.

12 THE WITNESS: I think, as I understand it,
13 and probably Mr. Frampton can clarify when he comes
14 up, is that the products, as I said, would be subject
15 to a phase permitting process.

16 And if the goal is indeed to make sure that
17 we keep a good track of how many accessory dwellings
18 there are as each phase of the project is
19 implemented, I think certain restrictions should be
20 made at than point that we're going to be reaching
21 our goal or threshold. We have this many more units
22 to develop, and at this point we need to stop
23 permitting any more with accessory dwellings.

24 So, again, I'm not sure how the mechanics
25 would work, but certainly it's got to be something

1 that we can't just let project district phase II
2 approvals be approved without recognition that at
3 some point we are going to hit that threshold.

4 So, again, need to be some process to make
5 sure we stop early on in the phase so people don't
6 get in a jam.

7 COMMISSIONER CABRAL: Thank you for the
8 input. It's a concern.

9 CHAIRPERSON ACZON: Commissioner Scheuer.

10 VICE CHAIR SCHEUER: On the issue of
11 recreational access, existing conditions in the EIS.
12 When your discuss recreational access, did you
13 conduct any survey of the number of people who
14 currently use and park along the shoreline?

15 THE WITNESS: We did not.

16 VICE CHAIR SCHEUER: So not over weekdays
17 or weekends or holiday weekends?

18 THE WITNESS: No, although I think we
19 recognized the existing condition in terms of the
20 area at mile marker 14 and at the surf spot that
21 there are issues with respect to visitors pulling off
22 of the highway and parking and pulling back on, so
23 that I think is a safety issue that we all are aware
24 of.

25 VICE CHAIR SCHEUER: I recall the EIS

1 noting that safety concern, but how can you make a
2 determination that there's going to be sufficient
3 parking for public access when you have no idea how
4 much the existing public access is?

5 THE WITNESS: I think again, as I said, of
6 the more detailed planning, there's going to have to
7 be some coordination with the Department of Parks and
8 Recreation to determine what might be an appropriate
9 number of parking spaces that each park area
10 provides, as an example, but again, we need to
11 address the existing situation, plus whatever
12 additional demand for parking that might arise
13 through the project itself.

14 So that's something we need to discuss with
15 the parks department as we develop each park area.

16 VICE CHAIR SCHEUER: Mr. Chair, just one
17 more.

18 On the makai side of the existing highway,
19 the Cultural Impact Assessment noted a number of
20 significant historic sites. Can you point out where
21 those are on the conceptual map? Because I spent
22 time -- none of the maps are to scale, and I spent
23 time trying identify how certain historical sites
24 that said were of extreme significance closes
25 somewhere between park and multi-family.

1 THE WITNESS: May I have a minute,
2 Commissioner?

3 VICE CHAIR SCHEUER: Yes.

4 THE WITNESS: So, Commissioner, I'm looking
5 at figure from Volume 4, Appendix G-1, which is the
6 archaeological report, and they show the
7 archaeological sites makai of the highway.

8 And probably Ms. Greig is probably better
9 to answer this than I am. But it's really not
10 depicted clearly on Figure 4, but it's back in the
11 appendix where her study is contained.

12 VICE CHAIR SCHEUER: So I'm aware of that,
13 there is one particular site which one of your
14 informants said is associated with land court award
15 property just mauka of Napili Point. I'm at a loss
16 to understand how the conceptual plan puts it
17 somewhere between the park and multi-family even
18 though the EIS in another place says that these
19 cultural sites will be protected.

20 THE WITNESS: Again, what we're dealing
21 with right now is a conceptual plan. The objective,
22 of course, would be to respect whatever
23 archaeological sites are deemed significant. And how
24 that occurs, that's going to have to be worked out,
25 of course, but it's not -- I do acknowledge it's not

1 reflected on the Master Plan, but it will be
2 addressed as we go through the process.

3 CHAIRPERSON ACZON: Commissioner Hiranaga,
4 followed by Vice Chair Wong.

5 COMMISSIONER HIRANAGA: Two questions.

6 Look at page eight of the Executive Summary
7 down at the bottom, significant beneficial impacts.
8 Reading that one section, the EIS has been -- the EIS
9 has been coordinated with the (inaudible) document
10 and evaluate technical characteristics of
11 environmental impact.

12 At the bottom I guess maybe the word
13 "submit" second to last line says: As reflected on
14 the County of Maui's adopted Maui Island Plan, the
15 project is located within the future UGB. That
16 statement is not correct, because your project is
17 proposing land makai of the existing highway. That's
18 not near the -- (inaudible) it just says substantial
19 portion of or majority of the project located within
20 the UGB.

21 THE WITNESS: That might be a more
22 appropriate term, Commissioner.

23 COMMISSIONER HIRANAGA: So at this point
24 how do you make changes to the document? Because
25 when this is released stating that the LUC examined

1 this and basically supports it there in fact there
2 may be some tweaking that's required.

3 THE WITNESS: Right, but what you stated in
4 the document is that the Maui Island Plan has
5 designated urban growth areas and rural growth areas
6 mauka of the highway, but that the plan allows for an
7 extension of those, the urban growth area makai of
8 the highway as part of the West Maui Community Plan
9 amendment process, assuming there won't be any
10 adverse affects to natural resources and so forth.
11 So while the preferred alternative relies on and what
12 the applicant intends on doing is seek a community
13 plan amendment as reflected in the Maui Island Plan
14 to incorporate those lands makai of the highway.

15 COMMISSIONER HIRANAGA: That's your future
16 intent, but that's not a correct statement at this
17 point in time. The project is not reliable.
18 Apparently you're hoping to include the makai section
19 but currently it's not. I just want to make note of
20 that.

21 Just again following up on Commissioner
22 Scheuer's comments, do you know how many people use
23 that surf spot? If you look at Launiupoko Park, the
24 number of park spaces makai of the highway is totally
25 inadequate when the surf is up, and now they have

1 created informal parking mauka of Launiupoko, and
2 thankfully there is a traffic light there because
3 people can safely cross highway to get -- as you go
4 from Launiupoko, you are forced to park mauka of the
5 highway, and forced to run across the highway with
6 their surfboards. And you talk about a safety issue
7 at that surf spot, but because of the shoreline
8 location, there is ample parking for everyone to park
9 on the makai side of the highway and no one is forced
10 to run a cross Honoapi'ilani Highway with a
11 surfboard.

12 You need to come up with what the demand is
13 on that spot when the surf is up. If you haven't
14 been out there, you're going to have to build a huge
15 parking lot.

16 I know the parks department is not going to
17 want to do that unless you pay for it, but parking is
18 going to be so far away from the surf spot having to
19 carry boards across yards to get to the ocean. You
20 really need to look at that. It's a very sensitive
21 issue with me.

22 Thank you, I'm done.

23 CHAIRPERSON ACZON: Commissioner Wong.

24 VICE CHAIR WONG: The 1500-unit -- housing
25 units that's going to be built within these ten

1 years.

2 THE WITNESS: Yes.

3 VICE CHAIR WONG: Did you calculate how
4 many individuals would be in each units?

5 THE WITNESS: Not specifically, not in the
6 EIS, although we do know that an average occupancy is
7 just under three in Maui, but that's just a rounded
8 average.

9 VICE CHAIR WONG: I just -- the problem
10 is -- I lived in a multi-generational housing, my
11 father-in-law, mother-in-law, ourselves my kids, some
12 of my cousins. So we don't have a house of three.

13 But the issue is, my son has got his
14 license, heaven forbid, and keep off the road, but
15 they don't have -- you know, my father no drives. I
16 drive. My wife drives.

17 The question I have, I guess, I'm going
18 back to the traffic, it's not units but more how many
19 cars, because let's say I have my beach car or diving
20 car, I get my work car. So that's going to be at
21 least two or three or four cars in a house at least.
22 Let's say a family of three, because we all want a
23 car.

24 My son's a good car, I get chuck-a-lug.
25 But I mean, the issue I have, I'm very concerned

1 about that, tell you the truth, even though it's
2 units, it's more than just units, it's individuals
3 living in houses, especially in bad times. I don't
4 want to see my family go homeless, of course, they
5 don't have a job, live with me until you get a job,
6 so more cars.

7 So I'm just very concerned about it's not
8 units going to be living in the district, but more
9 the amount of people. So I just want to comment on
10 the fact that we have to look at that future and also
11 on the traffic.

12 Thank you. Commissioner Mahi.

13 COMMISSIONER MAHI: After hearing the -- I
14 mean the questions that are being asked of you, sir,
15 and I'm feeling pretty uneasy because of the figures
16 and facts and even designated areas of which
17 statements in the proposed EIS have already been
18 stated. I'm really feel there needs to be a more
19 attention given to more specifics only in that as we
20 move along here, that's the purpose of our meeting to
21 try to see whether you're galvanized, sort of to
22 speak, not only the intention, but more important
23 what's actually going to happen here. That's what
24 I'm really concerned about, this hearing testimony.

25 And I'm concerned about that, and I hope --

1 we're supposed to take action by this coming
2 Thursday, and today too, so but anyway that's what
3 I'm really uneasy about.

4 Hearing through the questions of Maui is
5 concerns and, of course, you know the public who have
6 a real strong big heart here, and in terms of what is
7 going to be happening to the reefs.

8 I enjoyed the testimony hearing that in
9 terms of the facts being given, I hope, yeah, I hope
10 there is more information. It's not hope what we're
11 going to find out, it's what we are going to commit
12 to is what I'm interested in hearing today, before we
13 take our vote. Mahalo.

14 CHAIRPERSON ACZON: Just a reminder. We
15 have to make a decision to make the December 10th
16 deadline.

17 VICE CHAIR SCHEUER: One last question.
18 This has to do with the differences between
19 alternative one and alternative two and how this
20 relates to ohana units.

21 Now, the project's EIS states you can do
22 the project by an alternative two, everything mauka
23 of the road, not seeking any shoreline things, and
24 it's still a viable project.

25 But there is going to be some trade-offs,

1 fewer ohana units because some of the lots too small
2 to allow them on or accessory dwelling units. That's
3 going to translate into different water demands in
4 terms of irrigation, other kind of impacts.

5 Where in the EIS does it sort of look at
6 the detailed level of difference in impact between
7 alternative one and alternative two?

8 THE WITNESS: Alternative one and two both
9 represent that 1,500 units would be the maximum. It
10 is a matter of -- as an example, under alternative 2
11 we have I think 15, 20 acres roughly of lands
12 designated for residential use.

13 So what that means is that that density
14 would need to be made up products which are probably
15 more apartment type uses.

16 Again, in that at this point that's what
17 the studies, the engineering studies, the traffic
18 studies have assumed is that 1,500 would be maximum
19 alternatives, and that basically would make up the
20 difference is the product mixes.

21 VICE CHAIR SCHEUER: I understand that.

22 But there is presumably a different impact
23 associated with different product mixes, correct?

24 THE WITNESS: For purposes of our analysis,
25 and. Again, just taking infrastructure impacts as an

1 example, because that's something that I think that,
2 for instance, is a bit clearer. Water demands with
3 the higher density -- well, water demand that the
4 engineers use for an alternative one versus
5 alternative two, use the same standards as it is with
6 the wastewater demand.

7 Just because there is a variability in the
8 standards that they use, which would capture I think
9 the range of product types. So essentially to answer
10 your question, Commissioner, the standards that the
11 engineers use to develop their analysis basically are
12 the same for both alternative one and two.

13 CHAIRPERSON ACZON: Any others?

14 Ms. Lim, are you done with the witness?

15 MS. LIM: I would like to ask a few more
16 questions.

17 CHAIRPERSON ACZON: Go ahead.

18 REDIRECT EXAMINATION

19 BY MS. LIM:

20 Q Mike, I get the feeling that there might be
21 an impression that we're looking for a much bigger
22 approval than really what we're looking for.

23 What is the goal that we're seeking? What
24 is it that we're hoping this Commission will do?

25 A Again, as has been discussed whether or not

1 the EIS document meets the requirements of 343 and
2 HAR 200.

3 Q If the Commission were to decide that the
4 EIS was prepared -- which is the legal standard was
5 it prepared in good faith, and does it meet the rule
6 of reason and accepts this EIS, does that entitle the
7 Applicant to do anything on this property?

8 A No.

9 Q Can we build any portion of the Olowalu
10 Master Plan if the Commission accepts this EIS?

11 A No.

12 Q Can you mention one or two of the major
13 lands entitlements that would need to be obtained?

14 A Of course.

15 What would come before this Commission is
16 the District Boundary Amendment. That request which
17 seeks to reclassify the agricultural lands to urban
18 and rural. And, again, that process would subject
19 the Petitioners to conditions as deemed appropriate
20 by this Commission.

21 Separately, once that process is concluded,
22 the Applicant would need to commit to the County of
23 Maui applications for community plan amendment change
24 in zoning. And as I mentioned, project district
25 approval.

1 And the change in zoning process as well
2 would be subject to further conditions as recommended
3 by the Planning Commission and as adopted by the Maui
4 County Council.

5 Once that level of entitlements are
6 completed, then there is a project district Phase II
7 step where in each phase of the project will be
8 detailed in terms of what the product looks like,
9 specific designs, street layout and so forth.

10 And even at that time, because as you can
11 imagine, that might take some time, Department of
12 Planning and the Commission could certainly request
13 updated studies, whether traffic or engineering
14 studies.

15 But each phase of development would be
16 subject to project phase II, which is a discretionary
17 approval. And again, at that level, really, would
18 you would have the details of what the project is
19 going to look like in terms of architecture, street
20 layout, design, so forth.

21 And because it is a project district
22 concept, there is a further project district step
23 three before you actually get to the building permit
24 which the department needs to review.

25 So I think there is a number of steps

1 through the process that will be required at each
2 step that would get into further detail as to what
3 the project would look like.

4 Q So, again, we're not asking the Commission
5 to approve this project; is that correct?

6 A

7 A

8 A

9 A

10 A

11 A That's correct.

12 Q Not at this time?

13 A Yes, not at this time.

14 Q Thank you.

15 Commissioner Hiranaga expressed concern
16 about on page eight Executive Summary wordsmith. His
17 point is well taken.

18 I would like to provide a copy of page 339
19 of the EIS, because Commissioner Hiranaga's comment
20 is well taken. He noted that the description of the
21 urban and rural growth boundaries was not
22 particularly accurate in the executive summary. Most
23 of the project is in one of those growth boundary
24 throughout the entire project.

25 Please clarify for the Commissioners what

1 is written on page 339 of the EIS?

2 A This page 339 comes from the chapter
3 relating to plans, policies and land use controls,
4 and it speaks to our analysis of the Maui Island
5 Plan.

6 And basically this reflects what I
7 mentioned earlier that lands makai of Honoapi'ilani
8 Highway in alternative one are not included in the
9 UGB, however, the Maui Island Plan states future
10 delineation of potential growth area makai of the
11 existing Honoapi'ilani Highway may be undertaken in
12 conjunction with updates or amendments to the West
13 Maui Community Plan.

14 Q Thank you, Mike.

15 So do you believe that throughout the EIS,
16 in addition to the page that you just noted, there
17 are other references to the fact that the makai
18 portion of Olowalu Master Plan is in neither urban or
19 rural growth boundaries?

20 A We represented that throughout the
21 document, yes.

22 Q In numerous places. Thank you.

23 There were a lot of questions posed to you
24 regarding the ohana units and concerns about putting
25 (inaudible).

1 But you are not an attorney, so you don't
2 draft project documents, but in light of the
3 extensive experience you do have in doing development
4 work, are you aware of any projects that ever imposed
5 private restrictions on land, like declarations of
6 CC&R?

7 A Yes.

8 Q What are the purposes of declarations of
9 CC&R in laymen's language?

10 A Basically to preserve the quality and
11 integrity of the project itself so that there are
12 some controls over what individual property owners
13 can do within the project.

14 Q Have you ever seen CC&R's that prohibit
15 certain types of housing types?

16 A I don't recall specific CC&R's of that
17 nature.

18 Q Have you even seen CC&R's that direct
19 homeowners to do or not do certain things to their
20 property?

21 A I'm familiar with CC&R's that provides
22 procedures for homeowners association to review
23 certain types of actions of individuals. Again, it's
24 just more of a control to make sure that the project
25 quality remains intact.

1 Q And you mentioned homeowners association.
2 They're almost like a mini government; is that a fair
3 statement?

4 A That's my understanding.

5 Q So those mini governments basically set the
6 rules for the community?

7 A Yes.

8 Q Based on the CC&Rs?

9 A Yes.

10 Q So if those homeowners association limit
11 the number and type of units, then that's what buyers
12 who purchase into the community are subject to?

13 A That's my understanding, yes.

14 Q Thank you.

15 My last question will be in response to
16 some questions by Commissioner Scheuer. He's
17 expressing concerns about whether or not the analysis
18 done by the consultants fairly account the
19 differences between alternative one and two.

20 You acknowledge that both alternatives have
21 the same number of units. There are differences,
22 alternative two doesn't have makai lands.

23 Did you have the consultant do a different
24 analysis to address the issues between alternative
25 one and alternative two?

1 A We did. We asked the consultants to
2 consider the differences between alternative one and
3 alternative two, and determine whether or not the
4 difference in the alternatives would have a bearing
5 on their report outcomes.

6 And so each consultant did do that and
7 provided a response which we have included in the
8 final EIS.

9 Q And those consultants are here today?

10 A Most of the consultants are here today.

11 Q And they will be able to address in more
12 detail on that point.

13 With that I'm ready to let the witness
14 rest.

15 CHAIRPERSON ACZON: Thank you. Before you
16 call the next witness, I just have an announcement to
17 make.

18 I will note for the record that at 10:20
19 a.m. this morning, the Office of Hawaiian Affairs
20 emailed a letter to our office's email address in
21 full disclosure are attempting to make hard copies of
22 the letter to the Commission and to the parties.

23 We will make one copy of public review at
24 the table. So for now we will now take a short
25 recess to allow for review and observation.

1 CHAIRPERSON ACZON: We will come back in an
2 hour, we might as well take a break for lunch.

3 (Noon recess taken.)

4 CHAIRPERSON ACZON: We're back on the
5 record.

6 Are you ready to proceed with your next
7 witness?

8 MS. LIM: Yes, we are, Chair. Our next
9 witness was Ms. Lee-Greig.

10 CHAIRPERSON ACZON: Do you swear that the
11 testimony that you're about to give is the truth?

12 THE WITNESS: Yes.

13 TANYA LEE-GREIG
14 Was called as a witness by and on behalf of the
15 Petitioner, was sworn to tell the truth, was examined
16 and testified as follows:

17 CHAIRPERSON ACZON: State your name and
18 address for the record.

19 THE WITNESS: Tanya Lee-Greig. My address
20 is 1860 Main Street.

21 DIRECT EXAMINATION

22 BY MS. THOENE:

23 Q Please explain what you do and let us know
24 what studies you prepare for and EIS.

25 A I am the Maui office director for Cultural

1 Surveys Hawaii here in Maui County taking care of the
2 three islands, Maui, Lanai and Molokai.

3 I prepare the consultation plan for
4 cultural assessment impacts.

5 Q And that's Appendix H of the FEIS?

6 A Yes, the Final Cultural Impact Assessment
7 for the FEIS.

8 Q That's Appendix H-1, correct?

9 A Yes.

10 Q And the archaeological review is Appendix
11 G-1?

12 A Yes.

13 Q So can you please describe what method that
14 you used for the archaeological literature review?

15 A Sure.

16 I went through the library at the State
17 Historic Preservation Division here on Maui to
18 identify and find previous archaeological studies
19 within the project area and Olowalu ahupua'a overall.

20 Following that, just to review and see what
21 had been completed before, not just archaeological
22 inventory studies, but also any preservation
23 mitigation burial treatment plans that may have been
24 in place in the field by SHPD.

25 Following that we did -- we developed some

1 overlays using the information that's within the
2 inventory surveys with regard to site location and
3 their relationship to historic maps of Olowalu as
4 well as the plans -- the Olowalu property.

5 Q Did you prepare a document that was called
6 Archaeological Inventory Survey for this project?

7 A No.

8 Q Is a document that is called Archaeological
9 Inventory Survey required to be prepared as a part of
10 Environmental Impact Statement?

11 A Not that I am aware of.

12 Q How many sites were identified within the
13 project area?

14 A I believe there were 31 historic properties
15 identified within the project area.

16 Q How many?

17 A 31.

18 Q 31 with preservation rights?

19 A Right.

20 Q And ten of those sites do not have any
21 required further work, correct?

22 A Right. Ten of those sites were determined
23 to be were designated for no further work.

24 Q And can you identify -- Commissioner
25 Scheuer has a question about the site.

1 Can you point that out to the figure behind
2 you, identify that for us?

3 A 4697.

4 Q Can you identify what site that is, please?

5 A Site 4693 is a burial preserve; site 4697
6 and 4694 are alignments.

7 Q Are these sites, do these have preservation
8 measures in place approved by SHPD?

9 A Yes, they do.

10 Q The figure that you just looked at, which
11 figure is that in the EIS?

12 A Figure 23.

13 Q In addition to the sites that were
14 previously identified in the area, were there
15 additional sites that you identified?

16 A Yes, there were.

17 Q Can you talk about those sites?

18 A Sure.

19 While we were doing the field inspection of
20 SHIP-4701, which was interpreted as the koa, we
21 identified what we believe to be an additional
22 retaining wall that may be associated with that koa
23 but did not show up on the field maps from the report
24 in the EIS.

25 In addition to that, when going from the --

1 along the ridge line traveling from one place to the
2 other, we have identified two surface scatters of
3 branch coral along the ridge line. This would be a
4 very unusual place for that. I don't know if it was
5 purposely brought to that area.

6 And then the fourth historic property was a
7 plantation era reservoir that exhibited some dry
8 stacked types of construction as well as concrete
9 construction. And that was identified as well in the
10 project area and that had not been previously
11 recorded.

12 Q Just to take a step back. Aside side from
13 those four sites, the remaining sites within the
14 project area were previously identified as part of
15 the archeological survey inventory that was done on
16 the property. Correct?

17 A Yes.

18 Q How many studies were done? And do they
19 encompass the entire Olowalu Master Plan area?

20 A There were several studies done. The most
21 comprehensive of which were two studies completed by
22 Xamanek Researchers, one for the makai section, or
23 below Honoapi'ilani Highway, and the other on the
24 mauka section above Honoapi'ilani.

25 Q Have any burials been identified in the

1 area?

2 A Yes.

3 Q Is there a Burial Treatment Plan in place?

4 A Yes.

5 Q And has that plan been approved by SHPD?

6 A Yes, there are two. Again, because they
7 were studied in two separate parts. The burial
8 feature that is located at the makai section has the
9 conditions and recommendations and preservation
10 measures under the Makai Burial Treatment Plan.

11 And the burials within Pu'u Kilea Cemetery.
12 Those are encompassed in the Burial Treatment Plan in
13 the mauka area.

14 Q And both mauka and makai area, both of
15 those are in the EIS's that were set for the property
16 the mauka plan and makai were both also accepted by
17 SHPD; is that correct?

18 A Yes, they were.

19 Q Were those acceptance letters included in
20 your study?

21 A They were appended to the study.

22 Q Is there any development proposed for any
23 Puu O Kileia?

24 A No. Pu'u Kileia is within the Olowalu
25 Cultural Reserve, and that's a no-build area.

1 Q Are there a lot of states preserved in that
2 no-build Cultural Reserve area?

3 A Yes.

4 Q So we are going to move to the Cultural
5 Impact Assessment. Can you describe the methods that
6 you used to prepare that study?

7 A We prepare a cover letter requesting --
8 describing the proposed project and requesting
9 referrals or recommendations for who to speak with
10 regard to traditional cultural practices.

11 Those letters go out to the major
12 organizations like OHA for the overall, the State
13 Historic Preservation Division, Maui County Cultural
14 Resources Division, initiation of that process.

15 And folks that have -- we consulted before
16 on various projects if that was the case.

17 Q So we just received a letter from OHA
18 today. And did you contact OHA in the scope of your
19 cultural assessment?

20 A I did.

21 Q Did you speak with anyone?

22 A I did speak with someone from OHA, and they
23 shared referrals on who to speak with in and
24 knowledgeable about the area.

25 Q Did you speak to people that you were

1 referred to?

2 A Yes. We spoke to them, and those who I had
3 not been able to get into contact with, some of the
4 family members were present at later public meetings
5 like the CRC, and a field trip that we took in
6 Olowalu.

7 Q For your initial scoping, do you remember
8 about how many of those letters you sent out, how
9 many individuals or organizations you tried to
10 contact?

11 A Initial scoping letter contained in that
12 consultation table within the Cultural Impact
13 Assessment. I believe there were 19.

14 Q This is in Appendix H-1.

15 In addition to those scoping letters that
16 you sent out, how many community meetings or other
17 outreach did you --

18 A We did three formal interviews. We went to
19 the Maui County Cultural Resource Commission twice.
20 We met with the community organizations in the
21 Cultural Impact Assessment once, and we conducted a
22 field trip with concerned community members to
23 Olowalu once, and we met with the caretakers of
24 Kawaialoa Heiau at one time.

25 Q Did the Maui County Cultural Resource

1 Commission have a chance to review the draft and
2 final EIS?

3 A They had a chance to review the Draft
4 Cultural Impact Assessment.

5 Q What were some of the primary concerns of
6 the Cultural Resource Commission?

7 A The main concern I would say that stuck out
8 the most was one, quality and integrity of the marine
9 resources and access to those resources. Maintaining
10 mauka to makai connection and that access, being able
11 to see viewplanes, and landmarks.

12 Another concern, of course, were for the
13 historic properties, or the very sensitive ceremonial
14 sites that were in the area, the Kawaialoa Heiau was
15 of big concern. Maintaining the integrity of the
16 heiau, maintaining integrity of the protected 'ahu's
17 in the area. Maintaining the privacy, the privacy
18 needed to carry out certain protocols within the
19 area.

20 Q Did you make recommendations in your report
21 about how to mitigate those potential impacts?

22 A I did. And the recommendations came from
23 ideas presented by the community as well.

24 So with regard to the marine access area,
25 maintaining the integrity of those cultural resources

1 was a big issue.

2 One of the recommendations was to put
3 together an Olowalu Marine Management Group that
4 would serve as a community policing effort of the
5 coastline, if you will.

6 And also be able to go out and create this
7 group, do baseline studies prior to any construction.
8 Also monitor during construction, and continuation of
9 those monitoring efforts of construction.

10 Another participant actually came up with
11 this really great idea of looking at not only the
12 scientific surveys that were done, but instituting or
13 bringing together a kahuna group or a native
14 practitioner group to do survey of the resources and
15 the manner in which they used them and what kind of
16 resources they are.

17 So you not only have scientific survey, but
18 traditional knowledge base survey as well.

19 So those two were really, really good
20 suggestions, which were included in the Cultural
21 Impact Assessment.

22 Of course you have the other -- more
23 recommendations about allowing more flow into Olowalu
24 Stream, to allow for the perpetuation and propagation
25 of the native species that are coming and going in

1 the area.

2 As well as maintenance of the Cultural
3 Reserve and continuing consultation with the
4 community and making -- having there be some
5 accountability for maintaining the protective buffers
6 of the historic properties and the integrity of that
7 preservation area.

8 Q In addition to your report, mitigation
9 measures were discussed in the Final Environmental
10 Statement, correct?

11 A Yes.

12 Q On pages 160?

13 A Yes.

14 Q Circle back, because at the last hearing on
15 November 18th, there were some public members that
16 said they weren't contacted for the cultural impact
17 assessment.

18 I know you went over your methodology. Can
19 you tell us why those persons may not have been
20 contacted?

21 A Some folks I didn't -- weren't brought
22 forward, and --

23 Q Going back to your methodology, you said
24 you consulted with certain individuals that always
25 lived in the area and certain Hawaiian organizations

1 and they provided names to you, that's how you
2 continued to make your contact with individuals.

3 So the particular individual that said they
4 were not contacted at the last meeting, did their
5 names come up during your consultation?

6 A No.

7 Q If they had, would you have contacted them?

8 A I would have tried, or sought them out if
9 they were at the community meeting.

10 Q Kind of along the same line. Of note,
11 there was one additional customary practice that was
12 not included in your report, but was identified by
13 the public, that was gathering of pohaku ku'i'ae.

14 Was that practice identified to you during
15 study?

16 A No, that practice is not in the study.

17 Q Also there's been some allegations about
18 particular claims. Can you talk about your research
19 of kuleana claims?

20 A As a part of the background study for the
21 Cultural Impact Assessment we took a look at all of
22 the kuleana claims that were brought to the Land
23 Commission. We looked at both unawarded and awarded
24 claims.

25 The reason we do that for the Cultural

1 Impact Assessment portion is to understand the land
2 uses of the area that were at that time, what
3 traditional land uses were within the area. So we
4 identified 91 individual claims, and within those
5 claims, those are just the helu alone, and so 91 helu
6 were presented to the Land Commission.

7 Within those helu you also have individual
8 apana. So you might have one Land Commission Award
9 under a single helu and then it might be four
10 different sections within different parts of the
11 ahupua'a.

12 So we took a look at all those apana as
13 well and came up with some really neat things. I
14 have to refer back to my report.

15 Q Of those 91 claims, 13, is that the correct
16 number?

17 A Correct.

18 Q And also partial awards for 17?

19 A Yeah. And so that's what I mean by partial
20 awards, a single helu, all of the apana under that
21 single helu, not necessarily all of the apana were
22 awarded. One may have been awarded while another may
23 not have been.

24 Q You mentioned in your research kuleana
25 claims, that you found a lot of research. Did this

1 help you to identify what traditional customary
2 practices were practiced in Olowalu?

3 A Yes.

4 Q Can describe those practices?

5 A Sure.

6 Q Just some of things. It's a very
7 comprehensive report.

8 A Of course, lo'i aquaculture, lo'i kalo in
9 the valley area. The stream was redirected, and so
10 the former route of the stream some kuleana land
11 located along that former route, and those are --
12 there's one house site that's within one kula or
13 dryland agriculture on the alluvial flank of Olowalu.

14 House lots were predominantly along the
15 coastline, that is apana claims along the coastline,
16 and one claim specifically made into a place to pound
17 salt, so that was neat.

18 Q What about fishing practices?

19 A The land -- I do not recall specific
20 mention within the kuleana testimony about fishing
21 practices, mainly because they were trying to get fee
22 simple rights to the land and what they were doing on
23 that piece of land.

24 Q So can you tell me about how you were able
25 to identify the fishing practices that are identified

1 in the EIS? Was that from interviews with current
2 residents?

3 A Some of it was from interviews with current
4 residents, some of it came out of comments presented
5 to the Cultural Resource Commission. And some of it
6 came out of the documentary research.

7 Q Can you talk a little bit about who you did
8 the formal interviews with and a little bit about
9 those results?

10 A Sure. We interviewed Auntie Ahaina Drake
11 (phonetic). And in her interview she discussed a lot
12 of the fishing practices that were carried out by her
13 tutu as well as between her and her husband who went
14 fishing in the area. I'm not going to say where
15 exactly, but in that area.

16 We interviewed Al Lagunero, who is
17 associated with the Olowalu Cultural Reserves, and
18 the things that are happening within the cultural
19 reserve, bringing back the lo'i and reopening things
20 like that, as well as the spiritual nature of Olowalu
21 was discussed.

22 And we interviewed Stan Okamoto who's --
23 he's not Native Hawaiian, but he has a long memory of
24 Olowalu. His grandmother was with the plantation
25 back when that was in operation back to the old

1 Olowalu Sugar Company, so he had those memories to
2 contribute as far as the wings of the area and land
3 uses.

4 Q So you spoke -- those are the formal
5 interviews that you did. Were you also able to
6 identify some ceremonial practices in the area? Who
7 did you speak to to identify those practices?

8 A Individual names?

9 Q If you recall them.

10 A There is some who would rather not be
11 identified. But specifically with regards to the
12 ceremonial practices of Kaiwaloa Heiau, we spoke with
13 the caretaker.

14 Q And can you point out where on the map
15 behind you the heiau is located?

16 A (Indicating.)

17 Q Figure 23 of the EIS. Thank you.

18 Is the heiau located in the Olowalu
19 cultural reserve?

20 A Yes.

21 Q With respect to the requirement to do
22 interviews and cultural impact assessment, is that
23 something that's specifically required in a Draft
24 Environmental Impact Statement? What was your
25 decision to do interviews?

1 A It's provided in the guidelines and the
2 recommended guidelines as a good method of
3 understanding of traditional cultural practices.

4 Q But as far for a legal requirement to do
5 interviews, Chapter 343 or HAR 11?

6 A I am unaware of any hard and fast rules for
7 that under HAR. It's my understanding that they are
8 still guidelines.

9 Q And according to the impact of the proposed
10 development, do you believe that the Olowalu Town
11 Master Plan will inhibit access to the ocean or
12 fishing?

13 A As long as the access avenues as, outlined
14 in the EIS, and as long as the consultation with the
15 community continues as recommended in the Cultural
16 Impact Assessment for understanding how people access
17 these areas for understanding how best to honor
18 traditional access to these areas, I would say the
19 impact would be very minimal.

20 Q Does that go also the same for the
21 land-base practices?

22 A Yes.

23 Q So under the Kapaa Kai analysis, LUC does
24 have to make specific findings as to the agricultural
25 resource on the property, specifically need to

1 identify the scope of these resources and practices,
2 understand the impacts to these resources and
3 practices and be able to see that there has been
4 feasible mitigation action for them.

5 Do you believe that the studies you
6 prepared for this project for the EIS provide LUC
7 with enough information that they can make that
8 determination?

9 A I believe that they have the information
10 needed that is provided in the studies as known at
11 the time of the studies.

12 Q In your opinion, are these studies
13 comprehensive of the resources and practices that are
14 in the area?

15 A Yes.

16 Q Do you want to make any final comments or
17 clarify anything that might have been said on the
18 record at the last meeting?

19 A I think clarification a little bit with
20 regard to the OCR and the purpose of the OCR in
21 respect to the overall traditional cultural
22 practices.

23 In the archaeological literature review and
24 field inspection I did make the statement that the
25 historic properties, the terraces that are within the

1 Olowalu Cultural Reserve, the petroglyph panels that
2 are within the Cultural Reserve, because of their
3 position within the Olowalu Cultural Reserve, which
4 is a no-build area, those will not be impacted by the
5 proposed development.

6 So long as that Olowalu Cultural Reserve is
7 maintained for the historic properties. The
8 traditional cultural practices, however, I would like
9 to clarify that.

10 The documents do state that continued
11 consultation with the community with regard to access
12 of these resources outside of the Cultural Reserve is
13 necessary. And we do look at potential impacts to
14 those resources outside of the Cultural Reserve and
15 made some mitigation recommendations and suggestions
16 as to how to move forward with best management and
17 integrity of those resources.

18 Q Did you get a chance to review some of the
19 development consultants with respect to the
20 mitigation proposed and whether those mitigation
21 measures would be beneficial or help to preserve the
22 historic resources in the area?

23 A Are you asking specific to the
24 archaeological consultant reports or the other
25 reports that ar in the Draft EIS?

1 Q Well, both, if you can answer both.

2 A So with regard to the archaeological
3 preservation measures and Burial Treatment Plans in
4 addition to some additional suggestions made by
5 community members during the consultation process, I
6 believe that the integrity of those sites, so long as
7 there is accountability as far as maintaining the
8 preservation measures, I believe those historic
9 reservation sites will be protected.

10 As far as the other, I don't have the
11 expertise to really understand traffic reports or
12 anything like that, I'm sorry.

13 Q Thank you. That's all the questions I have
14 for Ms. Greig at this time.

15 CHAIRPERSON ACZON: Ms. Thomson, do you
16 have any questions?

17 MS. THOMSON: We don't have any questions.

18 CHAIRPERSON ACZON: Mr. Yee?

19 CROSS-EXAMINATION

20 BY MR. YEE:

21 Q Thank you for your testimony. Let me start
22 with some basic questions.

23 How many Cultural Impact Assessments have
24 you prepared?

25 A I've been involved with the preparation --

1 I've been doing this professionally for 17 years on
2 the cultural impact assessment side of it. I've been
3 involved in the preparation of upwards of ten.

4 Q And so you've been working this field for
5 17 years or so?

6 A I've been working in the field of
7 archeology for 17 years.

8 Q In this case, if I understand correctly,
9 you were responsible for the Cultural Impact
10 Assessment, is that correct?

11 A Yes.

12 Q Were you also responsible for the
13 archaeological literature?

14 A Yes.

15 Q And with respect to the archaeological
16 literature review, I understand that document
17 summarized prior adds that were done for this
18 property, petitioners, is that right?

19 A That's correct.

20 Q The two primary, I guess, AIS for this
21 petition area were the one mauka on the area, the
22 other about makai area?

23 A Correct.

24 Q Do you remember the day?

25 A Field work carried out between '97 and '98,

1 report was finalized and accepted by SHPD in 2000.

2 Q Do you remember the day in which SHPD
3 enacted its current or more recent rules respecting
4 the requirements for archeological inventory survey?

5 A 2003.

6 Q These reports were done prior to the SHPD
7 rules for AIS reports?

8 A Correct, they were done under the
9 guidelines provided by SHPD at that time, right.

10 Q Is it correct that many of the AIS's that
11 were done prior to the SHPD rule, were more of a
12 reconnaissance than an inventory survey?

13 A I would not make that statement about all
14 reports in inventory surveys.

15 Q I don't mean to ask you to make that
16 statement. I'm just wondering if you understood many
17 of these older archaeological reports that were done
18 prior to SHPD rules would not be considered
19 applicable to the SHPD rules today?

20 A Yes.

21 Q And if I understood correctly, you did a
22 field study more recently?

23 A Yes, field inspection.

24 Q In the field inspection you identified four
25 archaeological sites not previously identified.

1 A Yes.

2 Q And that would not be unusual under the old
3 requirements when you have a more recent study and
4 find archaeological sites that were not previously
5 identified; is that right?

6 A That is correct.

7 Q The archaeological inventory surveys
8 previously done to the petition area were not
9 included, or attached to your document, is that
10 correct?

11 A That's correct.

12 Q So you summarized it instead?

13 A Summarized and pulled up all the data out
14 from it in order to create the tables that are in
15 there.

16 Q With respect to the Cultural Impact
17 Analysis, in the Draft EIS you prepare a consultation
18 plan; is that right?

19 A Yeah.

20 Q And the consultation plan set forth a
21 proposed method by which you would be doing the
22 Cultural Impact Assessment?

23 A Right.

24 Q It included, for example, possible names of
25 people you would contact, but it did not include --

1 at that time you did not actually contact anyone or
2 conduct interviews; is that right?

3 A That is correct.

4 Q Would it be fair to say -- you testified
5 that you're not aware of any hard and fast legal
6 requirements to conduct interviews; is that right?

7 A That is correct.

8 Q But with respect to this particular case,
9 do you think you could have an adequate cultural
10 impact assessment without conducting interviews?

11 A No.

12 Q So it would be fair to say at the time you
13 prepared the consultation plan, you understood that
14 that consultation plan would not be adequate for a
15 Final EIS?

16 A Right.

17 Q In response to whether or not this
18 information contained in the Final EIS would be
19 sufficient to satisfy Kapaa Kai requirements, you
20 noted it would be as known at the time of the study.
21 What did you mean by that statement?

22 A At the time of the study I was unaware -- I
23 did not know about the collection, the traditional
24 practice of collecting the pohaku for pohaku ku'i'ae.
25 That would be one.

1 With regard to the archaeological
2 resources, there have been -- there has been
3 additional fines in the Olowalu area, more recent,
4 and so that is what I meant by that.

5 Q So do you think both the cultural and
6 archaeological review, or just one or the other?

7 A Can you restate?

8 Q Would those two items relate to both
9 cultural impact and as well as archaeological
10 literature review, or just on one or the other?

11 A Collection of pohaku, pohaku ku'i'ae
12 reflects the cultural impact assessment. The
13 additional find of a burial feature at Camp Olowalu
14 would apply to both.

15 Q And do you think then that the Cultural
16 Impact Assessment, Archaeological Literature Review
17 would need to be amended to reflect that information
18 that you're now aware of?

19 A I would think that it would need to be
20 included.

21 Q In response to a question you were asked
22 about whether or not the Final EIS study, the
23 Cultural Impact Analysis would adequately -- and you
24 may correct me, I don't know the exact word -- would
25 adequately -- the impacts were adequately discussed

1 or accounted for. Do you remember saying that?

2 A Yes, I do. The area for collecting pohaku
3 ku'i'ae is in the coastal area along the rocky
4 beaches, I believe. That's is a resource in that
5 area. The stony beaches in the area made great
6 pohaku ku'i'ae. That access to that cultural area is
7 covered in the impact assessment.

8 And maintaining access to that area to
9 carry out traditional practices is also spoken of in
10 the Cultural Impact Assessment. The Olowalu area
11 that was identified in the Olowalu Camp area outside
12 of the burial preserve is in an area and in soil and
13 sediment types of deposits where burials often a
14 concern for encountering (inaudible) discovered
15 during previous work.

16 So that the mitigation measure for
17 continuing monitoring in that area, that is also in
18 place, is accounted for in the field inspection and
19 literature.

20 Q In your answer I think you also refer to
21 the needs to have further discussion about cultural
22 impacts; is that right?

23 A That is correct.

24 Q So in order to come to a conclusion about
25 how to adequately account for the impacts, do I

1 understand you correctly saying that there needs to
2 be further discussion and further evolution of what
3 those mitigation measures would be?

4 A Yes. As details come together for the
5 different blocks of conceptual areas, what that looks
6 like and how that is carried out in relation to the
7 traditional cultural practices, absolutely.

8 Q If you still need to have these
9 conversations, how can you conclude that the cultural
10 impacts are adequately mitigated?

11 A I would say that the suggestions for
12 mitigating those cultural impacts are included in the
13 EIS, and to carry out those mitigations, that's the
14 responsibility of the Petitioner or conditions for
15 permits or something like that.

16 Q But the agreement for those mitigation
17 measures are not covered, is that right?

18 A That's correct.

19 Q In the -- and I just wasn't clear --
20 there's discussion about realignment of Honoapi'ilani
21 Highway. Was the area of that realignment included
22 within the AIS that you reviewed?

23 A Yes.

24 Q And within these AIS that you were
25 reviewing -- let me take a step back.

1 You mentioned that there are certain areas
2 in the property that are more conducive to burials?

3 A Yes.

4 Q Because typically in hard rocky areas
5 you'll find fewer burials, and sandy areas it's a
6 concern?

7 A Yes.

8 Q In your archaeological literature review,
9 did you analyze how well -- how good a job was done
10 to determine whether or not there had been adequate
11 analysis of underground archaeological resources such
12 as burials?

13 A For the makai area I did take a look at
14 their transects. They did quite a few -- I don't
15 know the exact numbers, it's not with me right now --
16 focused along the coastline.

17 When the individuals that are located
18 within the burial preserve, when that was first
19 encountered, the methodology to define or attempt to
20 define, because really you can't really fully know
21 unless you excavate every square meter of the
22 coastline.

23 So with the attempt to define the limits,
24 or the extent of that area, was within current
25 archaeological method norms to go from your center

1 and/or test pit out from your center until you find
2 nothing.

3 Q So if you were to do a new archaeological
4 inventory survey today, would you recommend
5 additional trenches be done?

6 A Yes.

7 Q And that is because of the importance of
8 burials and the likelihood of burials would be found
9 in this particular area?

10 A I would say yes, and with a more specific
11 footprint to work with, you should do more,
12 absolutely.

13 Q With respect to aboveground archaeological
14 sites, would you recommend that complete block, the
15 entire fishing area be done?

16 A I would recommend a complete walk through
17 of the areas where we have the and in that alluvial
18 area, the former route of the streambed.

19 Q So moving forward, would you recommend that
20 that work be done?

21 A I would.

22 Q Thank you very much.

23 CHAIRPERSON ACZON: Thank you.

24 Commissioners, any questions?

25 COMMISSIONER MAHI: I notice I remember

1 that the question was asked -- that letter that was
2 prepared by the Office of Hawaiian Affairs and in
3 that letter did you recognize the attitude for which
4 they expressed toward today's proceedings relative to
5 the subject area?

6 THE WITNESS: I'm sorry, the attitude?

7 COMMISSIONER MAHI: Not the attitude, but
8 their reaction in terms of their feelings that the
9 EIS should not be accepted.

10 Did you read that in the letter?

11 THE WITNESS: Yes.

12 COMMISSIONER MAHI: What is your reaction
13 to that?

14 THE WITNESS: With regard to response to
15 the archaeological work, we do have archaeological
16 reports, mitigation plans, burial treatment plans
17 have been imposed by the State Historic Preservation
18 Division, and the Burial Treatment Plans regard to
19 burials identified during inventory survey, those
20 need to go through the Maui Island Burial Council
21 before being formally accepted by the State Historic
22 Preservation Division. So those issues have been
23 before Burial Council.

24 COMMISSIONER MAHI: Do you believe that
25 Kamana's (phonetic) reaction was premature?

1 THE WITNESS: I would have liked to have
2 seen that letter earlier to be able to provide a
3 comment to OHA.

4 COMMISSIONER MAHI: Sure.

5 You also said that you had spoken to people
6 at OHA while you prepared -- and which individuals
7 are they?

8 THE WITNESS: Auntie Thelma (phonetic). We
9 talked about recommendations for who to talk to.

10 COMMISSIONER MAHI: And did you contact any
11 of those individuals?

12 THE WITNESS: Yes.

13 COMMISSIONER MAHI: Was it Kai Markel by
14 chance?

15 THE WITNESS: No, Kai Markel -- we did send
16 a letter to OHA directly, both to the Maui division
17 as well as OHA on Oahu, and I believe Kai Markel is
18 with OHA.

19 COMMISSIONER MAHI: I believe his name was
20 also mentioned in the letter as a reference person
21 that we had received at 10:00 o'clock this morning.

22 I also have a concern about the council
23 that you had organized in relating back to previous
24 questions as to -- if you can clarify this again to
25 me -- is that you had put a council together to meet

1 and give advice on cultural activities and cultural
2 concerns. And that you did not have a meeting with
3 them. Can you repeat that again?

4 THE WITNESS: Sure, that was a
5 recommendation for our putting together such a
6 council, like an Olowalu Marine Management Group, and
7 the council of traditional practitioner from the
8 Olowalu area.

9 That was a recommendation put forward as a
10 part of the consultation process in a manner to
11 mitigate or maintain the integrity of some of the
12 resources. That has not been formed. It was a
13 recommendation.

14 COMMISSIONER MAHI: I don't have any
15 questions right now, thank you.

16 CHAIRPERSON ACZON: Thank you. Vice Chair
17 Scheuer.

18 VICE CHAIR SCHEUER: Aloha, thank you for
19 being here and sharing your expertise.

20 If I understood some of your questioning
21 from Ms. Thoene, site number 4693 has a protection
22 plan or some kind of preservation planning in place?

23 THE WITNESS: Yes.

24 VICE CHAIR SCHEUER: What is the plan for
25 that preservation?

1 THE WITNESS: The measures for that are to
2 maintain native vegetation within the boundaries
3 which are designated on that Figure 23. The
4 permanent markers for -- so that people are aware
5 that there's something here are large pohaku along
6 the boundary of that, as well as signage describing
7 what is there and that the area is kapu.

8 VICE CHAIR SCHEUER: So it's not proposed
9 for park use then?

10 THE WITNESS: If it is in preservation you
11 cannot use the burial preserve as a park. That's off
12 limits.

13 VICE CHAIR SCHEUER: I'm trying to
14 understand why on the figure to your left the
15 proposed Master Plan, it actually falls within the
16 park area.

17 THE WITNESS: I believe the surrounding
18 land use around the preservation area is designated
19 for parking open space, so not to build up against
20 it, but within the parking open space you will have
21 this preserve.

22 VICE CHAIR SCHEUER: So the map doesn't
23 necessarily reflect what the intended protection --
24 the map on the left, conceptual plan doesn't
25 necessarily reflect protection measures that are

1 anticipated?

2 THE WITNESS: Right. I believe that what
3 that illustrates it's the proposed land use for the
4 areas around the preservation area and the concept of
5 the master plan.

6 VICE CHAIR SCHEUER: I want to discuss a
7 somewhat delicate subject. Who within SHPD did you
8 work with and get approval for the various plans that
9 you worked on that were approved?

10 THE WITNESS: Those plans were not drafted by
11 myself. Those were plans that had been previously
12 approved. I was not brought onboard the project
13 until 2011. So Xamanek Researches, they were at the
14 consulting firm that was involved with the
15 archaeological inventory survey and development of
16 the burial treatment plans as well as the measures
17 for Kawaialoa Heiau.

18 The Olowalu Elua Associates, they were
19 responsible for putting together the mitigation and
20 preservation plans for the remaining of the historic
21 properties that were not burial sites and not
22 ceremonial sites.

23 VICE CHAIR SCHEUER: Were you part of the
24 -- you said you sent out consultation letters.

25 THE WITNESS: Yes.

1 VICE CHAIR SCHEUER: You sent them out to
2 SHPD?

3 THE WITNESS: Yes.

4 VICE CHAIR SCHEUER: Who at SHPD did you
5 send those out to?

6 THE WITNESS: Those went out to Pua Aiyu
7 (phonetic) with a courtesy copy to the Maui Division.

8 VICE CHAIR SCHEUER: Who at the Maui
9 Division did you send those to?

10 THE WITNESS: Morgan Davis and Henon
11 Rodrigues (phonetic).

12 VICE CHAIR SCHEUER: Thank you.

13 My last set of questions right now. Ms.
14 Thorn asked you about Kapaa Kai. IT sounds like
15 you're familiar with the standards.

16 Are you familiar with why the LUC failed in
17 Kapaa Kai?

18 THE WITNESS: Not the specifics of that,
19 no.

20 CHAIR SCHEUER: So in part of what the LUC
21 did was that the petitioner agreed to set up a group
22 to work with cultural practitioners to work out
23 unresolved issues, and the court found that that was
24 not sufficient in terms of protecting.

25 So I'm trying to understand -- Ms. Thoene

1 didn't hesitate to ask you about Kapaa Kai. I'm
2 trying to understand why you believe, what I
3 understand to be a very similar proposal in the EIS,
4 which is, well, there is going to be some other
5 cultural impacts, we haven't worked out yet. We are
6 going to set up a working group, very much the same
7 proposal that the LUC approved and the court
8 overturned it. So what is the distinction?

9 THE WITNESS: I'm not sure if all of the
10 traditional cultural -- any traditional cultural
11 practices were called out in that, in that case, or
12 did they say they were just going -- we'll consult?

13 VICE CHAIR SCHEUER: I'm sorry, I guess I
14 assumed that when Ms. Thoene asked you about Kapaa
15 Kai, you were familiar with the case.

16 THE WITNESS: I'm familiar with the
17 outcomes of that case and why we do what we do, but
18 I'm not familiar with the mechanics in particular of
19 that court case.

20 VICE CHAIR SCHEUER: So how does
21 trusting -- let me ask it this way.

22 How does trusting that the petitioner is
23 going to work on something when there's petitioners
24 who were consulted during the process, as well as
25 people come to us since then. How do we have

1 assurance that our duties to affirmatively protect
2 traditional and customary practices to the extent
3 feasible are taken care of?

4 THE WITNESS: The way that I understand it,
5 I'm not sure if there were conditions put on permits
6 following that. I have worked in areas where
7 documents like memoranda of agreement between the
8 developer and community groups are developed, and are
9 binding. Whether that happens at this stage and in
10 this forum, or is something that is a condition later
11 as a part of permitting process, or all the lingo of
12 the planning with the district plan amendments and
13 all of that, whether that can come then.

14 VICE CHAIR SCHEUER: It's okay.

15 You state in your opinion that this was
16 satisfactory under Kapaa Kai, and I wanted to
17 understand that.

18 CHAIRPERSON ACZON: Commissioner Wong.

19 VICE CHAIR WONG: I have a question.

20 You did a walk through of the area?

21 THE WITNESS: Yes.

22 VICE CHAIR WONG: And you found four that
23 was never in the EIS before?

24 THE WITNESS: Right.

25 VICE CHAIR WONG: When did you do this walk

1 through?

2 THE WITNESS: 2011, 2012.

3 VICE CHAIR WONG: Was this during -- when
4 was the AIS filed?

5 THE WITNESS: The AIS was finalized in
6 2000.

7 VICE CHAIR WONG: So the question I have is
8 you found four sites -- haven't been identified
9 before sites. Wouldn't you think that would at least
10 say maybe we should have done an AIS because --

11 THE WITNESS: Because the area had already
12 undergone an AIS, the recommendation was to document
13 those four sites at an inventory survey level with
14 further consultation with SHPD as further information
15 is made known about what is happening in particular
16 areas.

17 VICE CHAIR WONG: So the other question I
18 have is, because I guess EIS is to a cultural site is
19 to assist and identify sites. You did a walk
20 through. You used the old AIS to do this. But you
21 found four sites. Wouldn't you think a new AIS
22 should be done?

23 THE WITNESS: I think that, you know,
24 again, that falls within the purview of SHPD. And
25 because the area footprint of the area had already

1 previously undergone an inventory survey, additional
2 work would need to come from SHPD. I did make
3 recommendation to document what we did see during the
4 walk through, as well as preliminary recommendation
5 to, at a minimum, because prior to this there had
6 been no more work needed in the area, so at the
7 minimum I had recommended monitoring with
8 consultation with SHPD moving forward in the event
9 that they had felt that more was needed.

10 Again, I'm not the regulatory agency for
11 that, so how the rules are interpreted and the steps
12 to be taken when there is already an AIS in place for
13 certain lands, that's to come through consultation
14 with SHPD.

15 VICE CHAIR WONG: So SHPD got the
16 information of four new sites?

17 THE WITNESS: It is in the literature
18 review.

19 VICE CHAIR WONG: SHPD didn't say, hey --
20 did they ever say, I want to do more? Or just say
21 blank?

22 THE WITNESS: We included -- the study was
23 appended to the Draft EIS. SHPD received a copy of
24 that Draft EIS, and I believe that there's no
25 comment.

1 VICE CHAIR WONG: Thank you.

2 CHAIRPERSON ACZON: Commissioner Cabral
3 followed by Commissioner Estes.

4 COMMISSIONER CABRAL: You've been in this
5 business as an archeology consultant cultural expert
6 for about 17 years and then you came onto this
7 project about six years ago, and you reviewed what
8 someone else did, and that was approved in 2000.

9 During the currently and/or how much in the
10 past -- do you live here? Do you work out of Maui?
11 Do you live everywhere?

12 THE WITNESS: No, I live in Kihei. I have
13 lived on Maui. I mean, it's really what brought me
14 to Maui was the work. I worked on the Kaho'olawe
15 project for the duration of that and started working
16 in Maui County as resident of Maui County following
17 the completion of that project.

18 COMMISSIONER CABRAL: What year was that?

19 THE WITNESS: 2004.

20 COMMISSIONER CABRAL: Thank you very much.

21 CHAIRPERSON ACZON: Commissioner Estes.

22 VICE CHAIR SCHEUER: Can I go just a little
23 bit?

24 In the testimony you talked story with
25 Uncle John and Auntie Rose Marie Duey?

1 THE WITNESS: No, they provided a letter.

2 VICE CHAIR SCHEUER: But they were
3 contacted?

4 THE WITNESS: Yes.

5 VICE CHAIR SCHEUER: So they commented
6 about needing sufficient mauka-makai flow of water.
7 Was that part of the scope of what is supposed to be
8 worked out in the future?

9 THE WITNESS: I think that there is other
10 studies about how much water goes back into the
11 stream, and the scope of their needs. That may
12 increase as they open more lo'i, or depends on how
13 many lo'i are open.

14 VICE CHAIR SCHEUER: I'm trying to
15 understand to whom we get the different experts.
16 Obviously growing kalo and lo'i is a cultural
17 practice, so you're involved, but then hydrological
18 issues.

19 I'm trying to understand, how -- when you
20 have a cultural practitioner saying we need to have
21 sufficient water both for growing lo'i kalo as well
22 as for mauka-makai flow, when you say there's not
23 going to be impact on traditional and customary
24 practices, where did you come into the water
25 discussion on that?

1 THE WITNESS: So the water discussion -- I
2 don't say there is not going to be impacts. I always
3 state that there may be impacts and you need to think
4 about these, but I don't state that there's not going
5 to be any impact, first all.

6 Second, just looking at trying to
7 understand what the hydrology, and they're saying,
8 and in conversations with repairing the different
9 irrigation systems so that they don't leak out into
10 the different -- and lose water and not work
11 efficiently. If those systems are working
12 efficiently, then there is a statement that more can
13 be put into the stream, the level to which -- the
14 levels to which need to be worked out with the
15 individual kalo farmers and putting in a mechanism in
16 place as a condition of anything, I think, you know,
17 would hopefully assist in assisting the perpetuation
18 of that practice.

19 Hard and fact numbers, I don't know. I
20 think they're still trying to figure that out with Na
21 Wai Eha.

22 VICE CHAIR SCHEUER: So your roll is to
23 sort of identify if there is a practice, and that
24 information gets handed off to other consultants in
25 terms of quantification?

1 THE WITNESS: That's how I look at it.

2 VICE CHAIR SCHEUER: Thank you.

3 CHAIRPERSON ACZON: Anybody else? Ms.
4 Thoene.

5 REDIRECT EXAMINATION

6 BY MS. THOENE:

7 Q Tanya, did you review again the AIS
8 document that -- did you review the 2000 AIS that was
9 approved by SHPD?

10 A Yes.

11 Q So you also reviewed both AIS for the --
12 (inaudible)?

13 A Yes.

14 Q Both those studies as a whole, and they
15 were not appended to your study.

16 Is all of the data from those studies in
17 your report?

18 A Yes.

19 Q Can you please explain how those studies
20 are consistent with the current AIS rules?

21 A Currently in order to carry out an AIS, you
22 need to identify your area of potential effect which
23 they did. Secondary to that is a pedestrian walk
24 through of your area with a field crew, depending on
25 the number and transect. And according to their

1 report, they did their inventory survey pedestrian
2 with a field crew having a five-meter or 15-foot
3 interval between each, which is a very fine level of
4 walk through.

5 So, yes. They also completed subsurface
6 testing of both mauka and makai section. The makai
7 section was a lot more comprehensive, a lot more land
8 open to be able to be tested.

9 In the mauka area where they were unable to
10 subsurface tests, they did clarify that due to access
11 issues, we were unable to subsurface test certain
12 areas.

13 So part of the rules within an AIS is if
14 you're unable to subsurface test, or if you not think
15 that you need to do subsurface testing, you need to
16 say why, and they did that.

17 The other aspects of that is to do proper
18 artifact analysis to discuss the soil description and
19 the sediment layers, and that is within the inventory
20 surveys, as well as maps and locational information
21 overall topographic maps. Those are also provided in
22 the inventory survey.

23 Q How large an area was your study?

24 A My study for --

25 Q Archaeological cultural.

1 A So for the archaeological lit review we
2 looked at studies that not only encompassed entirely
3 within the footprint, but we did identify one study
4 for the electrical line mauka, which we also included
5 in there, as well as some of the older historic
6 archaeological studies in the early 1900's. Winslow
7 Walker was the archeologist that recorded Kawaialoa
8 Heiau and a smaller heiau below that for the first
9 time. And other historic types of documents like
10 that.

11 Q With respect to the size of the Olowalu
12 Town Master Plan, did your review and the studies
13 that were done encompass the entire area for the
14 Olowalu Town Master Plan?

15 A It did encompass the footprint of Olowalu
16 Town Master Plan.

17 Q There has been some discussion about four
18 new sites that you identified. Again, can you talk
19 about those and discuss whether those sites were
20 significant or not?

21 A They're all significant on one level or
22 another. So for the historic site that was
23 identified near the site koa --

24 Q Would you give us those on the figure
25 behind you?

1 A (Indicating) Site 4701, that's the koa
2 feature where we identified an additional retaining
3 wall, kind of a long a swale there. And the
4 construction materials, construction style is with
5 that of a koa. There are -- at this point in time we
6 are looking at it as being associated with that koa,
7 located on the mauka side of the koa structure, mauka
8 and Launiupoko.

9 So is that significant? Absolutely, if
10 it's determined to be associated with that koa.

11 Q Just to stop you for that. That koa
12 already has preservation measures in place for that?

13 A Yes, it does.

14 The other two were located along the ridge
15 in here.

16 Q Could you identify that?

17 A That's Figure 10 of the Appendix G-1.

18 And those were the two surface scatter of
19 the corral fragments along the open ridge line. It
20 had some, not a whole lot of rain, and so areas that
21 were open we were able to see that because of that.

22 So that coral, to understand that, we would
23 need to go back. And definitely there is indications
24 that there may be some ceremonial significance to
25 that just because of the type of coral, branch coral

1 that you often find in ceremonial features, as well
2 as for informational purposes along that ridge line.

3 And the other was a reservoir there
4 (indicating).

5 Q Again to Appendix G-1. And --

6 A That without doing any additional historic
7 background on that, we're looking at -- also
8 recommended additional consultation with the
9 architecture branch to understand its significance in
10 terms of historic engineering, significant for that.

11 Q So are you at you all familiar with the
12 Kelaki, Yoshioka (phonetic) case 2012 Supreme Court
13 case?

14 A No. What is it for?

15 Q So in this case the court decided whether
16 or not an actual document that is called an AIS needs
17 to be included in an EIS.

18 Are you aware of that requirement?

19 A Yes.

20 Q I think we went over this, but just to
21 restate it. Is a document that is called an AIS
22 required in an EIS?

23 MR. YEE: I object. One, it was not
24 included. Second, really calling for conclusions
25 which I'm sure counsel will be ably arguing.

1 MS. LIM: We concede that point.

2 Q (By Ms. Thoene): Do you believe SHPD
3 clearance will be required for any ground disturbing
4 activities in the project area if this project goes?

5 A Absolutely.

6 Q That's all we have. Thank you.

7 CHAIRPERSON ACZON: Thank you.

8 Before you call your next witness,
9 five-minute break.

10 (Recess taken.)

11 CHAIRPERSON ACZON: Do you swear that the
12 testimony that you're about to give is the truth?

13 THE WITNESS: I do.

14 CRAIG LEKVEN

15 Was called as a witness by and on behalf of the
16 Petitioner, was sworn to tell the truth, was examined
17 and testified as follows:

18 CHAIRPERSON ACZON: Please state your name
19 and address for the record.

20 THE WITNESS: My name is Craig Lekven.
21 Address is 1955 Main Street, Suite 200, Wailuku.

22 DIRECT EXAMINATION

23 BY MS. LIM:

24 Q Hi, Craig. You prepared a couple the
25 studies for this Environmental Impact Statement

1 before this Commission today, correct?

2 A That's correct.

3 Q Would you please tell the Commissioners
4 what studies you prepared?

5 A I prepared the Wastewater Management Plant
6 for the proposed Olowalu Town development. And I
7 prepared a Storm Water Quality Enhancement Report for
8 the development as well.

9 Q Thank you.

10 Just for the record, that Wastewater
11 Treatment Plant or Management Plan is Appendix Q, and
12 I believe your Storm Water Quality Report is C --

13 A Two.

14 Q That's correct, C-2.

15 So we have done a lot of Q and A with
16 certain other witnesses, but I think particularly in
17 this instance, what I really would like to do first
18 is to discuss the details of the Wastewater Treatment
19 Plant that was assessed under the EIS.

20 What it was that you understand that this
21 plant will consist of, where it's located, how it
22 will be built, what the components are.

23 If you would, just please give the
24 Commission some details.

25 A When we started looking at this proposed

1 development, we came up with some goals for this
2 Wastewater Treatment Management Program.

3 First is that there be no injection wells.
4 Other goals are we would have a high level of water
5 recycling, and we would make use of natural
6 wastewater treatment systems where feasible.

7 So what we came up with is a, I believe
8 will be one of the, if not the most progressive
9 wastewater management system in the State of Hawaii.

10 What is going to happen, the proposal is to
11 construct a membrane bioreactor wastewater treatment
12 plant that incorporates a process called biological
13 nutrient removal.

14 This treatment plant will satisfy two
15 goals. The first one is to produce R1 recycled
16 water, and R1 recycled water is the State of Hawaii
17 Department of Health highest classification of
18 recycled water.

19 If you produce R1 water, then you're
20 allowed to use that water to irrigate areas with
21 unrestricted public contact. In other words, parks,
22 playgrounds, green spaces, areas like that.

23 The second portion of this treatment
24 process is biological nutrient removal. Biological
25 nutrient removal will reduce concentration nitrogen

1 in the wastewater down to less than ten milligrams
2 per liter of total nitrogen, and total phosphorous to
3 less than three milligrams per liter.

4 It's important that we remove nutrients in
5 our wastewater treatment process, because those
6 nutrients, if they get into the marine environment,
7 are a liability to say the least.

8 However, these nutrients, when they're
9 applied to land for irrigation water, are assets,
10 because those nutrients provide fertilizer value to
11 the crops that are being irrigated.

12 Q Couldn't we just dump it in injection
13 wells? Wouldn't that be even less risky in terms of
14 impact to marine environment?

15 A No. Because I think it's pretty well
16 accepted, recycling the water and using it for
17 irrigation, uses the water at the surface of the
18 land. The plants that are growing and using the
19 water, use those nutrients and uptake those
20 nutrients, as opposed to injection wells where we
21 take the water and place it directly into the
22 groundwater aquifer.

23 So there are additional layers of
24 environmental protection afforded by implementing
25 water recycling.

1 Q How do the plants work to do that
2 recycling, and I guess the nutrient removal is
3 important. How does it work to help remove nutrients
4 from the waste water?

5 A It's a biological treatment process. The
6 treatment plant consists of multiple tanks and
7 various configurations. And we use microorganisms to
8 both remove organic matter and nutrients from the
9 wastewater. This is pretty typical for modern
10 mechanical wastewater treatment plants.

11 Q Are there a lot of plants like this in
12 Hawaii?

13 A Yes. It's not -- the process that we're
14 proposing is tried and true and there are other
15 instances of this particular wastewater treatment
16 plant and process and use.

17 Q But you did mention that you think that
18 this plant will be somehow different or superior to a
19 lot of plants?

20 A I'm referring to the wastewater system as a
21 whole. The wastewater treatment plant is just one
22 element of this wastewater management system.

23 So the wastewater treatment plant will
24 produce R1 recycled water with produced nutrient
25 content.

1 Olowalu Town development has a lot of green
2 space proposed for it, and we're proposing to use
3 recycled water to irrigate much of that in the forms
4 of parks, street-scapes, playgrounds, that sort of --
5 those types of uses.

6 Now, when -- people flush their toilets
7 year round, and so we have a constant supply of
8 wastewater throughout the year. During the dry
9 season there is a big demand for recycled water, so
10 really no issue with using recycled water during the
11 hot dry summer months, but during when the wet winter
12 months when there's periods of extended rainfall, the
13 demand for recycled water decreases.

14 So our recycled water system and our
15 wastewater management system is designed to balance
16 supply and demand, providing enough irrigated acreage
17 and using supplemental irrigation water during dry
18 periods to irrigate a large acreage of land.

19 And by doing this, we can recycle 90
20 percent or more of the wastewater that's produced by
21 the development.

22 There will be a need to dispose of some
23 wastewater. For example, fit rains for days on end,
24 then there will be minimal or no demand for the
25 recycled water, so then there is a need to dispose of

1 excess recycled water.

2 For this part of the program, we've
3 proposed a constructed wetland natural treatment
4 system, followed by a soil aquifer treatment system
5 to manage this excess recycled water.

6 The first piece of that two-part system is
7 a constructed wetland. What this is, is a man-made
8 feature incorporating aquatic vegetation. And as
9 this excess recycled water flows through this
10 constructed wetland, you know, the treatment that
11 occurs, natural treatment. This is one of our
12 natural treatment systems that we have incorporated
13 into this wastewater management plan.

14 And that wetland will -- the wetland will
15 provide a process known as denitrification. That
16 will convert nitrate in the wastewater, the nitrogen
17 into nitrogen gas. So the nitrogen that was a
18 liability for disposal purposes is effectively
19 removed from the system and returned to the
20 atmosphere.

21 The constructive wetland will provide other
22 benefits as well, such as phosphorus reduction,
23 additional polishing treatment reduction of heavy
24 metals concentrations, reduction of trace organic
25 compounds such as pesticides and other undesirable

1 chemicals that get into wastewater one way or the
2 other.

3 Q The area around the proposed Olowalu Town
4 Master Plan, that is not obviously the acreage we are
5 talking about, but the adjacent areas and the land
6 areas that are interspersed with the proposed
7 project, are those served right now by this water
8 treatment plant?

9 A No, they're not. There's no wastewater
10 plant.

11 Q So how is wastewater taken care of right
12 now?

13 A Those properties would have either
14 cesspools or septic tank systems. Cesspools provide
15 basically no treatment. They're basically holes in
16 the ground, and the wastewater flows into these holes
17 in the ground. Solids are captured within the
18 cesspool itself that the water filters through into
19 the surrounding groundwater.

20 Septic tanks provide more treatment than
21 cesspools. Septic tanks are appropriately sized
22 tanks where wastewater is flushing into the tank and
23 solids are allowed to settle or float out to provide
24 a certain level of treatment. And then the water
25 flows into what is called a leach field, which is a

1 below ground system for soil absorption, so that the
2 septic tank effluent flows into these trenches, and
3 the water then percolates downward into the
4 groundwater.

5 Q I'm really glad you used the term leach
6 field. That was a term that came up a lot the last
7 time we were here. A lot of the members of the
8 public were referring to the leach field, that you
9 were planning on have a leach field for a treatment
10 plant.

11 A No. No leach field is proposed. I think
12 those comments were confused with what a soil aquifer
13 treatment system is. That's the second natural
14 system as part of this wastewater treatment.

15 The constructed wetlands will provide
16 additional polishing treatment, as I described. And
17 then water requiring disposable will flow into what
18 is called a soil aquifer treatment system.

19 A soil aquifer treatment is United States
20 EPA recognized form of land application of
21 wastewater. What it consists of is multiple shallow
22 basins located in acceptable geological formation,
23 and treated effluent is intermittently applied to
24 these basins, and the water is allowed to percolate
25 to groundwater.

1 So the similarity between soil aquifer
2 treatment and soil -- between leach field and soil
3 aquifer treatment is that ultimately the water that
4 enters into those systems percolates to groundwater,
5 but soil aquifer treatment is a recognized form of
6 land treatment that provides additional benefits
7 beyond what leach fields do.

8 And it does that because it's called an
9 aerobic treatment process. It's located on the
10 surface, and water can be intermittently goes to it.
11 And it can be done in such a fashion to optimize the
12 natural attenuation of the pollutants that are
13 present in the wastewater stream.

14 Q Going back to the current wastewater
15 options for Olowalu in general, saying septic or
16 cesspool. So if this wastewater treatment plan gets
17 built as proposed, and, again, at least we are a
18 couple years a way from anything being built because
19 we are only at the EIS review; would this wastewater
20 treatment plant provide an opportunity for the
21 existing area residents to hook into a wastewater
22 treatment plant and no longer have a septic or
23 cesspool?

24 A Yes. That certainly could be accommodated.
25 The number of parcels, particularly along the

1 shoreline, which is the most critical area, those
2 parcels could be accommodated.

3 Q Right now those are just septic or
4 cesspool?

5 A Yes.

6 Q We've talked a little bit about this
7 wastewater treatment plant, and I should have asked
8 you right at the beginning.

9 Pointing at Figure 4 for the EIS, could you
10 identify for the Commission the general area where
11 the wastewater treatment plant is proposed?

12 A (Indicating.)

13 Q So you're pointing up in the mauka Lahaina
14 side?

15 A Yes.

16 Q Just on the mauka side of the highway, both
17 the proposed relocated highway and the existing
18 highway as well?

19 A Yes. And the constructed wetland and soil
20 aquifer proposed for this area is here (indicating).

21 Q That's quite a distance. Can you explain
22 mechanically -- you're an engineer -- but can you
23 explain mechanically why is there that huge
24 difference between the plant and the constructed
25 wetland?

1 A For the soil aquifer treatment system which
2 is a located adjacent to the constructed wetland, we
3 need favorable geology in terms of permeable soils,
4 and so this is an area that we identified as having
5 those soils.

6 Q How about the location of the plant?
7 Because at least one Commissioner expressed it, and
8 probably others are concerned. It's kind of close to
9 the shoreline, and it's a shoreline with a popular
10 surf spot.

11 Can you talk about the selection of that
12 spot for the wastewater treatment plant?

13 A That was selected in conjunction with the
14 overall architect for this development. There's an
15 Olowalu transfer station located adjacent to where
16 this treatment plant is, and there's an abandoned
17 landfill or closed landfill located in that area, so
18 that seemed like a good place to put an industrial
19 kind of facility that a wastewater treatment plant
20 is.

21 We didn't want to locate the treatment
22 plant right in the middle of town. It's better
23 placed on the outskirts of town.

24 Q That makes sense, but it's on the outskirts
25 of Olowalu Town Master Plan, but it's also close,

1 relatively close to the shoreline and the surf spot.

2 So what kind of impacts did you assess or
3 anticipate in having the plant at that location to
4 have the shoreline and the surf spot?

5 A The two biggest issues are visual.
6 Obviously if they are surfing, they probably don't
7 want to see wastewater treatment plant.

8 And, of course, we have all smelled
9 wastewater treatment plants as we have driven by
10 them.

11 There's ways to deal with those issues to
12 mitigate them, make those not significant.

13 We will discuss visual impact first. It's
14 possible to hide treatment plants so you don't see
15 them, and in my report I discuss visual mitigation
16 measures in the form of planting vegetation,
17 architectural walls, or it's possible to actually
18 disguise treatment plants to make them look like
19 buildings. My company has done this. And so that
20 it's not recognizable as a wastewater treatment
21 plant.

22 The second issue, of course, is odors. And
23 we've all smelled wastewater treatment plants before.

24 A wastewater treatment plant will always
25 generate odors. The question is what do you do with

1 it and how do you mitigate that?

2 What we have proposed is rigorous odor
3 control system in the form of collecting foul air and
4 treating it in bio filters or other suitable odor
5 control systems to mitigate the potential odor
6 impacts.

7 When you go to a wastewater treatment plant
8 and drive by, you're probably smelling one of two
9 things. It's either what's called the head works,
10 which is the front end of the wastewater treatment
11 plant where the raw sewage enters and is strained and
12 degrid. That's a particularly odorous process.

13 So we proposed enclosing the head works
14 within a structure collecting the foul air and
15 treating it.

16 The second part of the treatment process
17 that you might have smelled at other treatment plants
18 is the solids processing units.

19 Wastewater treatment produces residual
20 sludge or bio solids that has to be dewatered and
21 managed. And that can be, the handling of that,
22 converting it from a liquid to solid that can managed
23 can be an odorous process.

24 So for Olowalu Town we have proposed
25 enclosing the solid management part of the solid

1 dewatering system and taking the foul air and
2 treating it so that there's no nuisance odor impact.

3 Q So just to make sure that I understand.

4 Are you saying that the wastewater
5 treatment plant, as proposed, as it says in this EIS,
6 you established ways of building the plant and
7 putting mitigation measures in the plant such that
8 there wouldn't be foul odors coming from the plant?

9 A That's correct.

10 Q Thanks for making that clear.

11 What if it fails? What if there is a power
12 outage, what happens?

13 A Well, a power failure wastewater treatment
14 plant commonly have emergency generators to provide
15 power in the event that the regular power source is
16 interrupted. And we propose that here as well. Same
17 as the pump stations that would support this
18 treatment plant.

19 We have also incorporated what is called an
20 emergency storage basin into the plan. This is a
21 feature at the treatment plant that will allow
22 storage of wastewater that does not meet standards,
23 for whatever reason, and holds it until it can be
24 reprocessed.

25 The third -- I'm sorry, what we were

1 discussing?

2 Q We were talking about failure.

3 A Oh, failure, okay.

4 So we have the generator, standby power, or
5 sometimes what is called a supervisory command data
6 acquisition system. This is a theorized system that
7 monitors treatment processes. It's very common in
8 the water treatment facilities.

9 And during periods of time when the
10 treatment plant is unmanned, then there is automatic
11 alarms that go out to notify the operators that
12 trouble occurs, then they can respond.

13 Q This is all described in your wastewater
14 study that's in the EIS?

15 A Yes.

16 Q You know, there is also some allegations
17 from the public that the wastewater treatment plant
18 is in a tsunami zone.

19 A That's not correct. We are proposing a
20 location above the tsunami zone and above elevation
21 20. And then these wastewater tanks can aboveground
22 as well, so we can provide additional measures of
23 tsunami resistance in terms of elevation.

24 Q When we first started our discussion this
25 afternoon, you were talking about nutrient removal,

1 and I need you to help me connect the dots with
2 nutrient removal. I'm not an engineer and not a
3 scientist.

4 I understand that the wastewater treatment
5 plant is described and planned to create nutrient
6 removal for certain purposes. Again, the thing that
7 I hear again and again is nutrients go into the ocean
8 and create algae bloom.

9 I know you are not a marine resource, but
10 from your design of the wastewater treatment plant,
11 can you address that concern, please?

12 A Sure.

13 As I stated, we are anticipating that 90
14 percent or more of treated wastewater will be
15 recycled and used for irrigation purposes.

16 By incorporating this biological nutrient
17 removal process, we reduce the concentration of
18 nitrogen and phosphorus in this recycled water, such
19 that if it's used for irrigation purposes to irrigate
20 typical park vegetation, such as turfgrass and other
21 plantings, the nutrient uptake of that vegetation
22 will be greater than the amount of nutrients that are
23 being applied by the recycled water.

24 So in essence, everything we apply as
25 recycled water will be taken up by the vegetation

1 that is growing.

2 So there's not significant nutrients left
3 over to find its way to the marine environment.

4 The other element of the project is the
5 treatment and disposal element, the constructed
6 wetlands and the soil aquifer treatment system.
7 These offer two layers of environmental protection
8 and additional treatment.

9 The constructed wetland will provide
10 denitrification that I mentioned earlier to remove
11 nitrogen from there, and also there's additional
12 treatment benefits provided.

13 So the net result of this is that the
14 amount of nutrients percolating to groundwater from
15 this small fraction of the total recycled water
16 production during the year that is applied to the
17 disposal system is insignificant and won't cause a
18 significant impact.

19 And you can talk to Tom Nance about that.
20 He assessed the groundwater quality assessment.

21 Q One question about wastewater treatment
22 plant, if I could.

23 The numbers in the EIS about how much
24 sludge, which is an ugly word, right? Sludge is not
25 a word that just rolls off your tongue.

1 Nine wet tons of sludge a week is going to
2 be generated. What do you do with that, and how many
3 cars or trucks are needed to get rid of that sludge?

4 A That sounds like a lot, but it really
5 isn't. It's a typical volume produced by wastewater
6 treatment plant. Nine wet tons a week is basically
7 one truckload or less.

8 So on Maui County, we're fortunate in that
9 there is a centralized sludge treatment facility in
10 the form of a compost team at Central Maui landfill.

11 So it's anticipated that this one truckload
12 of sludge per week will be taken to the Central Maui
13 landfill and processed there.

14 Q And that's at full build-out?

15 A Yes, 1500 units.

16 Q Now, I'm going to turn your attention a
17 little bit and I'm going to ask that you please tell
18 the Commissioners about the groundwater quality
19 enhancements. I believe that that -- sorry,
20 stormwater quality. My apologies. That's Appendix
21 C-2.

22 If you can describe what that study was
23 intended to do and why is it --

24 A Well, with the Olowalu reef right there, it
25 was recognized early on that stormwater management is

1 going to be a big issue for the proposed development.

2 And prior to my doing this study, my
3 company produced a manual for the State of Hawaii to
4 the Commission on Water Resources Management, and
5 also the United States Bureau of Land Reclamation.
6 And this document is called: A Handbook for Storm
7 Water Reclamation and Reuse Best Management Practices
8 in Hawaii.

9 And what we did is review the types of
10 measures that have been used successfully on the
11 mainland to address stormwater quality problems. And
12 to summarize them and bring them here to Hawaii to
13 help developers and agencies understand the nature of
14 the options that are out there to address stormwater
15 quality.

16 So what we did for Olowalu Town was review
17 that document, looking at the specific proposal for
18 Olowalu Town.

19 Q That's reviewing the document that Brown
20 and Caldwell prepared for CWRM?

21 A Yes, correct.

22 We identified the types of measures that
23 would be most applicable to the Olowalu Town
24 development, based on our understanding of how it was
25 going to be developed. So we came up with -- in our

1 conclusions of my report, we have a matrix of the
2 types of what are called low-impact development or
3 LID measures that could be used Olowalu Town to
4 improve the quality of stormwater.

5 Q Why is important? What are you talking
6 about, improve the quality of stormwater?

7 A In the past the approach towards stormwater
8 management has been to -- the primary goal has been
9 protection of property.

10 So the stormwater systems were developed
11 with channels to basically just take the water away.

12 Q Push it off the property?

13 A Take it off, get it out to the ocean and
14 take care of it that way.

15 The next generation of stormwater
16 management was the incorporation of retention basins
17 to mitigate the impacts of development. And you
18 develop the property, you add impervious surface to
19 those parcels and that increases the volume of
20 stormwater runoff.

21 And so the next generation of development
22 was the incorporation of these retention basins to
23 hold and retain stormwater runoff so that the net
24 flow from the development was comparable to
25 predevelopment conditions.

1 These stormwater quality enhancements
2 represent the next generation of approach to the
3 stormwater problem, which is a big problem
4 nationwide.

5 And the approach with these low impact
6 development measures is to deal with stormwater at an
7 individual parcel level. And by implementing these
8 measures, we accomplish a number of things.

9 We try to increase the amount of stormwater
10 that percolates into the ground instead of running
11 off into the community stormwater collection system.

12 It allows for reuse of stormwater in
13 certain situations to provide a water resource
14 benefit. And for the stormwater that does runoff a
15 property and the community system, these measures
16 provide treatment of that stormwater, so that the
17 quality of that stormwater is better than it would be
18 otherwise.

19 Q So that's interesting. I appreciate you
20 discussing the evolution of the stormwater treatment,
21 but this current state, low impact development design
22 that you're discussing that you assessed in the EIS,
23 are you saying that these LID measures actually take
24 sediment from undeveloped areas? In other words, you
25 explained how retention basins captured water from

1 developed areas. Now you're saying third generation
2 of treatment stormwater. Can you clarify?

3 A No. These LID measures treat the
4 stormwater from the developed area. So within
5 Olowalu Town, the parcels within Olowalu Town will
6 have these low impact development measures to reduce
7 the amount of stormwater that is produced, and to
8 treat it to a higher quality than it would otherwise
9 be.

10 Q I think this may be my last question.

11 This is regarding your August 25th, 2015,
12 letter which was Appendix C-3.

13 Do you recall that letter?

14 A Yes.

15 Q So in that letter, this has to do with
16 assessing, and this somewhat goes to the question I
17 believe Commissioner Scheuer asked earlier about
18 whether the mauka-makai alternative one development
19 was assessed; but then how was the alternative two
20 development, which is the mauka land only assessed,
21 and I guess my question to you is:

22 Did your two studies take into account the
23 difference between having both the mauka and the
24 makai, and just having the mauka lands developed?

25 A With respect to wastewater management, both

1 proposals incorporate 1500 dwelling units. And so
2 the flow assumptions that I used to size the
3 treatment processes, recycled water use areas, and
4 the disposal system are the same.

5 There was no -- alternative one does not
6 incorporate reuse of recycled water makai of the
7 highway. So all of the -- for both options, all of
8 the recycled water is to be used mauka of the
9 highway, and the sizing of the facilities is the same
10 for both of those.

11 With respect to stormwater quality
12 enhancements, these measures are proposed for
13 individual parcels, so there's no difference between
14 the two.

15 Q I have no further questions at this time.

16 CHAIRPERSON ACZON: Ms. Thomson.

17 MS. THOMSON: Thank you, Chair. Just a few
18 questions.

19 CROSS-EXAMINATION

20 BY MS. THOMSON:

21 Q You mentioned a 90 percent recycling. Is
22 that dry weather rate or wet weather rate? What is
23 the wet weather recycling rate?

24 A That is the average over the entire year,
25 so that would incorporate both wet weather and dry

1 weather.

2 Q It correct that the design is based on 1500
3 units? How do you account for the other uses that
4 are planned, because they will be close from those
5 uses?

6 A What uses? I'm not understanding your
7 question.

8 Q In addition to the residential uses.

9 A Yes. There is a commercial allocation as
10 well, so it incorporates 1500 residential units, plus
11 estimates from the anticipated commercial area.

12 Q What visitor count? So if people that are
13 diverted to the area to visit, or the business that
14 will be there, or recreational opportunities along
15 the stretch of coastline, how did you an account for
16 the visitors? And what visitor count are you using?
17 Average visitor counts?

18 A At this level of analysis, we can't take
19 individual, you know -- well, start over.

20 There will be parks developed, access
21 points developed with facilities that incorporate
22 wastewater flows.

23 So within our study, we incorporated
24 multiple levels of conservatism. In terms of
25 wastewater strength estimates and also flow estimates

1 we calculate average wastewater flows based on
2 residential and commercial proposals, but then we
3 assume the strongest wastewater possible which I've
4 yet to see actually occur in Hawaii.

5 And we also incorporate what we call
6 peaking factors, robust peaking factors of beyond
7 what we have seen actually occur in Hawaii.

8 So our wastewater system proposal is a
9 robust one and can take on wastewater from visitors
10 as well as residents.

11 Q Thank you.

12 I just have one question regarding the
13 stormwater system. Will any of the stormwater be
14 aligned with the sewer flow, or will those two
15 systems be completely separate?

16 A Those will be completely separate system.

17 MS. THOMSON: Thank you, Chair, that's all
18 I have.

19 CHAIRPERSON ACZON: OP?

20 MR. YEE: No questions, thank you.

21 CHAIRPERSON ACZON: Commissioners?
22 Commissioner Hiranaga.

23 COMMISSIONER HIRANAGA: Again, I have
24 several questions about. I'll limit the focus on the
25 wastewater treatment plant location primarily

1 initially.

2 You stated that the location was selected
3 because of the existing recycled center and for
4 landfill site was one of your primary determining
5 factors for locating the proposed wastewater
6 treatment plant at this location.

7 THE WITNESS: Those are utility systems, so
8 it made sense to locate the wastewater treatment
9 plant adjacent, basically to cluster those
10 facilities.

11 COMMISSIONER HIRANAGA: Have you physically
12 inspected that site personally?

13 THE WITNESS: Yes.

14 COMMISSIONER HIRANAGA: You know what the
15 form landfill site looks like?

16 THE WITNESS: Yes.

17 COMMISSIONER HIRANAGA: The recycled
18 center, is it a chain link facility?

19 THE WITNESS: Yes.

20 COMMISSIONER HIRANAGA: As far as soil
21 consistency along the proposed mauka Honoapi'ilani
22 Highway route, are the soils pretty consistent from
23 the north end to the south end of the project area?

24 You said soil -- conditions of soil was a
25 factor as far as locating the wastewater treatment

1 plant. I'm just wondering if soil consistency of the
2 south end was similar to the north end of the
3 project.

4 THE WITNESS: For the soil aquifer
5 treatment system and constructed wetland, that area
6 that we selected that, that's not consistent
7 throughout. That's one of the unique features
8 identified in the soil surface for that area.

9 COMMISSIONER HIRANAGA: So the soil on the
10 south end is different type of soil?

11 THE WITNESS: I believe so, yes.

12 COMMISSIONER HIRANAGA: Thank you.

13 CHAIRPERSON ACZON: Commissioner Scheuer.

14 VICE CHAIR SCHEUER: How far mauka of the
15 tsunami inundation zone is the proposed plant?

16 THE WITNESS: It's close to the boarder, so
17 it's located above the highway.

18 VICE CHAIR SCHEUER: So what's close?
19 100 feet, 1000 feet?

20 THE WITNESS: I think the limit of that
21 tsunami inundation zone is the mauka side of the
22 existing highway.

23 VICE CHAIR SCHEUER: So it's just mauka of
24 the highway which is the edge of the tsunami
25 inundation zone?

1 THE WITNESS: Yes.

2 VICE CHAIR SCHEUER: You have no inundation
3 zone close to sea level rise?

4 THE WITNESS: I'm not aware of that. But
5 with the anticipated sea level rise, I would
6 anticipate that the tanks and features of this
7 treatment plant would be located above grade to
8 basically make them higher to account for sea level
9 rise in the future.

10 VICE CHAIR SCHEUER: What's the economic
11 lifetime of this plant, generally speaking?

12 THE WITNESS: The equipment, that
13 mechanical equipment will typically last ten to
14 20-years, concrete tanks and such will have at least
15 a 50-year lifetime.

16 VICE CHAIR SCHEUER: You've mentioned in
17 your two reports a number of innovative and sort of
18 exciting technologies, everything from rain gardens
19 and subsurface tanks to the wastewater treatment
20 facilities and the constructed wetlands.

21 Are there any areas in Hawaii that you've
22 been involved in or aware of that have been installed
23 in this scale?

24 THE WITNESS: I'm not aware of any in
25 Hawaii, but on the mainland there are examples of

1 where these stormwater systems have been used to
2 mitigate stormwater quality concerns in sensitive
3 areas such as Puget Sound or Chesapeake Bay.

4 VICE CHAIR SCHEUER: So are you familiar
5 with any sort of record of success with these systems
6 in Hawaii?

7 THE WITNESS: This is new for Hawaii.
8 There's not been, that I'm aware of, a development.
9 This is one reason why the state hired us to do the
10 initial handbook was to bring these technologies to
11 Hawaii.

12 VICE CHAIR SCHEUER: And forgive my
13 ignorance. I assume it might cost more to do these
14 kinds of higher end technologies or --

15 THE WITNESS: Any time you provide more
16 infrastructure, then it will cost more. I would say
17 that the County of Maui has adopted an ordinance,
18 subsequent to my development of these stormwater
19 quality report, requiring these low impact
20 development and other stormwater quality measures on
21 all future developments in Maui.

22 VICE CHAIR SCHEUER: Just a couple more
23 questions. Like particularly on wastewater treatment
24 plant, proposed constructed wetland, given the cost
25 and the scale of this development, are you at all

1 qualified to make an estimate whether sewage rates or
2 the rates for the users of the system would be
3 typically higher than the existing county rates?

4 THE WITNESS: It will probably be, yes. It
5 will probably be higher than the existing county
6 rates, because much of the county's infrastructure
7 was paid for with federal grant money back in '70s
8 and '80s.

9 VICE CHAIR SCHEUER: Do you have any
10 thoughts on how that will affect affordable housing
11 and affordable aspects of this development?

12 THE WITNESS: It's my understanding that
13 County of Maui -- let me start over on that.

14 The one approach to -- the capital cost of
15 these facilities would be borne by the developer, and
16 that would be passed on to the residents.

17 They would have a formula with respect to
18 how those costs are allocated. A lot of times what
19 happens is the market rate houses, properties, end up
20 subsidizing the cost for the affordable units.

21 VICE CHAIR SCHEUER: I was referring to the
22 operational cost and like monthly bills or bimonthly
23 bills that you receive. They're going to be higher
24 than you would expect of county sewage rates?

25 THE WITNESS: Looking at the existing

1 rates, likely be higher.

2 VICE CHAIR SCHEUER: Two last brief
3 questions.

4 So the best treatment practices certainly
5 sound very good, but we just heard a lot of testimony
6 the last time we were here the people lack faith that
7 best treatment practices get implemented in a proper
8 way. Or actually are able to deal with the runoff
9 issues that occur, and even within this general area
10 of Maui.

11 What about the implementation of this --
12 are you suggesting that these technologies that are
13 proposed are going to be adequate to not have that
14 kind of failure repeated?

15 THE WITNESS: I would respond by saying
16 that these low impact development measures are how
17 the nation as a whole through U.S. EPA and states are
18 implementing stormwater concerns nationwide.

19 VICE CHAIR SCHEUER: But, again, we don't
20 have any -- most of these proposals are not being
21 implemented in Hawaii, so we don't have a track
22 record.

23 THE WITNESS: That's correct.

24 VICE CHAIR SCHEUER: A number of the
25 proposed measures include some fairly significant

1 ground disturbances, retention basins, underground
2 storage of water.

3 Our previous witness talked about the high
4 possibility of potential subsurface deposit where
5 ground disturbing activities would actually be not
6 heavily desired in a culturally historic significant
7 area.

8 What happens if you say this project starts
9 to move forward and you get to a area where you want
10 were to put it in, but there is significant
11 cultural -- Plan B.

12 THE WITNESS: Plan B is to relocate and
13 redesign to honor those culturally significant sites.

14 VICE CHAIR SCHEUER: But if the sites are,
15 as we have heard, quite possibly very heavily spread
16 throughout the property and no relocation possible
17 for these underground technologies or reservoirs and
18 other proposed best management practices.

19 THE WITNESS: Well, we've proposed an
20 assortment of measures, some of which don't require
21 underground excavation, some of them are more
22 surfaced based. So I would expect if there is an
23 individual parcel, if underground culturally
24 significant artifacts are found, then there would be
25 a need to redesign those low impact development

1 measures to address the issue in another way.

2 VICE CHAIR SCHEUER: But that's not
3 considered.

4 THE WITNESS: We provide a menu of options.
5 I can't say at this point what would be placed on
6 each individual parcel. That's got to be done as
7 part of the design process.

8 VICE CHAIR SCHEUER: Thank you very much.

9 COMMISSIONER HIRANAGA: Two more questions.
10 Then just going back to the wastewater
11 treatment plant, I think you mentioned that the plant
12 would be located approximately 20 feet above mean sea
13 level, is that correct?

14 THE WITNESS: That would be, yeah, that's
15 the finish grade. The lowest part of the area that
16 we have identified.

17 COMMISSIONER HIRANAGA: Do you know the
18 upper limits of the rezone 17 feet, it may vary
19 depending on the location. Just wondering if you're
20 aware what the upper limit of the rezone?

21 THE WITNESS: That's kind of outside my
22 area. I would suggest that you ask that of our civil
23 engineer witness.

24 COMMISSIONER HIRANAGA: You mentioned that
25 it's out of the tsunami zone, but is it within the

1 evacuation zone? Because the evacuation zone goes
2 beyond the high inundation.

3 THE WITNESS: I'm not aware that an
4 evacuation zone is identified for that parcel at this
5 point.

6 COMMISSIONER HIRANAGA: I believe it is.
7 You can see it in the telephone book. Where I live
8 in Paia, at a certain point evacuation goes beyond to
9 Hana Highway. So anything makai of Hana Highway is
10 the evacuation zone. A number of homes are in the
11 tsunami zone.

12 Just wondering if the proposed location is
13 within the evacuation zone?

14 THE WITNESS: I don't believe it is.

15 COMMISSIONER HIRANAGA: I guess that can be
16 answered later.

17 The plant in comparison to the proposed
18 town, is it relatively similar. Is pumping required
19 to bring the sewage?

20 THE WITNESS: Pumping will be required to
21 transport the wastewater from town up to the
22 wastewater treatment plant, and then pumping will be
23 required to distribute recycled water to the users,
24 and also to supply water to the constructed wetlands
25 and soil aquifer system.

1 COMMISSIONER HIRANAGA: So back-up
2 electrical power will be provided to pumping
3 stations?

4 THE WITNESS: Yes.

5 COMMISSIONER HIRANAGA: I have some
6 questions regarding stormwater management. I'll
7 afford the other Commissioners to ask question. I
8 have further questions.

9 CHAIRPERSON ACZON: There are no other
10 questions.

11 COMMISSIONER HIRANAGA: I have a couple
12 more.

13 CHAIRPERSON ACZON: Just go ahead with your
14 questions.

15 COMMISSIONER HIRANAGA: You mentioned that
16 regarding stormwater management, former days
17 initially was drainage contained and redirected to
18 protect private property, not really happening from
19 where the water ends up in the valley or basin. And
20 that it's progressed to detention basins. And now
21 that this low impact development is kind of the
22 future, I'm wondering, 24 hours, 100-year storm.

23 What is this low impact development system
24 designed to -- can it handle a 100-year storm to last
25 over -- so it doesn't get overrun?

1 THE WITNESS: I believe their rated for a
2 100 year, 24-hour storm.

3 COMMISSIONER HIRANAGA: You believe?

4 THE WITNESS: It depends on the individual
5 systems. There is a -- County of Maui now has an
6 ordinance regarding the systems, which define design
7 storm, so of course these systems would comply with
8 those minimums at least.

9 COMMISSIONER HIRANAGA: So these systems
10 are designed to contain sediment generated by runoff,
11 so I guess periodically these areas have to be
12 dredged because of the sediment?

13 THE WITNESS: These LID measures do require
14 maintenance.

15 COMMISSIONER HIRANAGA: So that would be
16 the responsibility of developer or individual
17 property owners, because people become lacks in their
18 maintenance.

19 THE WITNESS: That hasn't been expressly
20 defined yet. I would anticipate homeowners
21 association would be required to maintain stormwater
22 quality infrastructure.

23 COMMISSIONER HIRANAGA: I read somewhere in
24 the EIS that Olowalu Village would be providing
25 access to the wastewater treatment plant. Is that

1 correct?

2 THE WITNESS: I think that refers to the
3 constructed wetland.

4 COMMISSIONER HIRANAGA: I'm pretty certain
5 I read that the wastewater.

6 THE WITNESS: Can you restate your
7 question?

8 COMMISSIONER HIRANAGA: The wastewater
9 treatment plant will be available to service the
10 Olowalu Village.

11 THE WITNESS: The existing properties, yes.

12 COMMISSIONER HIRANAGA: Who is going to pay
13 for that connection? Is it the developer or
14 individual property owners need to pay for their
15 hook-up to the wastewater treatment plant?

16 THE WITNESS: That hasn't been determined
17 yet, but I would anticipate -- well, that's best
18 answered by the developer.

19 COMMISSIONER HIRANAGA: You want to defer
20 that question. I'm done.

21 CHAIRPERSON ACZON: Thank you.
22 Commissioners? Ms. Lim?

23 MS. LIM: Just one, please.

24 REDIRECT EXAMINATION

25 BY MS. LIM:

1 Q Craig, I'm going to read to you something
2 from the Hawaii Supreme Court case called Price
3 versus Kobayashi. Hawaii Supreme Court said that an
4 EIS determination of sufficiency of the EIS guided by
5 the rule of reason under which the EIS need not be
6 exhausted to point of discussing all possible details
7 bearing on the proposed action, but will be upheld as
8 adequate if has been complied with in good faith and
9 sets forth sufficient information.

10 With that in mind, I ask you if your
11 wastewater treatment plan and stormwater quality
12 enhancement were complied with in good faith?

13 A Yes.

14 Q Do they inform sufficient information on
15 how impacts can mitigated?

16 A Yes.

17 Q I have no further questions.

18 CHAIRPERSON ACZON: Thank you.

19 COURT REPORTER: Mr. Chair, I know we just
20 took a break, but my replacement has just arrived.

21 CHAIRPERSON ACZON: Why don't we take a
22 five-minute break.

23 (Recess was taken.)

CERTIFICATE

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, JEAN MARIE McMANUS, do hereby certify:

That on December 7, 2015, at 10:18 a.m., the proceedings contained herein was taken down by me in machine shorthand and was thereafter reduced to typewriting under my supervision; that the foregoing represents, to the best of my ability, a true and correct copy of the proceedings had in the foregoing matter.

I further certify that I am not of counsel for any of the parties hereto, nor in any way interested in the outcome of the cause named in this caption.

Dated this 7th day of December, 2015 in Honolulu, Hawaii.

JEAN MARIE McMANUS, CSR #156