

LAND USE COMMISSION

STATE OF HAWAII

July 20, 2017

Maui Arts & Cultural Center

Morgado Meeting Room

One Cameron Way

Kahului, Maui, Hawai'i 96732-1137

ACTION

A94-706 Ka'ono'ulu Ranch (Maui)

To consider acceptance of Pi'ilani Promenade North, LLC's and Pi'ilani Promenade South, LLC's Final Environmental Impact Statement in support of their Motion for Order Amending the Findings of Fact, Conclusions of Law, and Decision and Order Dated February 10, 1995, which reclassified approximately 88 acres at Ka'ono'ulu, Makawao-Wailuku, Maui, Hawai'i.

BEFORE: Jean Marie McManus, CSR #156

1 APPEARANCES:

2 EDMUND ACZON, Chair
3 JONATHAN SCHEUER, Vice Chair
4 ARNOLD WONG, Vice Chair

5 COMMISSIONERS:

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8 NANCY CABRAL
9 DAWN CHANG
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1 CHAIRPERSON ACZON: Good morning.

2 This is the July 20th, 2017 portion of the
3 Land Use Commission meeting A94-706 Ka'ono'ulu Ranch
4 to consider the acceptance of the Final EIS.

5 Yesterday we had concluded the public
6 testimony for this docket, and will now hear the
7 parties' presentation of their cases.

8 The Chair to would like to remind the
9 parties and the public that per HRS 11-200-23(d) that
10 in the event that the agency fails to make a
11 determination of acceptance or nonacceptance within
12 30 days of the Final EIS, then the statement shall be
13 deemed accepted.

14 The Chair also would like to note for the
15 parties and public that from time to time I'll be
16 calling for a short break, at least an hour in
17 between. Please use the microphones when you're
18 speaking.

19 I understand that the parties agreed that
20 we're going to switch around the presentation of
21 cases. The Intervenor is going to go first, followed
22 by the county, followed by OP, and lastly Petitioner.

23 Are we all in agreed?

24 MR. SAKUMOTO: Yes, Mr. Chairman.

25 MS. APUNA: Yes.

1 MR. HOPPER: No objection.

2 MR. PIERCE: Intervenors are in agreement.

3 CHAIRPERSON ACZON: Thank you.

4 I also want to ask the parties and
5 Commissioners that their questions should be limited
6 to the Petitioner's Final EIS, and should not go into
7 the merits -- Petitioner's Motion to Amend LUC's
8 Decision and Order in this docket. So to kind of get
9 the hearing going.

10 Mr. Pierce, please proceed to provide the
11 Commission with your comments on Petitioner's Final
12 EIS.

13 MR. PIERCE: What I propose to do today is
14 we'll be calling first Mark Hyde, and then Daniel
15 Kanahale, and then Dick Mayer, who is our expert, and
16 then Lucienne de Naie, and preserve some closing
17 comments for myself at end of the day.

18 CHAIRPERSON ACZON: Four witnesses?

19 MR. PIERCE: Calling Mark Hyde.

20 CHAIRPERSON ACZON: May I swear you in
21 first?

22 Do you swear that the testimony that you're
23 about to give is the truth?

24 THE WITNESS: I do.

25 CHAIRPERSON ACZON: Please state your name

1 and address for the record.

2 THE WITNESS: My name is Mark Hyde, and I
3 reside at 4320 East Waiola Loop in Kihei.

4 CHAIRPERSON ACZON: Please proceed.

5 MARK HYDE

6 Was called as a witness by and on behalf of the
7 Intervenor, was sworn to tell the truth, was examined
8 and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. PIERCE:

11 Q Good morning. If you could just tell the
12 Commissioners a bit about your background.

13 A I have a political science degree, law
14 degree. I've served as a law clerk to Santa Clara
15 County Superior Courts. I've had a private practice
16 of law in Silicon Valley for 16 years.

17 Thereafter, I became the CEO of a health
18 maintenance organization in California. Served in
19 that capacity for 11 years. Moved here 13 years ago.
20 Put my boys in high school here, and have been
21 engaged in many civic organizations and activities.

22 Q What is your capacity with the South Maui
23 Citizens for Responsible Growth?

24 A I'm the President, Chairman of the Board
25 and one of the founders of the organizations.

1 Q Why was that organization created?

2 A It was created specifically as a
3 consequence of the proposed mega mall development
4 back in 2012 where members of the community realized
5 that there needed to be an organization that could
6 bring litigation to address some of the concerns that
7 were raised by that development.

8 At the time I believe I was on the board of
9 KCA, Kihei Community Association, but it really is an
10 organization that is designed to represent the entire
11 community, and it really wasn't a suitable
12 organization for commencing any kind of that
13 activity.

14 Q How did South Maui Citizens for Responsible
15 Growth become involved in the petition area?

16 A Well, the impotence -- I'm going to back up
17 just a second to answer your question.

18 The impotence came from an article that
19 appeared in the Maui News in January of 2012. It
20 announced that the largest shopping center of Maui
21 County was going to be built on Pi'ilani Highway,
22 coupled by developer documents indicating that the
23 intersection of Kaonoulu and Pi'ilani would have the
24 highest traffic counts of any place in the county
25 which is important for development purposes.

1 That was a shock to the community. I
2 attended a Kihei Community Association meeting about
3 two months later at which Mr. Spence and our
4 councilmember were present, and they advised the
5 standing-only room that the mega mall was fully
6 entitled. There was nothing anybody could do about
7 it. And we were chided for not having spoken up at
8 the time we had an opportunity to speak to the
9 project.

10 I was goded by a community member to dig
11 deeper into this because it just didn't seem right,
12 given that no one knew about it. I flew to Honolulu
13 and I read the LUC file, reporter's transcript and
14 the clerk's transcript. And what I found in that
15 file was that they had presented -- the ranch had
16 presented to this body --

17 Q And when you say the ranch, who are you
18 speaking of?

19 A That was the prior Ka'olo'ulu Ranch
20 represented to this body, and it was approved to
21 develop a 123 lot light-industrial park on the
22 property.

23 Q That was in 1995?

24 A That's correct.

25 As a result of that, I brought back to Maui

1 this information. I presented it to the Planning
2 Director and the Director of Economic Development for
3 Maui County, and I recommended that they enforce the
4 Land Use Commission order, because under state law
5 that is the only obligation of the county. And they
6 refused to do it.

7 As a consequence, then we formed South Maui
8 Citizens for Responsible Growth. We partnered with
9 Maui Tomorrow and Daniel Kanahele. And we brought an
10 intervention action here to challenge that project.

11 Q What was the basis of the challenge? And
12 that was called a Motion for Order to Show Cause?

13 A That's correct.

14 Q What was the basis for that challenge?

15 A The basis for the challenge was three-fold.

16 One, that the project that was being
17 developed was not substantially in compliance with
18 the representations made to the LUC in 1995.

19 Number two, that the developer's of that
20 project had failed to file public progress reports
21 that would inform the community of what it was that
22 they were doing.

23 And third, that the order provided for the
24 construction of a frontage road which was not part of
25 the developer's plans.

1 Q And the Land Use Commission in 2012 and
2 2013 had hearings on this motion for an Order to Show
3 Cause?

4 A Yes, by a five to four vote the Commission
5 found that there was substantial likelihood that
6 there was noncompliance with the order, and set the
7 matter for a contested case hearing.

8 Q They found that as part of the contested
9 case hearing, right?

10 A That was subsequent. First you had to get
11 through the Order to Show Cause.

12 Q In other words, your point is that they
13 granted the Intervenor's Motion to Conduct an Order
14 to Show Cause Hearing?

15 A That's correct.

16 Q What were the results of the Order to Show
17 Cause Hearing?

18 A It was heard over three days in November.
19 Decided, I believe, in January, February, 2013. This
20 body found that the developers were in violation of
21 the 1995 order for failing to develop the property as
22 represented.

23 CHAIRPERSON ACZON: Does this have
24 something to do with acceptance of the EIS?

25 MR. PIERCE: Mr. Chair, I apologize, but I

1 felt, because all of the Land Use Commissioners here
2 were not here in 2012 and 2013 --

3 CHAIRPERSON ACZON: I think the
4 Commissioners read all the records.

5 MR. PIERCE: We are pretty much wrapped up
6 with that.

7 It also helps, Mr. Chair, for the purposes
8 of Intervenor's explaining what their analysis is of
9 the current project.

10 Q So after that happened, at that point, Mr.
11 Hyde, the Pi'ilani asked for a stay of the contested
12 case hearing, right?

13 A Right.

14 Q And then they said that -- they asked for
15 the stay if they filed a motion to amend, and also
16 they planned to file an EIS?

17 A Correct.

18 Q With respect to that, Pi'ilani has only a
19 portion of the property, right?

20 A That's true.

21 Q And then Honua'ula still is an owner of
22 another portion of the property as they were back
23 then, right?

24 A That's correct.

25 Q So for today's purposes we're only focused

1 on the Pi'ilani portion, although to the extent that
2 you think it's necessary to explain how that relates
3 to the Honua'ula side of the property, feel free to
4 explain that to the Commission.

5 So based upon that, you've now explained
6 South Maui Citizens' involvement, why they got
7 involved.

8 Now, we have the EIS before us. And what I
9 want to get into is your analysis of the EIS.

10 Have you reviewed the EIS?

11 A I've reviewed portions of it that were of
12 particular interest to our organization.

13 Q Did you make comments on the Draft EIS?

14 A Yes, I did.

15 Q Did they respond to your comments?

16 A Yes.

17 Q Did you feel that your comments were
18 appropriately responded to?

19 A No.

20 Q Why don't you go ahead and tell us -- I
21 guess one of the things that also goes back to the
22 original project, would you describe to us what the
23 proposed action is in the EIS?

24 A Well, that's difficult, quite frankly.
25 It's one of the issues that came up earlier. Pardon

1 me for going back.

2 One of the issues in the 1995 order was
3 what did they really represent to the Commission.
4 And there was an effort to convince the Commission at
5 the hearing in 2012 that a 123 lot light-industrial
6 park is the same thing as a four lot mega mall.

7 And they represented that, well, they just
8 said it was a concept really, even though it was very
9 detailed.

10 So with that background, when I look at
11 what they're presenting to you now, which is a bubble
12 map, it's very unclear as to what it's going to be.
13 I don't think they even know what it's going to be
14 quite frankly.

15 Take, for instance, the component of the
16 project that is supposedly for light industrial.
17 It's light industrial/commercial. What does that
18 mean?

19 I had a meeting with the developer prior to
20 the preparation of the statement. They said we don't
21 know that there is going to be any light industrial
22 on the property. I said why don't you connect the
23 light industrial with the property to the north?
24 That's a light industrial area, would make a great
25 transition between the two. Oh, we're not going to

1 do that.

2 Then you look at south side of the property
3 and it's business/commercial, but I think it's really
4 retail. But who knows what it's going to be?

5 Q So do you think the EIS adequately
6 describes the proposed action?

7 A Absolutely not. When I think forward, say
8 three years from now, maybe this thing gets
9 approved -- let's say this gets approved. And they
10 start building whatever they're building. How would
11 you ever grab onto what's happened to say this is
12 what you represented to the Commission, because it's
13 just totally unclear.

14 Q In your comments on the Draft EIS, did you
15 discuss the Kihei-Makena Community Plan?

16 A That's been my key focus in this project.

17 Q What was your concern with the community
18 plan?

19 A My concern goes to how this county plans
20 its lands, and how do you retain your promise to the
21 people about how your community is going to be
22 developed.

23 And this project legally and factually is
24 completely at odds with the Kihei-Makena Community
25 Plan. And the discussion of that is so sparse, and

1 I've raised the issues with them legally if got great
2 detail. I've talked about the Gatri versus Blaine.
3 Talked about Leone vs. County of Maui. I've talked
4 about the purpose of community plans. The wording of
5 the community plan. The explicit way in which the
6 community plan bakes in this particular light
7 industrial project in a unique way, unlike any other
8 piece of property in South Maui, because of the
9 nature and the history of the community plan.

10 You see, the ranch came to you in 1995 and
11 got approval to build a 123 lot light-industrial
12 park. Then it went to the county and got baked
13 into -- because it had to, you ordered that they get
14 a community plan amendment; ordered that they get
15 light-industrial zoning, which they did.

16 They went to the county and they presented
17 the same 123 lot light-industrial park plan to the
18 county, and got light industrial zoning.

19 MR. SAKUMOTO: Mr. Chairman, I think the
20 ten-minute time limit has been exceeded.

21 CHAIRPERSON ACZON: We didn't put any time
22 limit on the witnesses.

23 MR. SAKUMOTO: I'm sorry, I thought I
24 understood that the Intervenor's witnesses were going
25 to be given ten minutes as opposed to the three

1 minutes.

2 CHAIRPERSON ACZON: I wasn't aware of that.

3 MR. SAKUMOTO: I'm sorry, I misheard the
4 request that Mr. Pierce made then. I thought he was
5 asking for additional time for his -- that would be
6 ten minutes for each of his four witnesses.

7 CHAIRPERSON ACZON: If they decided to be
8 public witness, they had to abide by the three
9 minutes.

10 MR. SAKUMOTO: Okay.

11 VICE CHAIR SCHEUER: I would appreciate
12 focusing on the EIS as much as possible. We do have
13 a lot to go through today.

14 MR. PIERCE: Thank you, Commissioners, for
15 your patience, and we are wrapping up.

16 Q So why is, on Page 270 of the Final EIS --
17 I'm going to read a quote.

18 It says: The County of Maui has
19 interpreted the Pi'ilani Promenade project as
20 complying with the KMCP, as the KMCP provides that
21 the goals and objectives are guidelines to the
22 ultimate implementation of the plan. End of quote.

23 Do you agree with that?

24 A Absolutely not. That's legally and
25 factually incorrect, and I'll tell you why.

1 Legally this is a very unique situation
2 because twice Hawai'i courts have ruled that the
3 Kihei-Makena Community Plan specifically has the
4 force and effect of law in Gotry and in Leone. And
5 uniquely the County of Maui was a party to both of
6 those decisions. They're bound by that finding and
7 by that law.

8 So to make the statement in the EIS
9 document that they're just suggestive is really
10 incorrect and unsupportable.

11 Furthermore, factually this plan speaks
12 specifically to this property, and it talks about all
13 development being makai of the highway in four
14 distinct areas on pages 17 and 18 of the plan.

15 And on page 18 it explicitly says that:
16 This piece of property is to be used for light
17 industrial use with only minimal commercial
18 intrusion, and only then to serve the interest of the
19 light industrial users.

20 So factually it's very specific. Those
21 words are not aspirational. Those words are very
22 specific and enforceable.

23 Q Is it your understanding that the LUC
24 Chapter 205 of the LUC law requires consistency with
25 the community plan?

1 A Absolutely.

2 Q Do you have anything further that you would
3 like to tell the Commissioners?

4 A No. Thank you for your time and interest.

5 CHAIRPERSON ACZON: Any questions for the
6 witness?

7 MR. SAKUMOTO: Just one question for you.

8 CROSS-EXAMINATION

9 BY MR. SAKUMOTO:

10 Q So your testimony about the KMCP, if I'm
11 hearing you correctly, focuses on the apparent
12 inconsistency between the zoning code and the KMCP;
13 is that correct?

14 A There is no inconsistency between the
15 zoning and the KMPC. The inconsistency lies in this
16 project, which does not abide by the explicit
17 language of the KMPC.

18 Q What parts of the project were you
19 referring to?

20 A The entire thing. If there was any
21 exception, it might be a small component of the light
22 industrial, if there is light industrial, but I think
23 that's vague.

24 Q I'm sorry, was that your answer?

25 A Yeah.

1 Q Are you saying then that the relationship
2 of the community plans in general, not talking about
3 the KMCP particularly, as it relates to the zoning
4 code in general, apply islandwide?

5 A I believe the holding in the Gatri case and
6 Leone case do apply more broadly to other community
7 plans, but I have not -- I've not read those plans
8 and those two cases were specific to our plan.

9 Q Thank you.

10 A You're welcome.

11 MS. APUNA: No questions.

12 MR. HOPPER: No questions.

13 CHAIRPERSON ACZON: Mr. Tabata.

14 MR. TABATA: Yes. Thank you, Mr. Chair.

15 CROSS-EXAMINATION

16 BY MR. TABATA:

17 Q Mr. Hyde, are you aware of any other land
18 uses in the Kihei-Makena region that you believe is
19 inconsistent with the Kihei-Makena Community Plan?

20 A I don't have any knowledge of that, no. I
21 haven't done that kind of a broad scan.

22 Q So, okay.

23 So this project is the only project that
24 you are aware of that you believe is inconsistent
25 with the community plan?

1 A Let me say this. I believe you represent
2 Honua'ula.

3 Q Yes. I'm sorry, my name is Curtis Tabata.

4 A I think your project is also inconsistent
5 with the plan.

6 Q Thank you.

7 This project is zoned M-1 light industrial,
8 that's my understanding.

9 A That's correct.

10 Q Are there -- is there any inconsistency --
11 does this project have any inconsistency with that
12 zoning designation?

13 A I believe it does. I think the county will
14 tell you that it doesn't.

15 We've debated this, and this was raised in
16 the discussion with the developer that if you read
17 the county code, which says that light-industrial
18 zoning is intended mostly to be common light
19 industrial uses, warehousing, light assembly, that
20 sort of thing, mostly defined in the dictionary as
21 more than half.

22 The way the county interprets that is they
23 completely ignore that, and I think they ignore
24 logic, quite frankly, and they allow any kind of
25 development basically in a light-industrial zone

1 except for heavy manufacturing. And therefore,
2 light-industrial zones become chaotic zones,
3 unpredictable. You can do B-1, B-2, B-3. You can do
4 apartments. You can do just about anything you want
5 to do, and of course, that's why they want it.

6 Yeah, I think that there is inconsistency
7 there, and there's lack of enforcement by the county.
8 I've discussed this with Mr. Spence.

9 Q So when you say that they allow B-1, B-2,
10 B-3 and apartments, isn't it true that the zoning
11 code specifically allows those uses in those other
12 zoning districts?

13 A Yes.

14 Q B-1, B-2, B-3, apartments. So it's an
15 expressed right?

16 A I think you have to read it in conjunction
17 with the introduction, and with the concept of what
18 does light industrial mean. If you ask somebody on
19 the street what would you expect to find in a
20 light-industrial zone, if the person was told
21 clothing shops, and that's it, I think they would
22 find that rather odd.

23 And that's why the introduction to the
24 whole definition of light industry is to be mostly
25 these common kinds of light-industrial uses.

1 Q Thank you, Mr. Hyde.

2 A You're welcome.

3 CHAIRPERSON ACZON: Thank you.

4 Commissioners, any questions? Commissioner Okuda.

5 COMMISSIONER OKUDA: Mr. Hyde, you
6 understand that, since you're a lawyer, that the
7 issue here is sufficiency of the Environmental Impact
8 Statement, not the merits of the project.

9 Do you agree with that?

10 THE WITNESS: Absolutely.

11 COMMISSIONER OKUDA: In fact, the Supreme
12 Court in Kaleikini, K-A-L-E-I-K-I-N-I, versus
13 Yoshioka, Y-O-S-H-I-O-K-A, 128 Hawai'i 53 at page 67,
14 which is a 2012 case said that one of the issues here
15 is whether or not the Environmental Impact Statement,
16 and I quote:

17 Has been compiled in good faith and sets
18 forth sufficient information to enable the
19 decisionmaker to consider fully the environmental
20 factors involved, and to make a reasoned decision
21 after balancing the risks of harm to the environment
22 against the benefits to be derived from the proposed
23 action, as well as to make a reasoned choice between
24 alternatives.

25 You agree that that's the law that applies

1 here?

2 THE WITNESS: That sounds great, yeah.

3 COMMISSIONER OKUDA: Can you tell me
4 without argument, because argument might come at a
5 later stage about whether or not the project should
6 be approved or not under the circumstances at that
7 point in time, but can you give us a list, without
8 argument, about what items of information are missing
9 in this final or proposed Final EIS?

10 THE WITNESS: Yes, thank you.

11 What's missing is a robust discussion, a
12 balanced discussion of the legalities with regard to
13 this project compared to the Kihei-Makena Community
14 Plan. There is no acknowledgement of Gatri. There's
15 no acknowledgement of Leone. There's no discussion
16 of those cases.

17 And furthermore, as a matter of law, those
18 cases are res judicata vis-a-vis these Applicants.
19 This is not argument, I don't believe. They have a
20 duty to define how their project fits within the
21 policies and laws that govern the area. And the
22 community plans is just that.

23 So you need a robust discussion about that.
24 And for them to not acknowledge that they are bound
25 by a Supreme Court decision, they are bound by a

1 Court of Appeals decision that finds that the plan
2 that they dismiss as merely being suggestive, is
3 unreasonable in the extreme.

4 COMMISSIONER OKUDA: I'm just looking for a
5 list. So there is no discussion of these appellate
6 cases. No discussion of the affect on the community
7 plan.

8 Is there any other on information, and just
9 a list, of what else you believe should have been in
10 the EIS?

11 THE WITNESS: Yes.

12 I will expand on that just a bit, if I may.

13 Because there's no acknowledgment that the
14 plan is binding, there is no real discussion of the
15 impact this project will have on the future
16 development of Kihei. Specifically, retail
17 commercial development in the plan to address
18 existing sprawl was limited to four distinct areas on
19 pages 17 and 18 of the plan, which they don't really
20 address, to control growth, to build a sense of
21 place, and to reduce the automobile centrlicity of the
22 community.

23 We heard yesterday, Jay Krigsman testified
24 that if this project goes forward, which is like a
25 range fire on the other side of the highway --

1 CHAIRPERSON ACZON: The Commissioner is
2 just asking for the list. Can you provide that list
3 so we can move on?

4 THE WITNESS: I think I would leave it
5 there.

6 COMMISSIONER OKUDA: Thank you very much.
7 I was just looking for a list, because arguments on
8 merits is a different time and place.

9 CHAIRPERSON ACZON: Commissioners,
10 questions?

11 Mr. Pierce, are you done with the witness?

12 MR. PIERCE: Just a short follow up.

13 REDIRECT EXAMINATION

14 BY MR. PIERCE:

15 Q So does the Kihei-Makena Community Plan
16 include specific language dealing with the Petition
17 area?

18 A Yes.

19 Q Was that information provided in the EIS?

20 A Not as to this piece of property.

21 Q Are you able to read that information into
22 the record, please? It's fairly short, isn't it?

23 A Yes.

24 Q And please let us know which page from the
25 KMCP you're reading from.

1 A Page 18, paragraph K:

2 Provide for limited expansion of light
3 industrial services in the area South of Ohukai and
4 mauka of Pi'ilani Highway, as well as limited
5 marine-based industrial services in areas next to
6 Ma'alaea Harbor. Provide for moderate expansion of
7 light industrial use in the Central Maui Baseyard
8 along Mokulele Highway. These areas should limit
9 retail business or commercial activities to the
10 extent that they are accessory or provide service to
11 the predominant light industrial use. These actions
12 will place industrial use near existing and proposed
13 transportation arteries for the efficient movement of
14 goods.

15 And I should point out that light
16 industrial is defined in the plan as the following:

17 This is for warehousing, light assembly,
18 service and craft-type industrial operations, page
19 55.

20 Q And, Mr. Hyde, in closing, why is the EIS
21 inadequate with respect to its analysis of community
22 planning and consistency with community planning,
23 which is one of the requirements it has to address
24 both under EIS law as well as under the Land Use
25 Commission's rules?

1 A The EIS gives no serious consideration to
2 the things that I just read. It gives no
3 consideration to the law. And it's in violation of
4 the plan, straight forward.

5 Q Thank you. Thank you, Mr. Chair.

6 CHAIRPERSON ACZON: Thank you. Please
7 proceed with your presentation.

8 MR. PIERCE: Our next witness is Daniel
9 Kanahele.

10 CHAIRPERSON ACZON: May I swear you in
11 first?

12 Do you swear that the testimony that you're
13 about to give is the truth?

14 THE WITNESS: Yes.

15 CHAIRPERSON ACZON: Please state your name
16 and address for the record?

17 THE WITNESS: My name is Daniel Kaleoaloha
18 Kanahele. I'm a resident of South Maui. I live in
19 the moku of Honua'ula, in the ahupua'a of Pai'ahu
20 (phonetic).

21 CHAIRPERSON ACZON: Please proceed.

22 DANIEL KANAHELE

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

DIRECT EXAMINATION

BY MR. PIERCE:

Q Are you one of the Intervenorors in the contested case?

A Yes, I am.

Q How did you end up being one of the Intervenorors?

A It happened in my drive-through office at home. I was at a meeting with some people. We were discussing other issues in South Maui, and the topic, of what was called back in 2012, the mega mall, came up.

It had been in the media, been on social media. We got curious about it, and decided to look up some information on the internet. I brought out my old mini-laptop Toshiba, the only connection to the internet in my house, and we looked up the decision order, Findings of Facts, Conclusions of Law, which was on record for the state. And there were lots of red flags that suddenly popped up.

It seemed that what was being proposed was not consistent with the decision order that came from the LUC state in 1995, February 1995.

So that made us very curious, and so some of us began to do research and look through public

1 documents, like Mark said. And that's how I became
2 involved.

3 My personal involvement was based on three
4 things: The importance of transparency; the
5 importance of following the law; and the importance
6 of giving people voice in what happens in the area
7 they live in terms of land use. And I felt that this
8 project, in my view, had failed all three of these
9 personal criteria for what is pono.

10 Q Do you live in the Kihei area?

11 A Yes, I do.

12 Q How long have you lived there?

13 A I lived there full-time since 2009.

14 Actually live in the house my parents built. I'm
15 second generation in that house. And my father is
16 from Maui. His parents were from Maui. Their
17 parents were from Maui. I have lineal connection to
18 Maui going back hundreds of years.

19 Q Could you describe for the Commissioners a
20 bit further about your relationship to the Petition
21 area, and also your cultural practice, whether you
22 conduct cultural practices?

23 A Well, it's pretty simple. From a cultural
24 perspective, I believe that all the residents of
25 Maui, for example, which include myself, have a

1 kuleana, a duty, responsibility and moral obligation,
2 if you will, to malama, to take care of, to protect
3 the natural and cultural resources of the communities
4 that they live in for the benefit of present and
5 future generations.

6 And to add to that, the need to exercise
7 one's rights and liberties as a citizen of that
8 community.

9 So I'm very active in my community. I work
10 there in South Maui. I go to church there. I work
11 in youth programs. I'm a scout leader. I'm a member
12 of my neighborhood board member. I'm a member of the
13 community board. I'm also the liaison for Maui
14 Cultural Lands, which is the grassroots Land Trust
15 Organization founded here in Maui, which has as its
16 mission to stabilize, protect and preserve Hawaiian
17 cultural resources.

18 Q Have you worked on identifying cultural
19 sites before?

20 A Yes, I have.

21 Q Can you describe to the Commissioners a
22 little bit of your background?

23 A One of my practices is a kahuna o maka
24 (phonetic), which is the art and practice of
25 observation. And it comes natural for Native

1 Hawaiians, because a lot of what we know in terms of
2 our cultural practice comes from observation, comes
3 from observing patterns, and how things are
4 interconnected and the web of life.

5 For me -- some people study the changing
6 seasons or weather patterns or ocean patterns, I
7 study cultural landscapes. And I've been doing this
8 for many years. I have learned how to find and
9 identify cultural historic properties by walking the
10 land.

11 And just, for instance, how do you do that?
12 For example, when you're looking for cultural sites,
13 you go during the dry season. My particular focus is
14 in South Maui leeward side, dry side. So I go during
15 the dry season, go during different times of day
16 because the light, the quality of light enables you
17 to find cultural sites much better, certain times of
18 day, certain times of the year. I'm just sharing my
19 cultural practice.

20 I am a gulch walker, because many cultural
21 sites are found in and around gulches. I look for
22 prominences, high points that have excellent
23 viewplanes, because the chances of finding cultural
24 sites in those areas or features are very, very high.

25 So that just gives you a short explanation

1 of a kahuna o maka, using observation to find
2 patterns and connections between things.

3 And the purpose of that is for us to become
4 better stewards of the land, to know how to better
5 manage our resources so that we don't deplete them,
6 that we don't cause them to collapse. We protect
7 them for future generations.

8 That's a very short summary of why this
9 practice is important. And it's practiced by all
10 cultural practitioners. All cultural practitioners
11 have to use the powers of observation, sensory and
12 nonsensory to understand the interconnectedness and
13 relationship of things, and how everything works
14 together towards harmony.

15 Q Mr. Kanahale, have archaeologists confirmed
16 your cultural identification of sites?

17 A I worked on the Honua'ula project, also
18 known as the Wailea 670 project, for many years, and
19 I was able to personally identify many cultural
20 features and cultural sites which are now included in
21 their Archaeological Inventory Survey for that
22 project. I worked many years up there doing kahuna o
23 maka stuff.

24 Q Have you been on the Petition area that is
25 involved with this EIS?

1 A Yes.

2 Q What are your concerns with -- I would like
3 for you to talk about how you were involved in the
4 EIS process, leading up to the Cultural Impact
5 Assessment and the cultural evaluation in the EIS?

6 A Well, I'm like many of those that shared
7 their testimony yesterday in terms of cultural
8 practice. I engaged early on, and going back to
9 2012, when I heard about the proposed project, aka,
10 the mega mall. That was the nickname it had back
11 then.

12 In 2012 I pulled the 1994 Archaeological
13 Inventory Survey that was done for the Ka'ono'ulu
14 Light Industrial Park, and read it. I read that
15 document in 2012. And then I read subsequently, the
16 CIA, Cultural Impact Statement that was done in 2004.
17 Very short document. Just a very few pages. There
18 weren't any interviews at all. Had very, very really
19 substantive information in that. So I tried to
20 educate myself by reading those documents.

21 I also have done cultural accesses to the
22 land, because I believe it's impossible to know a
23 place without actually walking it; without actually
24 touching, feeling, seeing, hearing what's there,
25 without actually feeling it. That's how you get to

1 know a place. That's how you begin to make
2 connection. That's how you begin to realize that we
3 as kanaka are part of that family album, those
4 cultural landscapes. Cultural landscapes are a
5 combination of manmade and nature made things.

6 Q Did you seek out to be interviewed during
7 the Cultural Impact Analysis?

8 A I was. I was asked to be interviewed,
9 because they saw that I was participating. I had
10 submitted comments on behalf of Maui Cultural Land
11 for the Environmental Pin Notice. I submitted
12 comments on the Draft EIS. I attended the first
13 consultation, cultural consultation meeting held on
14 February 2014, with the developers and their cultural
15 consultant, or their consultant Eric Fredrickson, who
16 is here today, and present were many of the lineal
17 descendants, cultural practitioners and others who
18 had knowledge of this area. So I participated.

19 To answer your question, yes. I was
20 invited by Hana Pono to participate in an interview
21 in the Cultural Environmental Impact and was one of
22 those interviewed.

23 Q Did you reach a conclusion -- based upon
24 your experiences and knowledge, did you reach a
25 conclusion as to whether the project that's being

1 proposed now that's in the EIS, whether it was going
2 to impact -- have a cultural impact?

3 A Absolutely. I submitted several pages in
4 my comments to the Draft EIS of the cultural impacts
5 the project would have.

6 Q And what was -- what does the Cultural
7 Impact Statement, impact analysis say with respect to
8 whether or not there's a cultural impact?

9 A Well, I read the CIA that was included in
10 the Final EIS. And there is a statement that's a
11 summary, their summary. And bottom line their
12 summary, it's the last sentence of the summary says:

13 Whatever cultural practices or resources
14 were practiced there in ancient time have long been
15 abandoned and paved over in the construction of
16 modern day Kihei.

17 So you disagree with that statement. It's
18 not true. Cultural practices continue in the project
19 area. They have not been abandoned. Cultural
20 resources that provide for cultural practices exist
21 there too. They have not been paved over, at least
22 not yet.

23 Q So, Mr. Kanahale, as a cultural
24 practitioner, do you believe the developers have
25 fulfilled their obligations with respect to the EIS

1 law to properly document and analyze the cultural
2 activities associated with the Petition area?

3 A No, I think they have some more homework to
4 do. I think there are other people that need to be
5 interviewed for the Cultural Impact Assessment.

6 I think not all the sites have been
7 documented. Eric is a wonderful archaeologist. And
8 in our February 2014 consultation meeting, we asked
9 for a site visit. He was very excited about that.
10 He was very excited to hear what we, lineal
11 descendants and cultural practitioners, had to say
12 about the sites that they had discovered.

13 Unfortunately, that site visit didn't occur
14 until two weeks after the Archaeological Impact
15 Statement was accepted by State Historic Preservation
16 Division. They said we could have a site visit, but
17 it occurred several years later after the AIS had
18 already been accepted, which kind of befuddles me,
19 because wouldn't you want to also hear from these
20 lineal descendants and cultural practitioners before
21 you the fact is accepted?

22 But unfortunately it was accepted. It is
23 what it is. But we are here to say that there is
24 more information. There's much more that needs to
25 be -- you know, the purpose of the historic review

1 process, among others, is to increase our
2 understanding and knowledge of the history of this
3 area. That process is not complete.

4 I have more to share, and I know there are
5 many others who testified yesterday who have more to
6 share. So there is more work to be done.

7 Q Thank you.

8 CHAIRPERSON ACZON: Any questions for the
9 witness?

10 MS. CATALDO: I have some, Your Honor,
11 Chair.

12 CHAIRPERSON ACZON: You have only have one
13 minute now. (Laughter.)

14 CROSS-EXAMINATION

15 BY MS. CATALDO:

16 Q Mr. Kanahale, good morning.

17 I understood you to say that you
18 participated in several cultural consultation
19 meetings with the developer's representatives; is
20 that correct?

21 A Well, one main meeting, and a site visit
22 that come to mind.

23 Q Was Mr. Oshiro, who testified yesterday,
24 was Basil Oshiro at that meeting?

25 A Yes, he was.

1 Q And you referred to lineal descendants. Do
2 you mean Hewahewa?

3 A I don't know if they're of that particular
4 line. I know Brian Naeole (phonetic), who was -- I
5 don't know if he testified or not -- he's a lineal
6 descendant. And then Auntie Lani Florence, also a
7 lineal descendant, and so, you know, Brian was there.

8 Q Of Hewahewa, lineal descendants of
9 Hewahewa?

10 A I don't know if they're lineal descendants
11 of Hewahewa.

12 Q Prior to your involvement, or your
13 awareness of the project in 2012, from the time you
14 moved back home in '09 to '12, did you have any
15 involvement with the project site?

16 A Adjacent. I'm a gulch walker, lack of a
17 better word. I love walking gulches. I've walked
18 Kulanihakoi Gulch. I've walked Ka'ono'ulu Gulch.
19 That little gulch on their property that they say,
20 'a'ole, that doesn't have a name. I call Ka'ono'ulu
21 Gulch. I've walked that gulch, and Wahiawa Gulch
22 (phonetic) just because they're an oasis for native
23 plants and animals. And as Uncle Les has often said,
24 they're the heart of Maui. Gulches are the heart of
25 Maui for many reasons.

1 And there are all the sites. I never go up
2 a gulch where I didn't find several sites ever in
3 South Maui.

4 So I walk those. One is on the property,
5 that little gulch, I call it Ka'ono'ulu Gulch, but
6 the EIS doesn't give it a name. Brian Naeole
7 (phonetic) calls it Ka'ono'ulu Gulch.

8 And I know on our site visit in 2016 Eric
9 Frederickson called it Ka'ono'ulu Gulch.

10 Q Kulanihakoi Gulch is off the property.

11 A It's to the south of the property, yeah.

12 Q Have you looked at USGS maps and identified
13 a Ka'ono'ulu Stream, but off of the property?

14 A I have looked at some of the GS maps, and
15 you know, there are some debate about where exactly
16 that stream is, that gulch is. But I just go by what
17 I've heard those who have been there for many years,
18 like Brian Naeole. He was a paniolo on the ranch,
19 and they called it Ka'ono'ulu Gulch, that very same
20 gulch, back in the day. That's just the name that
21 I've heard others call it.

22 Q Did you have an opportunity to review 1994
23 AIS?

24 A Yes, I read it. It's very small document.
25 Read it in less than an hour.

1 Q Were you familiar with Mr. Fredrickson's
2 conclusion that the gully that you've been calling
3 Ka'ono'ulu Gulch was likely post contact ranch era
4 possibly related to erosion control?

5 A I've heard that.

6 Q The first time you walked that gulch was
7 when?

8 A I think prior to 2012. I can't remember
9 when.

10 Q How many times?

11 A Several. And there are features in that
12 gulch. On the property, there are features in there.

13 Q You are aware that the property has had a
14 history with cattle ranching in the last 100 years?

15 A Yes.

16 Q Are you familiar with fires in that area
17 that have resulted in heavy equipment being brought
18 on for creation of fire breaks?

19 A Well, you know, there has been some impact
20 to the land, whether it's caused by heavy equipment
21 being brought on for fire control, or by ranching
22 activities, what have you. There's obvious
23 disturbance on that land.

24 Q Military activities that may have involved
25 firing ranges, mechanized equipment being used?

1 A I've heard that that may have happened
2 there.

3 Q And are you familiar with the late 1970s
4 installation of a 36-inch pipe diagonal across the
5 property?

6 A Yes. And I've seen maps where it's located
7 on the property, the transmission line.

8 Q You would agree that was a significant
9 construction project?

10 A Yes. It's long, but narrow. You know, if
11 you look at the 88 acres, it's a very small
12 percentage of the property that was impacted by the
13 pipe.

14 Q How do those types -- the nature and the
15 scope of those types of disturbances impact
16 observations of the property from a cultural
17 perspective?

18 A Well, you take that into account. Manmade
19 impacts have occurred since the first person set foot
20 on this land, and it of course changed the landscape.
21 So you take that into account. But fortunately a lot
22 still remains despite manmade disturbances or animal
23 made disturbances. There's still a lot left,
24 especially on undeveloped land like this is.

25 Q You identified, or you indicated that

1 cultural practices were occurring on the property.

2 A Yes.

3 Q What specifically are those practices?

4 A You know, some of the testifiers yesterday
5 referred to objects that are connected to things,
6 patterns that occur in the sky. And so I have seen
7 people practice -- I'm not a papakea (phonetic) hoku.
8 I'm not one that knows a lot about star practices.
9 But I have seen that practice that they're using
10 specific sites in order to reference things that
11 occur, like solstices and equinoxes, setting and
12 rising of the sun different times of year, and its
13 connection to other things, other islands, for
14 example. The connectedness of things.

15 Q When was the first time you saw those
16 practices taking place on the property?

17 A 2012, 2013, somewhere in that range. Maybe
18 2013.

19 Q You were interviewed for the CIA?

20 A I was.

21 Q Did you indicate those practices in your
22 testimony?

23 A I indicated my practice.

24 Q Which is walking the land?

25 A It's walking the land. I look at the land

1 as a place -- I look at it as a library, and the
2 cultural sites are like books. I'm a library rat. I
3 wait outside the library in Kihei until it opens at
4 10:00 and then I go in.

5 It's sort of like this place. This place
6 had been closed for a long, long time, but now the
7 library is open. Now kanaka like me have an
8 opportunity to go in and read those books, the
9 mo'olelo that comes in through those sites. And
10 that's a practice.

11 The thing about cultural practices is that
12 they bring wai ha, bring life -- they awake the land
13 and bring life back to the land in a very real way.
14 And that's happening, because kanaka -- I have an
15 opportunity to do cultural practices beginning to
16 connect, and this is happening on that project area.

17 Q Is your understanding of the cultural
18 practices of objects connected to patterns in the
19 sky, those are objects on the ground?

20 A Yes, connected to the aka shadow, they call
21 it.

22 Q Would that practice be affected by the
23 significant ground disturbance that has occurred on
24 the property for, say, the last 100 years?

25 A Well, would disturb a lot of reference

1 points that on the ground. And that's pretty common
2 in a lot of cultural landscapes. You have references
3 on the ground that connect to things that happen
4 above.

5 Sometimes what the aka shadow, or the
6 celestial objects above actually determine what's
7 built on the ground. The Hawaiians did that as a
8 cultural practice.

9 Q Did you, when you were interviewed for the
10 CIA, did you provide any names to the CIA preparer?
11 Names of people that might be aware of cultural
12 practices?

13 A I don't know if I did that in the CIA, but
14 I definitely did in the Draft EIS. I recommended
15 that all those who were at the consultation meeting,
16 all those lineal descendants, be contacted and
17 interviewed. And I believe I -- yeah.

18 Q And they came to the cultural consultation
19 meeting?

20 A They were at the cultural consultation
21 meeting, and it was recommended in the comments I
22 submitted to Draft EIS that those people be contacted
23 and put -- possibly interviewed for the cultural
24 impact, the updated, or whatever they call it.
25 Because there was one done in 2004, but there weren't

1 any interviews whatsoever.

2 And there was another one done for the
3 Draft EIS and it had two interviews. But the people
4 that were interviewed, were interviewed for another
5 project. I believe it was for the hospital, not
6 related to the project area.

7 One was Paula Kalanikau (phonetic), who I
8 know. And I spoke to her, I asked her, "Were you
9 ever interviewed for this?" And she said, "I don't
10 ever remember being interviewed for the -- " maybe
11 they cut and pasted her interview, and put it in the
12 DEIS CIA.

13 And then the new one that came out, which
14 is much more robust, has about 300-plus pages, more
15 interviews in it. But the thing is, that CIA, that
16 robust CIA, the public never had an opportunity to
17 review that, because that came out in the Final EIS.
18 Which, you know, the public review is closed.

19 So that it is kind of unfortunate that this
20 information came out, and there was no opportunity
21 for the public. Maybe you would have gotten more
22 people coming out of the woodwork as the word
23 spreads, right? People find out through word of
24 mouth.

25 Q So you have had the opportunity to look at

1 the supplemental CIA?

2 A Yes.

3 Q And did you see the page in there where it
4 indicated who was contacted to participate? There
5 were about 20 folks named.

6 A I don't recall specifically. Be happy to
7 look at those if you have those, if you have them on
8 you right now.

9 Q Do you recall, at least, that you had the
10 recollection when you reviewed the supplemental CIA,
11 that the names that you provided had been contacted?

12 A I know that Basil was one, Basil Oshiro. I
13 know that Brian Naeole was one, so they did contact
14 some of those people, yes.

15 Q Thank you, no further questions.

16 A You're welcome.

17 CHAIRPERSON ACZON: Ms. Apuna, any
18 questions?

19 MS. APUNA: No questions.

20 MR. HOPPER: No questions.

21 CHAIRPERSON ACZON: Mr. Tabata?

22 MR. TABATA: No questions.

23 COMMISSIONER OHIGASHI: This has -- I'm not
24 too sure if it has anything to do with your
25 testimony, but I think one of the responses, one of

1 your concerns was an unpermitted segmentation of the
2 development took place and there was need for more.

3 THE WITNESS: Segmentation?

4 COMMISSIONER OHIGASHI: Segmentation.

5 THE WITNESS: I think that was one of the
6 comments in the Draft EIS that I made.

7 COMMISSIONER OHIGASHI: I was wondering,
8 could you expand on that? What do you mean by that;
9 and how does it relate to the EIS?

10 THE WITNESS: Well, what's on the table
11 here is 88 acres, right? And it seems that the EIS
12 is mostly about the Pi'ilani Promenade development,
13 and the other 13 acres belongs to Honua'ula project,
14 it's connected to that, where affordable housing is
15 supposed to be built.

16 So the question I was raising was, has that
17 project undergone an environmental review like the
18 rest of the 75 acres. And so I was -- and I don't
19 know where -- I know that the EIS for the Honua'ula
20 project didn't really cover a lot of information
21 about their off-site project, and so I was hoping
22 that there would be more comments with regards to the
23 possible segmentation of a project that was connected
24 to the 88 acres, but didn't seem like it was fully
25 reviewed in the Draft EIS.

1 COMMISSIONER OHIGASHI: How would that
2 affect your estimation of whether or not the EIS is
3 complete or not?

4 THE WITNESS: Well, I think -- well, as I
5 said earlier, when I got involved in this process,
6 one of the things I was most concerned as a citizen
7 of the community, resident, that there be this
8 following of the law, the rule of law. And that all
9 parties would be subject to that, including the
10 13 acres should have an environmental review too.
11 And I didn't feel that had.

12 For the public, right, so the public would
13 know. The public would have an opportunity to
14 comment on any impacts that that project would have
15 in terms of whatever, drainage, cultural, traffic and
16 so on, so forth. So that was a concern I have.

17 COMMISSIONER OHIGASHI: Do you believe that
18 the Cultural Impact Assessment adequately covered the
19 88 acres, or 75 acres, or 13 acres? Multiple choice
20 there.

21 THE WITNESS: No, I would say none. It
22 hasn't adequately covered.

23 COMMISSIONER OHIGASHI: I'm not talking
24 about substance, just talking about addressing the
25 concerns.

1 THE WITNESS: No.

2 COMMISSIONER OHIGASHI: Can you expand on
3 that or not?

4 THE WITNESS: I think I have in my comments
5 thus far, that the conclusion of the EIS is that
6 there are no cultural practices, they have been
7 abandoned. And that the cultural sites have been
8 paved over. And that's not true.

9 There should be a more robust -- actually,
10 I think there should be a new draft AIS done, which
11 includes the entire project. Instead of sort of
12 these -- sort of the AIS -- I mean, Eric is a great
13 archaeologist, but it's sort of a patchwork of
14 things. Should be a 21st Century AIS should be done
15 for that project.

16 COMMISSIONER OHIGASHI: Thank you.

17 THE WITNESS: That's what I think.

18 CHAIRPERSON ACZON: Commissioners?
19 Commissioner Chang.

20 COMMISSIONER CHANG: Aloha, Mr. Kanahale.
21 Just a couple of questions.

22 You said that you practice your kahuna o
23 maka. Does that from your family where other members
24 of your family also have that practice?

25 THE WITNESS: I don't know. You know, a

1 lot of what we do is based on DNA and moku auau, and
2 I didn't know all my grandparents. I was raised in a
3 very Western framework, and really -- I didn't really
4 come to a sense of who I was as kanaka until much
5 later in life when I started studying native plants,
6 native medicine. When I started studying cultural
7 landscapes.

8 This all resonated with me. It touched me
9 to the core. So part of being this practice of
10 kahuna o maka has a lot to do with your moku auau,
11 and your genealogy. And sometimes there is a -- I
12 call it ho'omana, where does the power, where does
13 the mana come from in a place.

14 And there's three P's, place, presence and
15 practice. Three P's. For example, this place has a
16 presence, there is mana there. And why is there mana
17 there? That's ho'omana. Where does the mana come
18 from? Some of that mana may come from my genealogy,
19 moku auau. May come from this particular site of
20 ceremonial, or there may be iwi nearby or water on
21 the ground. Something that makes this place have
22 this mana.

23 Then there is practice. Place, presence
24 and practice. Practice brings life back to the land.
25 It awakens the land -- it also awakens the kanaka.

1 You saw a lot of awakened kanaka yesterday, young
2 people making that connection to the land.

3 So some of it comes from us naturally
4 because, yes, of our genetics. So a lot of what I do
5 I'm sure has to do with who I'm connected to, who my
6 ancestors were, and the things -- it's in me. It's
7 in my DNA.

8 COMMISSIONER CHANG: Mahalo for that.

9 And your family has lived generations in
10 this area?

11 THE WITNESS: Well, my family is in Hana,
12 Kaupo, all over this island.

13 COMMISSIONER CHANG: And let me ask you,
14 how were you contacted for the Cultural Impact
15 Assessment?

16 THE WITNESS: Well, I was contacted by Kimo
17 Keokapalehua (phonetic). He's a friend of mine. And
18 he was at the consultation meeting, he was there. He
19 was on the site visit. And so it was -- I think it
20 was after the site visit, shortly after the site
21 visit he asked if I would do an interview.

22 COMMISSIONER CHANG: And you shared with
23 him some of your own practices?

24 THE WITNESS: Yeah. I call it walking the
25 land.

1 COMMISSIONER CHANG: And you've actually
2 walked this land as well?

3 THE WITNESS: Many times.

4 COMMISSIONER CHANG: And you've walked
5 other lands as well?

6 THE WITNESS: The whole island. I did a
7 kahupuni (phonetic), I did the 2009 March around the
8 island, and then did it in 2014. I learned a great
9 deal by walking. More people should get out of their
10 cars and walk the land, they'd learn a lot.

11 COMMISSIONER CHANG: In your experience,
12 and not necessarily just on this land, but your
13 experience as a -- I'll call you a cultural
14 practitioner because you seem to have been doing this
15 for awhile, and it's within your own DNA, but has it
16 been your experience that at times Native Hawaiians
17 practice, their continued practice, has been impacted
18 by their ability to access a particular area?

19 THE WITNESS: Well, let me put it this way.
20 I was a competitive swimmer in high school, so if I
21 go to the district park in Kihei, aquatic park, it's
22 closed, I can't get in there, I can't swim.

23 But once it's open, the resource is there
24 for me to swim. I jump in and I start swimming
25 because I love swimming.

1 The same thing here. You have to have
2 access to cultural resources in order to have
3 practice. That's why cultural resources -- there is
4 no practice without cultural resource.

5 COMMISSIONER CHANG: With respect to the
6 conclusion that they have been abandoned, has it been
7 your experience that in areas where now access is
8 open, cultural practitioners have come back to
9 exercise their practice?

10 THE WITNESS: Yes. I see it all the time.

11 COMMISSIONER CHANG: In your experience --
12 and again, even beyond just this property -- have you
13 found cultural resources that have been beneath
14 agricultural lands where people have what they have
15 planted below where there has been previous
16 development? Have you found subsurface historic
17 properties, even though the surface of the area has
18 been developed or used?

19 THE WITNESS: Most of my cultural practices
20 occurred on the leeward side on developed lands, and
21 a lot of times on lava flows, and so those tend to
22 not be used for ag purposes, maybe cattle ranching,
23 cattle ranching has more impact. This is the dry
24 side of the island, not much water to grow much. So
25 I see -- you're asking me are there things under the

1 ground? I am sure there are things. Look at
2 Moku'ula, it's under the ground. It was buried,
3 still there. Going to be dug up some day.

4 COMMISSIONER CHANG: One of the conclusions
5 was that there has been activity above the area, the
6 ranching, military use, but has it been your
7 experience that, notwithstanding those modern day
8 post contact activities, that there could be
9 subsurface features, historic properties below them?

10 THE WITNESS: Could be. Depends how much
11 soil you have. It's area -- I don't know how much
12 subsurface, how deep the soil goes down there, could
13 be. There's a lot of midden there I know that. And
14 there may be midden under the ground. The fact that
15 there is a lot of midden scatter is significant
16 because this traditionally was known as a barren zone
17 where not much cultural activity was thought to
18 happen.

19 But nowadays, that view, that
20 archaeological view has changed. Midden is a
21 significant indicator of activity, and there are many
22 midden scatters there in that place.

23 COMMISSIONER CHANG: It appears that there
24 is a gulch that goes through. We've heard a lot of
25 testimony yesterday about the flooding.

1 Do you know whether there were practices up
2 mauka or historic sites that may be up mauka that may
3 also flow down these gulches? You know a lot about
4 gulches.

5 THE WITNESS: When you say, sites that have
6 been --

7 COMMISSIONER CHANG: Historic properties,
8 have you seen anything that has come down from mauka
9 area through the gulches?

10 THE WITNESS: I know there are sites that
11 exist in the mauka area because I've walked up mauka
12 on these gulches. There's always sites. It's just
13 like incredible. If you want to find cultural sites,
14 you walk the gulches.

15 You go up above on the sides, you'll find
16 them there. Maybe not in the bottom because a lot of
17 the water comes down there, so why would you put an
18 actual cultural feature in that area? But along the
19 sides, the slopes of the gulch.

20 COMMISSIONER CHANG: What kinds of
21 resources are you aware of that exist on this
22 property?

23 THE WITNESS: Well, you know, of the things
24 I relate to, studies maybe the stars, studies of
25 celestial events that occur, that's not my kuleana,

1 not my area of expertise. Others are experts in that
2 area. So I'm aware of that. Some of these young
3 people obviously are aware of that that testified to
4 you yesterday.

5 COMMISSIONER CHANG: With this project in
6 your mind, if it is developed, impact the ability to
7 continue using or to protect these resources? And if
8 this is not your kuleana, that's okay too.

9 THE WITNESS: The short answer is yes.
10 When I first read the 1994 AIS, nothing was planned
11 to be preserved, all destroyed except for the
12 petroglyph that was removed from the site, which is
13 significant that there was a petroglyph there. That
14 kind of shocked me that nothing was going to be
15 preserved.

16 But in a way doesn't surprise me, because
17 so little of our history has been preserved in what
18 has now been developed in Kihei. So that makes what
19 is left so much more important.

20 So if what's left is going to help continue
21 the cultural practice of people who know about the
22 stars and celestial events, I think it should be
23 protected. I think it should be included within
24 whatever is developed there and not destroyed.

25 So there should be talks about preserving

1 these special areas.

2 COMMISSIONER CHANG: So some of the -- in
3 the Cultural Impact Assessment as well as
4 Archaeological Inventory Survey they identified
5 pohaku, some stone features, and attributed those to
6 be related to military use.

7 Do you have any opinion about that?

8 THE WITNESS: I don't know, I'm not an
9 expert on that. But it'd be good to bring someone
10 out there who could determine whether that's
11 something that's been constructed by post contact
12 tact, perhaps by the military.

13 Depending how it's constructed, because
14 ancient construction, there was a definite way they
15 built things. So someone who built walls had an
16 opportunity to look at that they, could say, yes,
17 this was a traditional way of building; or no, this
18 is not a traditional way and you could be more
19 conclusive as to whether something is military, or
20 not, rather than just saying, yeah, it's military.

21 COMMISSIONER CHANG: Are you aware of
22 any -- we heard testimony that there is a Land
23 Commission Award Royal Patent Grant with this
24 property.

25 Do you know the family that's related to

1 that property?

2 THE WITNESS: I know one of them, I know
3 Elden Liu, and he's someone that the developers have
4 --

5 COMMISSIONER CHANG: Do you -- I'm sorry.

6 THE WITNESS: I know -- I'm surprised he
7 wasn't here.

8 COMMISSIONER CHANG: Do you know whether he
9 was contacted for the Cultural Impact Assessment?

10 THE WITNESS: I don't know. I would be
11 surprised if he wasn't, because his name has come up
12 many times.

13 COMMISSIONER CHANG: Has it been your
14 experience that Hawaiians sometimes are reluctant to
15 come forward?

16 THE WITNESS: Absolutely, very reluctant.
17 They have been burnt, taken advantage of. They share
18 their knowledge, and people and take and use their
19 knowledge in ways that are inappropriate. So
20 sometimes they're very reluctant to share cultural
21 practices where they practice.

22 They're very reluctant to share their moku
23 auau, how they're connected to lands because they
24 have this history of distrust with the powers that
25 be. I call that being burnt.

1 COMMISSIONER CHANG: Mahalo for that
2 definition.

3 Let me -- in your opinion, the Cultural
4 Impact Assessment concluded, and I know -- concluded
5 that there are no traditional customary practices
6 being exercised. They've been abandoned, and
7 therefore there would be no impacts.

8 What is your opinion of that conclusion?

9 THE WITNESS: I made myself available from
10 2012. I've submitted comments. I've been at
11 cultural consultation meetings. I've been at site
12 visits. I did the CIA, where I stated that a
13 cultural -- I mean, what do you have to do to get in
14 the EIS that there is cultural practice there?

15 How much more clear does one have to be? I
16 think I've been very clear, and yet after all of
17 this, despite all of my efforts, it's still the
18 bottom line is all cultural practices have been
19 abandoned, and it's not true. It's not true.

20 COMMISSIONER CHANG: I appreciate that.
21 Thank you so much for your testimony.

22 CHAIRPERSON ACZON: Commissioners, any more
23 questions? Mr. Pierce, are you done?

24 MR. PIERCE: I'm done.

25 MS. CATALDO: May ask a couple follow-up

1 questions?

2 CHAIRPERSON ACZON: Please be quick because
3 we are going to break.

4 RECROSS-EXAMINATION

5 BY MS. CATALDO:

6 Q Did you participate in the discussion about
7 the preservation of certain sites identified in the
8 AIS as well as two unmarked sites?

9 A Yeah, some of them. I was one of those
10 that was on the site visit. And the purpose of the
11 site visit, after the acceptance of the AIS, which
12 doesn't make sense, was to identify sites and to
13 share your mana'o about sites. So all of us at the
14 site had opportunity to share thoughts.

15 Q I wanted to make sure you were aware -- I'm
16 not sure you are from your testimony -- but in the
17 Final EIS on pages 92 and 93, there is a commitment
18 to preserve nine sites, seven that are -- that you,
19 and I believe Ms. De Naie identified, as well as two
20 additional unmarked sites that weren't identified in
21 the AIS. The developer had agreed to preserve those
22 sites. Are you aware of that?

23 A I am somewhat aware of it. I would love to
24 see it on the map.

25 Let's put it this way. Let's put it on the

1 map, you're going to preserve these sites. Where are
2 the sites in relationship to your project? That
3 speaks volumes.

4 We are going to preserve sites. Put it on
5 the map, draw X's, and this is where the project is
6 going to be, to work with that.

7 Q Understood. Understood that in this
8 project that will be the subject of further
9 discussion. But the commitment to preserve has been
10 made.

11 A That's great.

12 Q And do you understand that as a result of
13 your walking the site with Mr. Fredrickson, despite
14 the fact that SHPD had already accepted the 2015 AIS,
15 that sites were submitted for data recovery?

16 A Well, if that was included in the AIS --
17 was it included in the AIS?

18 Q Correct.

19 A And that was published in the Final EIS?

20 Q Correct.

21 A And that did not give the public an
22 opportunity to comment on that, because then we
23 skipped a step there, didn't we?

24 Q I'm not sure I understand.

25 A I'm saying the opportunity -- the public

1 missed an opportunity to comment on a study that was
2 done as part of the EIS and should have been part of
3 that, opportunity for the public.

4 You say put in the Final EIS, and the
5 public doesn't have -- maybe we have an opportunity
6 at this meeting, but it's a huge document, 4,000
7 pages. Public didn't have adequate time to review
8 the additions to the AIS that came after the fact
9 that the draft was done, and now we are in the pre
10 Final EIS.

11 BY MR. SAKUMOTO:

12 Q Mr. Kanahale, you understand that the EIS
13 process is very structures, correct, for the --

14 A I'm not an expert on the EIS, but looking
15 at it seems very structured.

16 Q The comment -- the ability to comment on
17 the EIS documents arises when you have a chance to
18 look at the Draft EIS, as you did, correct?

19 A Yes.

20 Q And so you did comment on that?

21 A I did.

22 Q And in response to comments that the
23 developer receives, the developer is then -- or the
24 let's say the Petitioner is then obliged to respond
25 to those comments; is that correct?

1 A The Petitioner, okay, yes.

2 Q And sometimes responding to those comments
3 requires the Petitioner to request further
4 investigation to provide an intelligent response?

5 A Okay.

6 Q And so in that case -- I'm asking a
7 question, not trying to put words in your mouth --
8 but you seem very familiar with the EIS process
9 having participated in this.

10 A A few, yeah. Not been a lifelong thing,
11 but I have read a few.

12 Q So would you, I guess, acknowledge that in
13 response to comments received to the documents
14 attached to the Draft EIS, the developer then had to
15 have further investigation done to provide something
16 to the Final EIS?

17 A Okay.

18 Q And there is, in the process of the Final
19 EIS, no further public comment period except for
20 opportunity such as this.

21 A Right.

22 Q Thank you.

23 CHAIRPERSON ACZON: Thank you, Mr.
24 Kanahele.

25 We will take five-minute break.

1 (Recess taken.)

2 CHAIRPERSON ACZON: Back on the record.

3 Mr. Pierce, please call your next witness.

4 MR. PIERCE: Dick Mayer.

5 CHAIRPERSON ACZON: May I swear you in
6 first?

7 Do you swear that the testimony that you're
8 about to give is the truth?

9 THE WITNESS: Yes.

10 CHAIRPERSON ACZON: Please state your name
11 and address for the record.

12 THE WITNESS: Richard, also know me as Dick
13 Mayer. My address is 1111 Lower Kimo Drive, Kula.

14 CHAIRPERSON ACZON: Please proceed.

15 RICHARD MAYER

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

19 DIRECT EXAMINATION

20 BY MR. PIERCE:

21 Q Good morning, Mr. Mayer.

22 A Good morning.

23 Q Have you previously testified in this
24 contested case?

25 A Yes, I have.

1 Q Were you testifying as an expert witness?

2 A Yes.

3 Q You gave your testimony that was before the
4 Commission found violations of the conditions of the
5 Ka'ono'ulu Ranch Decision and Order?

6 A Yes.

7 Q Can you just -- I think most of the
8 Commissioners know you, but could you please just
9 describe your background and experience, knowledge?

10 A Several things. One I was former Planning
11 Commissioner for Maui County. I also was the Vice
12 Chair of Maui Island General Plan Advisory Committee,
13 which drew up the Urban growth boundaries, Rural
14 growth boundaries.

15 Presently work as a coordinator for all the
16 community associations on Maui. And I taught at the
17 college here next door for 34 years, and now retired.
18 I taught economics and geography.

19 Q Have you been qualified before as an
20 expert?

21 A Yes, I have.

22 Q In other administrative hearings?

23 A In several both before LUC and other
24 bodies.

25 Q Have you had a chance to review the Final

1 EIS?

2 A Large portions of it, but not all of it.

3 Q What's your general evaluation of whether
4 the developer has met the EIS requirements?

5 A I don't believe they have met them, and I
6 can give I can examples later on ways that they did
7 not.

8 Q Okay.

9 Let's start with the community planning
10 side. And first if you could explain what your
11 experience is with community planning here on Maui.

12 A I was also -- I didn't mention -- I was
13 also the Vice Chair of the Community Plan Advisory
14 Community for my own area Upcountry, Maui,
15 Makawao-Kula-Pukalani.

16 As I said, I was on the G path, which
17 meant -- and also prior to even the Maui Island Plan
18 being developed, the County of Maui hired me to
19 evaluate the experts who were putting together the
20 sections of the Maui Island Plan to look at their
21 material and see what things were in there and not in
22 there, and give recommendation, so that they could
23 give feedback to the experts over the years. This
24 was back at the very beginning of that process.

25 Q Would you describe yourself as having a lot

1 of experience on Maui with the community planning
2 process?

3 A Yes. As I said, I was on the Planning
4 Commission back in the '70s, and have been on several
5 of the county boards and commissions.

6 Q I'm going to ask you -- I'm going to read
7 something from the EIS, page 270 of the FEIS. This
8 is a discussion of whether or not the project is
9 consistent with the community plans and zoning.

10 And the statement is made:

11 The County of Maui has interpreted the
12 Pi'ilani Promenade project as complying with the
13 KMPC -- the KMPC is the Kihei-Makena Community
14 Plan -- and I'll start over just to make sure you've
15 got that straight.

16 To County of Maui has interpreted the
17 Pi'ilani Promenade project as complying with the
18 KMCP, as the KMCP provides that the goals and
19 objectives are guidelines to the ultimate
20 implementation of the plan.

21 Do you agree with this assessment made in
22 the FEIS?

23 A I don't believe they're just guidelines.
24 The community plans are actually, I think, law.
25 They're adopted by the county council that put into

1 an ordinance. They're both, in some cases
2 guidelines, but in some cases they're actual law.

3 And as I have been told and understand it,
4 there's sometimes when words like, things are
5 encouraged, protect the coral refers or whatever.
6 Those are guidelines.

7 When it says something "shall" be done or
8 something is "prohibited", that means it's law.

9 And I think that's been borne out in the
10 county council chambers when a project has come up
11 and something was prohibited, community plans were
12 declared law, not just guidelines.

13 Q Also, if you could tie this in.

14 What do you understand -- do you think that
15 the EIS has sufficiently described the proposed
16 action?

17 And, of course, "the proposed action" is a
18 term of art in the EIS law.

19 Are you familiar with that?

20 A Yes.

21 Q Okay.

22 What is the -- what is the -- do you think
23 that the EIS is sufficiently described in the
24 proposed action here?

25 A Not well. I think what you have is a

1 bubble map that's very conceptual, as opposed to
2 something that's detailed in giving information. And
3 there are many elements that are missing in that
4 bubble that I think are critical to understanding
5 what this project is going to be.

6 Let me give some examples of that. We
7 don't know the acreage of each of those bubbles. We
8 don't know the heights of proposed buildings.

9 I think particularly important thing that's
10 missing are the roads that will be within that
11 project. We know one central road that will be an
12 extension off of the highway. But beyond that, we
13 have no idea what the roads will be, and
14 consequently, we have no idea what the intersections
15 are going to be.

16 This is extremely important. And I would
17 like to just mention an example to help illustrate
18 that.

19 If a developer came to the LUC and said we
20 want to put up a 30-acre shopping center, this is
21 what we are going to do. And we will have two exits,
22 or one exit, or three exits from that, and this is
23 how it's going to interact with the highway just
24 outside.

25 You would then look for a TIAR for those

1 various intersections of how the shopping center will
2 interact.

3 Well, none of that is provided in this
4 document that you have before you. And not only do
5 you not have the intersections there, but across the
6 street from that big shopping mall there is a new
7 housing project being proposed, and another mall
8 being proposed across the street, plus potentially
9 another housing project.

10 All of that would have to be interacted --
11 we have to know what the interactions were whether it
12 would be safe for residents in those housing
13 projects. There are going to be two housing
14 projects. One with 226 units and one with 250 units.
15 476 housing unit across the street from this very
16 large mall.

17 What is going to be the ability of people
18 to go back and forth across the street to get to the
19 mall? Will there be intersections? Will it be
20 signalized? Those are all the details that would be
21 in the TIAR that's totally missing in a conceptual
22 bubble diagram of these things.

23 Those are just some of the things. We
24 don't know the building heights that will be there.
25 We don't know how the two housing projects -- this

1 housing project that is being proposed on this
2 particular 75-acre site is going to interact with the
3 with the other housing project on the 13-acre site
4 next door.

5 Will there be connections? Will there not
6 be connections? Will there be roads between the two.
7 None of that is provided.

8 So there's a total lack of any detail in --
9 the requirements of the EIS law is a detailed project
10 description, including maps, technical data,
11 economic, cultural, et cetera. And I would expect
12 traffic and all the other things would be needed in
13 order to understand what exactly is going on within
14 the project.

15 TIA studies that were done, were external
16 to this project, and are important -- and even there
17 there's some information that we'll maybe be able to
18 get into.

19 Q Thank you.

20 Question for you, follow-up question. You
21 talked about the community plan. Have you -- the EIS
22 says that the proposed action, which is not fully
23 defined, according to your testimony, it says:

24 The proposed action is consistent with the
25 zoning for the property.

1 Can you talk to the Commissioners about
2 your opinion as to whether the EIS adequately
3 addresses that?

4 A It avoids the subject. It says that will
5 be a decision the LUC will have to make at a later
6 date. Let me give the background why I think it does
7 not comport with the county zoning.

8 The county zoning law 19.24, the light
9 industrial zoning which would describe this project,
10 and it now has the ability to have that's called
11 pyramid zonings. So not only will the light
12 industrial be allowed, but you could have some other
13 businesses and commercial establishments, and also
14 even apartment complex could be put in there.

15 But it has a very keyword that the
16 developer, in this case, the EIS document, totally
17 tries to avoid mentioning, and that is it has to be
18 mostly -- and I emphasize the word "mostly" -- mostly
19 light industrial.

20 This bubble diagram doesn't give a lot of
21 details what is going to be in those bubbles, but the
22 diagram shows that the whole right-hand side is going
23 to be business/commercial, no light industrial. The
24 left-hand side shows a housing project, another
25 business/commercial, which is most of that site, and

1 also a light industrial section in the corner, which
2 is not just light industrial, but it's light
3 industrial, business/commercial.

4 So possibly the entire left side, the north
5 side of that project, would be business commercial
6 retail and housing. No light industrial at all.

7 So the word "mostly" is being violated --
8 would be violated in the zoning law.

9 Q Thank you.

10 I want to talk next about an area that you
11 have experience in, according to your testimony,
12 which is economics.

13 Do you think that the direct and indirect
14 economic impacts of the development were adequately
15 assessed and appropriately assessed in the EIS?

16 A I do not.

17 The study that was done, that is being
18 relied on now in this new EIS is a 2013 study, which
19 takes a look at the business climate, looked at back
20 then. It has not been updated.

21 And since then, as has been pointed out by
22 some other witnesses, the number of stores on Maui
23 have closed, retail stores, Kmart, Borders, Sports
24 Authority, Savers and others.

25 Down in Kihei, some of the areas now have

1 high -- not occupancy, the opposite of occupancy,
2 vacancy rates. So the result is that this project
3 will be coming in with a large shopping center and
4 could doom many other areas.

5 The developer of the new Kihei Downtown
6 area, which has gone through all its approvals, done
7 all the right things, has gotten the community plan,
8 the zoning, SMA, everything is ready -- they're ready
9 to build now. That project might be doomed if this
10 project were to go in, and yet the EIS does not
11 examine the interaction of the proposed big
12 commercial project with these other areas, and the
13 fact that they're large vacancy rates already in a
14 number of places.

15 Q On an unrelated be subject in terms of what
16 is planned for Kihei, can you tell the Commissioners
17 when the last community plan process happened in
18 Kihei?

19 A The last process was back in 1997-8, that
20 period of time, approximately. It was adopted as one
21 of the regular community plan updates. Maui Island
22 has six community plans, the South Maui area was done
23 around '98.

24 The new process is now about to begin.
25 Maui Island Plan, which I was the vice chair of the

1 General Plan Advisory Committee, set the framework
2 for all the community plans on Maui. It was an
3 attempt to look at the whole island, so different
4 areas could relate to each other. And we set up
5 Urban growth boundaries.

6 And beginning late this year, the first of
7 those community plans will be established for West
8 Maui. The Planning Department is well along in
9 setting that up. The Advisory Committee will be set
10 up this year.

11 That will be immediately followed by the
12 South Maui one. So the South Maui Community Plan
13 will be set up. And Advisory Committee of the whole
14 community will be established.

15 And what is very important, and it was not
16 mentioned in the EIS at all, that this will be a real
17 effort by whole South Maui community, and then the
18 council, which will have to adopt the community plan.
19 They will look at all the various things that have
20 happened since 1998, and will be able to say we need
21 more commercial. We need more industrial. We need
22 this. We need that. What the traffic pattern should
23 be. Where we shut put limits on growth.

24 The Urban Growth Boundary was established
25 by the Maui Island Plan to be an outer limit. And

1 the idea was that if we have no outer limits on
2 communities, infrastructure may have to go to some
3 very extensive areas. Everything from electric
4 lines, sewer lines, to waterlines, to school bus
5 routes, et cetera.

6 So the growth boundaries were meant to be a
7 constraining element, but it did not mean that the
8 Urban Growth Boundary was to be filled in with
9 development. It was meant to be -- so the outer
10 limit where a developer, a landowner may come in and
11 get approvals.

12 This particular site of the proposed
13 project is within the Urban Growth Boundary. It's
14 designated light industrial at present, and it will
15 be up to the community in the next year or two. As
16 they go through the community plan process, they will
17 look at this and say, we still want to keep it light
18 industrial. We think, no, it should be half
19 commercial, half this. It should be a housing
20 project. They will be able even to say, we will take
21 the light industrial away. That has happened at
22 times when community are done, that certain projects
23 that maybe ten, 20 years ago, thought of as being
24 viable or desirable, can be removed.

25 So it's even theoretically possible that

1 the community and the county council will say, no, we
2 no longer think this is an appropriate area for a
3 development. I think that's unlikely. I think it's
4 likely that it will probably remain as a light
5 industrial area, but that's my opinion, and it will
6 be up to the community and the County council to
7 decide what's in that new community plan.

8 Q So with respect to the information you're
9 providing, Mr. Mayer, can you link that now to
10 whether or not the EIS provides adequate information
11 for decisionmakers with respect to what the planning
12 is for Kihei-Makena area?

13 A I don't think they've looked beyond their
14 own project as to what's desirable or not desirable.
15 They're trying to take a piece of land that was
16 designated in the community plan and the zoning as
17 light industrial, and now want to convert it over
18 largely to business/commercial -- it was light
19 industrial designated -- to business/commercial and
20 the segment over for housing.

21 And the housing area, people keep talking
22 about it's an affordable housing project. Actually
23 the county requirement would be that only 56 units of
24 affordable housing would be built on that land. The
25 other 160, 170, approximately, would be market-priced

1 housing. So it's not really an affordable housing
2 project.

3 The community plan could come along and say
4 that this area should be an affordable housing area.
5 Could do a number of things, which is speculative on
6 my part as to what they may say.

7 Q Another part of the EIS deals with jobs.

8 Can you discuss the adequacy of the EIS's
9 evaluation of the jobs created or lost from the
10 proposed action?

11 A I think it's very weak in this area. They
12 describe a lot of dollar amounts that will be
13 expended for various things, construction. But I
14 think the Commission, if they're saying what we
15 really would like to see is a stimulus to get more
16 jobs done, my thinking is that if you were to build
17 the present community plan designation of light
18 industrial, 123 units, which was proposed for this
19 property, you probably would have more construction
20 jobs than building a number of big box stores as a
21 retail thing.

22 Q Why is that?

23 A Well, I think it's a simple of construction
24 to put one big warehouse type building, like say a
25 Home depot or Walmart, what have you. Those kind

1 of -- that would be multiple light industrial
2 projects with a lot of internal plumbing and
3 fixtures, electrical systems, and all those -- I
4 think it would probably provide more jobs
5 construction-wise to put up that kind of a center
6 than -- maybe that's why you had very few
7 construction workers here yesterday testifying
8 because I think they may have realized that this is
9 not necessarily going to be providing them with more
10 jobs.

11 But the second part of that is, once -- if
12 you're going to make a choice between the two
13 operations, which will have more employment and
14 better employment after, let's say, the two scenarios
15 were to take place. One, the light industrial
16 complex, the other largely business/commercial
17 project. My guess is that the light industrial would
18 have better paying jobs, more skilled people,
19 full-time workers; whereas if it was a retail
20 shopping center, you will have lower paid jobs, and
21 you probably will have lot of part-time people,
22 students after school will get some employment, but
23 those will be much less employment.

24 And so the income generated by the
25 employees will probably be less in a retail complex

1 than it would be under the existing community plan
2 designation. The EIS talks nothing about those kind
3 of ratios.

4 Q Thank you.

5 So that is the problem with how the EIS
6 fails to present that?

7 A The EIS totally ignores those kinds of
8 considerations.

9 Q The EIS does talk about pedestrian access,
10 which was an issue that was raised back in the
11 initial hearings.

12 Can you discuss whether the EIS adequately
13 discusses how pedestrian access will be provided, and
14 whether or not it will be safe?

15 A There are two areas here. One is
16 internally within the project; second, externally
17 from the project to the rest of the community.

18 Internally, as I said, there is no
19 indication of what roads, what the intersections will
20 look like. There is some schematic diagrams of the
21 road, main road going true the project, and whatever,
22 but nothing about where the crosswalks will be,
23 whether they'll be signalized, to what degree it will
24 be safe.

25 Externally, it's mentioned there will be a

1 connection along Pi'ilani Highway. And immediately
2 adjacent to the project is the new high school that's
3 going to be built, and there's a bridge right now
4 that goes over the gulch between those two projects.
5 There's almost no walkway between the two things, and
6 so the state or the highways department, put in --
7 It's in Appendix M-1.

8 Appendix A of M-1. This is quoting:

9 Pi'ilani Promenade shall provide
10 satisfactory pedestrian connections between the
11 project and Kihei High School.

12 The Final EIS provides no details of what
13 that access would be, how it would be constructed,
14 rather it makes a statement, we'll work with the
15 state. We'll help them design it. That would leave
16 it up to the state then to pay for it. None of that
17 is clarified.

18 The state, I think, is looking that the
19 developer would put that access in between the high
20 school and shopping center. I could well imagine
21 that many high school students after going to
22 classes, they would want to work at that shopping
23 center, or shop at the shopping center, as teenagers
24 very often want to do, and they will have at present
25 a very, very unsafe transit between the two.

1 There's also a new housing development
2 being built across the street from the shopping
3 center, 86 unit affordable housing project that's
4 been already adopted, and it's fully entitled. And
5 the transit between that housing complex and the
6 shopping center I think is not adequately covered in
7 the EIS as to how they'll will be able to go.

8 Q Thank you.

9 On the subject of housing, does the EIS
10 adequately assess the impacts of the proposed housing
11 for the Pi'ilani project?

12 And here, I guess, I would also ask you to
13 include a discussion of whether or not it adequately
14 addresses the housing that's proposed on the other
15 portion of the Petition area, still part of the
16 Petition area which is owned by Honua'ula?

17 A I don't believe it does. What we will have
18 is total of 476 units if both projects are built out
19 as being proposed, but we don't know, particularly on
20 this piece, how big those buildings will be.

21 Is it going to be two or three large
22 apartment complexes. Are there going to be a
23 multiple 10, 12 units? So we don't know what kind of
24 traffic pattern. We don't know anything about the
25 parking.

1 One place in the document it says this will
2 be non-vehicle, no vehicle. I'm not even sure what
3 that means in this case. Obviously, if you've got
4 all these people, many of whom will have to commute
5 to work, there should be some access from those
6 houses for people getting to work, driving to work,
7 driving to school.

8 We have no idea where the school buses will
9 be. Will there be adequate parking areas for
10 these -- for 476 units? And that means everything
11 from elementary schools, middle schools and the high
12 school, et cetera.

13 So we have some real unknowns about these
14 two housing projects next to each other, and the
15 impacts that will be coming from those, and the
16 impacts to those housing projects.

17 Q In your opinion, has the EIS adequately
18 addressed the housing, the impacts from the housing,
19 both the positive and the negative impacts?

20 A I don't believe it has discussed any
21 impacts.

22 Q Going onto -- one of the issues that you
23 talk about with the housing was traffic. And have
24 you reviewed the TIAR, that's one of the appendices?

25 A Yes, I have.

1 Q What's your evaluation of the analysis in
2 the TIAR, with respect to the proposed action?

3 Once again, I would ask for you to, in
4 light of the fact that the proposed action is
5 ambiguous, identify how that might affect the TIAR.

6 A I think the TIAR makes an effort. They've
7 got pages and pages, hundreds and hundreds of pages
8 of diagrams and whatever.

9 I'm not sure how they derived the number of
10 vehicles that will be coming into or out of the
11 shopping center, since there's no knowledge about how
12 big with the retail -- other than the square footage
13 of the retail establishments.

14 We don't know whether these are big box
15 stores, whether these are boutique type
16 establishments. We don't know anything. So there's
17 going to be a real range of traffic depending on the
18 type of commercial operations that go on there.

19 Similarly for the housing. It talks about
20 the housing as some one bedroom, some two bedroom,
21 some three bedrooms. The difference between a
22 one-bedroom house and a three-bedroom house means
23 that you might have two or three times as many people
24 in a three-bedroom house. So the number of vehicles
25 coming in and out of the housing area would be

1 unknown. That's just within the project.

2 We don't know the draw that this project
3 will have to bring people into the community. Will
4 there be visitors who may come from a shuttle bus
5 from a hotel? Are there going to be cars?

6 So they went ahead and created this very
7 elaborate TIAR. But what they did was they
8 self-defined the region that they would look at as
9 being sort of half a mile -- three-quarters a mile
10 north, and three-quarters a mile south of their
11 project.

12 But the R&D park, for example, they say
13 that's beyond our area. We're not going to put that
14 into our detailed analysis.

15 And the big A&B project which is now under
16 construction, 600 houses just to the north of the
17 project, also was left out in terms of their detailed
18 analysis.

19 So they create something else called
20 "background" thing, and then mentioned several other
21 projects in South Maui, the Makena project, the
22 Wailea Resort project, the Wailea 670 project, as
23 well as the R&D park. So that's all going to be part
24 of a background type of thing, and then they try to
25 make an assessment on that.

1 Those are really not just background. The
2 Makena project has just been approved by the county
3 council. And we know the exact number of units, the
4 maximum number of units that will be going into that
5 project. Wailea, it's very clear how many acres they
6 have.

7 Wailea 670, we know exactly the number of
8 units, 1150 units on the project. So all of these
9 projects are very clearly defined.

10 And I think the critical thing to look at
11 when you look at this traffic -- this highway,
12 Pi'ilani Highway is a cul-de-sac. It's a long 11,
13 12, 13-mile long cul-de-sac from North Kihei all the
14 way down to Makena, but it stops.

15 So everything that goes down has to come
16 back up. Everybody who lives on that road, will have
17 to use the same road to get their food, their
18 supplies, their gas, everything else will all pass by
19 the shopping complex that's being proposed.

20 And the TIAR took a look at the traffic on
21 that thing, and then they concluded that it would be
22 F traffic.

23 Q What does that mean?

24 A This is level of service. They concluded
25 that the -- not just one F, but several F's along

1 different intersections, but the one, let's say,
2 right in front of their complex, which they feel that
3 they will have to upgrade, even after they do the
4 upgrades in 2032, when fully built out -- let me try
5 to read the sentence here if I can find it here.

6 Despite -- I don't have the exact wording.
7 They say that it will be F level of service for that
8 particular intersection after it's done.

9 The implication -- to answer your question.
10 They rate intersections A, B, C, D, E, F with A to D
11 considered by the state HDOT to be acceptable, in
12 other words, it's not necessarily desirable level D,
13 but it's acceptable. E and F are not acceptable.

14 In this case, the F rating obviously means
15 that it's very unacceptable to have that kind of
16 delay.

17 The problem is we got emergency vehicles.
18 As I said, this is a cul-de-sac. Emergency vehicles,
19 that's police, fire, ambulance services needing to go
20 along passing several of these intersections which
21 will have very bad level of service ratings.

22 It will potentially cause some serious
23 health concerns or other emergency concerns,
24 depending what it was, ambulance or fire, all along
25 this highway. They try to get around that by saying

1 that the vehicles will have the ability to regulate
2 the lights, and have preference on the lights going
3 through, but still if there's a backup of traffic,
4 it's going to cause delays even for those vehicles to
5 maneuver around through an intersection where traffic
6 is blocked up.

7 Q Does the EIS adequately address the
8 mitigation steps that they're proposing to deal with
9 the level of service of F?

10 A They are indicating that they're going to
11 be putting in some left-turn lanes, right-turn lanes,
12 double lanes. They're indicating that they're going
13 to be putting in signalization, and things of that
14 sort.

15 But despite all the mitigations that
16 they're claiming that they will be putting in, it
17 still will be level F, like in frank.

18 Q Thank you.

19 A One other thing.

20 Even the formulas that they used in the
21 document, they have some fancy formulas with the
22 letter X and the letter T, but they do not explain in
23 the EIS how they derived their formula.

24 Q Why is that an issue for decisionmakers?

25 A It's an issue because it's unclear to the

1 public, and probably to LUC members, unless they're
2 traffic experts, they would not understand how those
3 various numbers were derived, and what how the
4 calculations were made. That's on page 40, Table 13
5 of Appendix M-1.

6 Q Did you comment on the EIS?

7 A Yes.

8 Q Did they respond?

9 A I got 40p-plus pages of response letters.
10 I started reading it, and I noted a number of places
11 where it was deceptive to me. It was something's --

12 Q Let me start with this.

13 What do you understand the EIS law requires
14 or drafter to do in comment responses?

15 A They should give clear responses that --
16 and they should reflect good answers to the issues
17 that I raised, and explain those things. Not sure
18 what else you'd want --

19 Q Okay.

20 But in this instance, did the responses
21 meet the requirements, in your opinion, of what is
22 necessary for a transparent -- EIS to be used by
23 decisionmakers?

24 A No. And I'll just give one example.

25 When they talk about the area, the area on

1 the lower left of the bubble diagram, so-called light
2 industrial/business/commercial, in the response to me
3 they just refer to that as a light industrial area.
4 Assuming that there would be -- they don't mention
5 business/commercial, and that was something that was
6 also -- many of the people who wrote sections in the
7 appendices all refer to that area as light industrial
8 as if they were told, oh, that's going to be a
9 light -- they never mentioned that that area --
10 there's no requirement that it would be light
11 industrial, because they put half light industrial,
12 half business/commercial in that area. It could be
13 all business/commercial.

14 So that happened in several places in the
15 responses to me.

16 Q So the responses are only as good as long
17 as light industrial is built there?

18 A Yes, only as good as the light industrial
19 being built there.

20 Q And they did not respond at all to the fact
21 that they were also proposing commercial for the
22 area?

23 A They did not mention that in the response
24 to me.

25 Q There was testimony yesterday about

1 flooding in the area. Did you have testimony that
2 you wanted to provide Commissioners about the
3 adequacy of the EIS with respect to flooding?

4 A It's not an area I have any expertise in.
5 I mention it as an issue. And I think other people
6 are much better qualified than I am to respond to
7 that part of the EIS.

8 Q Okay.

9 And then also did you have any concerns
10 with the way OEQC published the Final EIS?

11 A Yes. It's something actually in their
12 document. When they ask the developer to provide
13 comments, to provide their EIS to be published in the
14 document, they have a statement in there that I think
15 is -- should be, and I would urge the LUC to contact
16 the OEQC office on this where it says:

17 Comments are not taken on this action.

18 That's the wording that they put into their
19 official posting of this document.

20 Q This was in the Environmental Bulletin?

21 A In the Environmental Notice, and that's
22 misleading to the public. Someone reading that
23 Environmental Notice may say, well, no sense coming
24 to a meeting like this and giving testimony, because
25 they're not going to take any comments.

1 I would urge that that sentence be changed
2 somehow or other to give the public the impression
3 that if they wish to comment at a hearing on the EIS,
4 they can make the comments as many people did
5 yesterday. But there may have been many others, pro
6 and con, who may not have done anything feeling that
7 that directive is clear that nobody can comment.

8 Q Thank you, Mr. Mayer.

9 CHAIRPERSON ACZON: Any questions, for Mr.
10 Mayer, Petitioner?

11 MR. SAKUMOTO: No questions.

12 MS. APUNA: Nope.

13 MR. HOPPER: No.

14 MR. TABATA: We will be quick.

15 CROSS-EXAMINATION

16 BY MR. TABATA:

17 Q I think I missed this. What is the area of
18 your expertise that you're testifying to?

19 A I've reviewed -- 20 years I reviewed --

20 MR. PIERCE: If I may, I will just add. I
21 looked back at the transcript, Mr. Chair, last night,
22 and when I went through the process of submitting the
23 qualifications for Mr. Mayer, there seemed to be a
24 consensus where they did not want to go through the
25 qualification process, so I just want to have that on

1 the record that that was from the transcript before.
2 It was based obviously upon Mr. Mayer's overall
3 arching qualifications. We did not narrow that down
4 at that point. I just want to have that for the
5 record. And I have no problem with the questions.

6 CHAIRPERSON ACZON: So noted.

7 Q (By Mr. Tabata): Are you an expert in the
8 area of Environmental Impact Statement and reviews?

9 A For over 20 years I was asked by the
10 Environmental Center at UH-Manoa to review
11 Environmental Impact Statements here on Maui. I had
12 a lot of experience. They kept trusting me. They
13 kept sending over documents on highway, schools, all
14 kinds of projects to be reviewed, and I did that
15 professionally for about 20 years.

16 Q Thank you.

17 So approximately how many EIS's under
18 Chapter 343 have you reviewed?

19 A Dozens of them, many dozens of them. Some
20 I would get and they would send to me, and I would
21 just send it back. I see nothing in here.
22 Relatively trivial response, it looks very good.

23 In others I actually wrote very long
24 details. Points such as testimony I've given today
25 on an environmental -- where I analyze things pro and

1 con.

2 Q Approximately how many times have you
3 testified like you're testifying today regarding the
4 acceptance of an EIS under Chapter 343 HRS?

5 A Wasn't my job to accept or not accept. I
6 would describe the strengths and weaknesses in the
7 document. Areas that I think had been left out.
8 Things that should have been included. And try to
9 raise for the Environmental Center -- their job at
10 that time -- the Environmental Center that was merged
11 at Manoa with one of the other departments.

12 Q I'm sorry, Mr. Mayer. I wasn't
13 specifically referring to that job that you held.
14 Talking about in the last recent past, maybe the last
15 five years, have you testified like you're testifying
16 today regarding the acceptance of an EIS?

17 A Just a few months ago before the same body
18 the Waikapu Town meeting EIS came up before the body.
19 And I was one of the testifiers, and I basically said
20 this is a very good EIS document.

21 I then qualified that and said but there
22 are some areas that could be strengthened with regard
23 to traffic. I would urge that a condition be added
24 to the acceptance on that, but overall I said that it
25 was a very good EIS.

1 Q Thank you.

2 CHAIRPERSON ACZON: Commissioners,
3 questions?

4 COMMISSIONER OKUDA: Mr. Mayer, are you
5 being compensated for your time and work in this
6 matter?

7 THE WITNESS: Absolutely not.

8 COMMISSIONER OKUDA: Thank you. No further
9 questions.

10 CHAIRPERSON ACZON: Commissioner Cabral.

11 COMMISSIONER CABRAL: Thank you.

12 Other people might be able to answer this,
13 but you seem to have variety of experiences.

14 There's been numerous references to the
15 community plan, and the fact that the community plan
16 developed, and then it's adopted by the council, and
17 then the community plan would become more so law, not
18 a suggestion, but actual law.

19 In the preparation for that community plan,
20 am I correct to assume that everybody in the
21 community is notified that there's going to be
22 meetings held to develop that plan? I mean, so it's
23 really -- I mean, it's not just the county offices
24 developing that. Is it a community effort to have
25 that plan developed?

1 THE WITNESS: Let me briefly say. It goes
2 through several stages. I'll try to be very brief.

3 The Planning Department will take a look at
4 the existing community plan, and will do some
5 analysis, try to get updates on population, on jobs,
6 on transportation, various areas.

7 They will then put together a draft, an
8 update of the community plan. The county council and
9 the mayor will then select an advisory committee from
10 the community, nine members selected by the council,
11 four by the mayor, to review this.

12 They will then hold public meetings, and
13 those meetings will go on in the evening, not daytime
14 meetings, in the evenings for the public to come in.

15 And my experience as having been vice chair
16 of one of those community plans, we have very
17 extensive public testimony from the community. It's
18 in the newspaper when the meetings are held. The
19 meetings are reported back to the community.

20 A lot of input from members. In fact, one
21 of the problems is, we get so much public testimony,
22 that very often we don't have time to discuss all the
23 details.

24 COMMISSIONER CABRAL: I understood that.

25 THE WITNESS: Make a long story short, they

1 make recommendations, update the draft that was given
2 by the council -- by the planning department, that
3 goes to the Planning Commission. Planning Commission
4 then has six months to get whole review, make their
5 recommendations.

6 The three versions, the original draft by
7 the department, the recommendations of the citizens
8 advisory committee, and the recommendations of
9 planning all go to the county council, where it's
10 further reviewed, hearings are held, mostly by the
11 council during the day time, unfortunately, but they
12 do hold meetings in the community as well, and they
13 will eventually then adopt the community plan.

14 COMMISSIONER CABRAL: Notification for
15 these various meetings both at the community level as
16 well as when the county offices themselves put it
17 together and they're having their hearings, how are
18 people notified of that? Is that just through the
19 local publication? Through websites? Is there any
20 effort to actually notify the landowners of a
21 specific area through tax -- you know how to send
22 them a tax bill. Is there any effort to send them
23 any other kind of notification?

24 THE WITNESS: Things have changed -- the
25 last series of community plans were done in the

1 1990's, so we did not have the social media. We
2 didn't have lots of different things. So letters
3 would go out to people. The Maui News is the
4 newspaper record on the island. It has been very
5 good over the years in publishing that the community
6 plan is going to be reviewed. There's going to be
7 meetings coming up.

8 After some meetings have been held, they
9 will usually write a long article, as you may have
10 seen, for example, in today's paper, a long article
11 in Maui News about your meeting yesterday here,
12 followed -- but in that article they also indicated
13 that there would be continuation of that meeting this
14 morning?

15 So the paper has been very good about
16 alerting the public. And that goes out to most homes
17 on Maui. In addition now with social media it's much
18 to get the word out.

19 COMMISSIONER CABRAL: Then I'll conclude
20 with a question.

21 So if I was a large landowner in the area
22 of concern or the consideration is being given, I
23 would be able to know when a community meeting was
24 going to happen if I wanted to participate in
25 discussing the plans of the future? And then -- so

1 it's available from what you've said.

2 And then the second thing, once a decision
3 is made and it becomes adopted, anybody in the
4 community can get hold of that information through
5 county records, it's all available to everyone in the
6 public?

7 THE WITNESS: It's on the county website.
8 It's available through any other means -- you can go
9 up to the Planning Department and read the document
10 paper if you don't have web access.

11 It's widely available. And any landowner
12 who would want to know how his or her property is on
13 the plan, and -- but I think the point was made
14 yesterday by the County Councilwoman Kelly King, it's
15 not just the map, it's the text that's very, very
16 important.

17 And so a landowner would not only want to
18 look at the map that shows where his or her parcel
19 is, but would also want to read the text to see what
20 recommendations, what recommendations are law, and
21 what are guidelines that would affect their property.

22 COMMISSIONER CABRAL: Thank you very much.

23 COMMISSIONER CHANG: Chairman, I have no
24 questions.

25 CHAIRPERSON ACZON: Vice Chair Scheuer.

1 VICE CHAIR SCHEUER: Are you sure,
2 Commissioner Chang?

3 THE WITNESS: I have no culture.

4 VICE CHAIR SCHEUER: Mr. Mayer, I'm trying
5 to sort out in my mind the relationship between the
6 requirements in an EIS for discussion of compliance
7 between a proposed project and the community plan
8 with a separate set of requirements for the Land Use
9 Commission at the time of decision-making on the
10 merits of a project we are to consider the
11 relationship of a project to a community plan. So my
12 set of questions are going in that direction.

13 I understand your testimony to say, be
14 focused on arguing that the EIS does not adequately
15 discuss the relationship of this project to the
16 community plan. Is that correct?

17 THE WITNESS: That's correct.

18 VICE CHAIR SCHEUER: Now, there are
19 apparently differences of opinion about whether or
20 not this proposed project complies with the community
21 plan, is that also correct?

22 THE WITNESS: Yes.

23 VICE CHAIR SCHEUER: And I understand the
24 Maui County Department suggests that it is compliant
25 with the community plan, but you and other testifiers

1 believe it is not?

2 THE WITNESS: That's correct.

3 VICE CHAIR SCHEUER: What kind of
4 discussion in the EIS do you believe would be
5 sufficient, given the differing opinions, to address
6 the relationship of this project to the community
7 plan? This was to be an EIS you reviewed that says,
8 yeah, okay.

9 THE WITNESS: I think it's so far -- this
10 project that's being proposed with the EIS is so
11 different from what the community plan is designating
12 for this area, that they almost can't talk about it.

13 The community plan says specifically that
14 retail areas should be makai of the highway, and they
15 designate very clearly four areas.

16 The community plan says, for example, that
17 in a light industrial area, commercial establishments
18 and businesses are allowed, but only to support the
19 light industrial area. Let me give an example of
20 that.

21 VICE CHAIR SCHEUER: Let me, if I may.

22 So if the EIS had had the discussion that
23 said, the proposed project does not comply with the
24 community plan, or there are people who believe the
25 proposed plan is not in compliance with the community

1 plan for these reasons. Then you would feel that the
2 EIS was adequate in discussing those issues?

3 THE WITNESS: Got some negatives in there.

4 VICE CHAIR SCHEUER: This is why I wanted
5 to ask some questions.

6 So let me step back.

7 We could propose building a new harbor on
8 this island by detonating a nuclear bomb, and it's
9 technically possible to do a legally correct EIS for
10 it, right? It will create a lot of jobs. It might
11 also have some health affects.

12 But it's technically possible to do an
13 acceptable EIS for this project as proposed,
14 presumably.

15 How would the discussion of its
16 relationship to the community plan be discussed in an
17 adequate EIS?

18 THE WITNESS: I can't imagine how this
19 proposal could comply with the community plan. And
20 they would have a great difficulty saying that it
21 does, because the community plan very simply says
22 this should be light industrial.

23 The area -- the definition of light
24 industrial is given in the community plan as
25 warehousing and assembly, so they could try to say

1 something, that somehow a shopping mall is a form of
2 industry. Yeah, it's the retail industry if you want
3 to look at it that way. But that's usually not what
4 we think of as light industrial which is warehousing
5 and small time manufacturing.

6 VICE CHAIR SCHEUER: For LUC purposes, when
7 we will later, if for a moment you assume we accepted
8 an EIS for this project, and later then we have to
9 consider the relationship of the proposed project to
10 the community plan.

11 It would be possible to have that kind of
12 discussion in an EIS that would inform our
13 discussions later on about the relationship of the
14 proposed project to the community plan.

15 THE WITNESS: I don't see how you could
16 accept the EIS without looking at that issue. It
17 would be just again -- I'm not sure I follow.

18 VICE CHAIR SCHEUER: Yeah, I'm not sure I'm
19 being effective in my question.

20 THE WITNESS: And in addition to that are
21 the same issues with zoning.

22 CHAIRPERSON ACZON: Anybody else,
23 Commissioners?

24 Mr. Pierce, are you done with the witness?

25 MR. PIERCE: Followup, please, Mr. Chair.

REDIRECT EXAMINATION

BY MR. PIERCE:

Q Stay on this topic of the community plan. On page 28 -- and you'll probably recall this once I describe it -- on page 28 of the EIS there's a section called "unresolved issues".

And this says: The table below provides the list of unresolved issues associated with the project.

And a number of these are identified. One of them, number two, is: Compliance with the Kihei-Makena Community Plan. There are a few others that I may actually want to hit on, but let's focus on number two for now.

And this goes back to Commissioner Cabral's questions, based on your understanding of the community plan process. One of the things that an owner can do is, if they have inconsistency with the community plan, is they can seek a community plan amendment; is that right?

A That's correct.

Q Just very briefly explain to the Commissioners very briefly how that happens?

A The landowner can go to the county and make an application for community plan amendment. It

1 doesn't have to wait for the regular reviews, the
2 decennial reviews of the community plan. They would
3 then have to go to the Planning Commission. They
4 would hold hearings. The Planning Commission would
5 then make a recommendation to the county council that
6 this community plan should be changed or modified,
7 and any applicant -- any landowner can do that for
8 their particular parcel.

9 Q In this instance, we had Ka'ono'ulu Ranch,
10 the original owner of the Petition area that said
11 they wanted to do a light industrial project, and one
12 of the conditions that the LUC place on it, they said
13 you need to go get a community plan amendment.

14 A Yes.

15 Q And they went out and got it. In fact,
16 they got a very specific requirement that Ka'ono'ulu
17 Ranch wanted, identifying their specific project for
18 light industrial; is that right?

19 A Correct.

20 Q So then the property subsequently sold to
21 both the Pi'ilani owners as well as Honua'ula. They
22 are now obviously talking about something --

23 MR. SAKUMOTO: Is there a question, or is
24 he testifying for Mr. Mayer?

25 CHAIRPERSON ACZON: Redirect your question.

1 Q (By Mr. Pierce): So before I was
2 interrupted, the question is:

3 In this instance, we have two landowners.
4 They are proposing light industrial, but they also
5 are proposing other things that you've identified as
6 commercial.

7 If they feel that there is an inconsistency
8 issue, one of the options they have is like the
9 Ka'ono'ulu Ranch, is go seek a community plan
10 amendment; is that right?

11 A Correct.

12 Q So when the EIS talks about an unresolved
13 issue, and saying -- in fact, do you recall anywhere
14 in the EIS where one of the pieces of information
15 provided to decisionmakers was the possibility that
16 the owner could seek a community plan amendment.

17 Did they ever mention that in here?

18 A Not that I know of.

19 Q Instead, they refer to it as an unresolved
20 issue; is that right?

21 A That's right.

22 Q And what is the problem for decisionmakers
23 with respect to the adequacy of EIS by identifying
24 something in an EIS document, that's supposed to be
25 done at the earliest practicable time, and for the

1 purpose of informing decisionmakers, what is the
2 problem, based upon your experience and knowledge,
3 with identifying it as and unresolved issue?

4 A It needs resolution. It should have been
5 done earlier on. I would think they should have done
6 that initially, have gotten a community plan
7 determination that would be consistent with the
8 project that they are proposing.

9 Q And I'll identify another unresolved issue
10 that's identified. Number three on page 25 of the
11 EIS is preservation of archaeological sites.

12 What is the problem with not identifying
13 the location now, or how it's going to be preserved?

14 Why is there a problem in the EIS for
15 calling that an unresolved issue?

16 A The archaeological sites is an area beyond
17 my expertise. I don't know what the rules would be
18 with regard to the State Historical Office, et
19 cetera. I don't know the sequence in which that
20 happens.

21 Q What about number five, which is on page 26
22 of the EIS. Pedestrian connectivity to Kihei High
23 School. What is the problem with identifying that as
24 an unresolved issue in the EIS?

25 A The cost of putting that in is something

1 that should have been resolved so that the
2 Commissioners approving the EIS would be able to say
3 we know that the state has the money to put in a new
4 bridge, widen the highway, put something else in, or
5 they're going to leave it up to the developer of this
6 project to do that, and they have made no commitment
7 to fund that project. We don't know the cost of the
8 project. And they have made no effort to say that
9 whatever the cost is, we will provide that bridge,
10 widening of the bridge, whatever would be decided
11 would be needed.

12 So it's unresolved in the sense we don't
13 know how the pedestrian are going to be taken care
14 of.

15 Q Thank you.

16 CHAIRPERSON ACZON: Thank you. Are you
17 done with the witness? Thank you, Mr. Mayer.

18 VICE CHAIR WONG: Mr. Chair, I would like
19 to move to go into executive session to consult with
20 the board's attorney on questions and issues
21 pertaining to the board's duties, powers, privileges
22 and liabilities regarding these issues.

23 COMMISSIONER OKUDA: Second the motion.

24 CHAIRPERSON ACZON: It's been moved and
25 seconded to go into executive session. Those in

1 favor say "aye". Opposed? Motion carries.

2 (Executive Session.)

3 CHAIRPERSON ACZON: Back on record.

4 Mr. Pierce, please call your next witness.

5 I understand this is the last witness?

6 MR. PIERCE: That's correct.

7 CHAIRPERSON ACZON: How long will it be?

8 MR. PIERCE: Our goal is to get through
9 very quickly.

10 CHAIRPERSON ACZON: May I swear you in,
11 please?

12 Do you swear that the testimony that you're
13 about to give is the truth?

14 THE WITNESS: I do.

15 CHAIRPERSON ACZON: Please state your name
16 and address for the record.

17 THE WITNESS: Lucienne de Naie. I live at
18 320 Dora Faith Road in Haiku.

19 CHAIRPERSON ACZON: Please proceed.

20 LUCIENNE DE NAIE

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

24 DIRECT EXAMINATION

25 BY MR. PIERCE:

1 Q Good morning.

2 Could you describe -- your here on behalf
3 and you're testifying on behalf of Maui Tomorrow?

4 A I am.

5 Q Maui Tomorrow is one of the Intervenor?

6 A It is.

7 Q What is your position with Maui Tomorrow?

8 A I'm the President of the Board of
9 Directors.

10 Q Could you describe -- the reason you're
11 testifying is to talk about the adequacy whether or
12 not the EIS is for the Pi'ilani project is adequate.

13 And the question I would like for you to
14 first answer for the Commissioners is your background
15 and experience to give that type of testimony.

16 A Well, I'm just an ordinary citizen, but for
17 many, many years, over 40 years, I've been reading
18 environmental impact reports in California where I
19 was a Regional Planning Commissioner, and
20 Environmental Impact Statements here in Hawai'i for
21 the 30-some years that I've lived here in Hawai'i.

22 I have done this because I've been a
23 volunteer with various citizen groups. That's how I
24 got elected to be Regional Planning Commissioner in
25 San Diego in California. I was President of the town

1 council. And, of course, it was my kuleana to have
2 to read some of these documents and write comments on
3 them. So I am a self-trained analyst. I was an
4 English major in school, University of California.
5 So that goes to show what public education can do,
6 you can actually read the reports after you take some
7 training in the university system.

8 Q So roughly how many EIS's would you say
9 you've reviewed and commented on?

10 A Oh, my gosh, scores, scores and scores, and
11 many, many, many here in Maui.

12 I've been on the board of Maui Tomorrow on
13 and off since 1995, and I was one of the four or five
14 people that often was given the task of reading and
15 reviewing, sometimes as a team effort, these
16 different documents.

17 I've also served on many boards and
18 commissions here where you had to read these kinds of
19 documents. I served on the General Plan Advisory
20 Committee. I've served on advisory group on the
21 relocation of the Honoapi'ilani Highway, reviewing
22 their EIS preparation notice.

23 So I've done this. I actually served on
24 the Land Use Commission Advisory Panel for Reform a
25 few years ago. So I read a lot of these documents.

1 Q And you mentioned that sometimes you're
2 reviewing in a team. Are you sometimes collaborating
3 or working on a team with professional experts such
4 as engineers or surveyors?

5 A Yes, I do. I turn to folks who have
6 engineering degrees. I've worked with hydrologists.
7 I've worked with folks --

8 VICE CHAIR SCHEUER: We're not qualifying
9 people as experts, right?

10 MR. PIERCE: That's correct, however, I do
11 think, Mr. Chair and Commissioners, that the weight
12 of the testimony of any of our witnesses is going to
13 be based upon their background.

14 I don't want to belabor, but I did want to
15 make sure the Commissioners were aware of the
16 background.

17 VICE CHAIR SCHEUER: And I very much
18 appreciate. I'm just also cognizant of the time that
19 we have for making a decision today.

20 MR. PIERCE: Understood. I'll speed up.

21 Q The other thing I do want to ask though
22 very quickly, if could you briefly just say, because
23 you are going to be testifying regarding cultural
24 issues in the EIS, what's your background, and why
25 are you competent to talk about cultural issues.

1 A Well, I have been taken in to a number of
2 different organizations that are involved with
3 cultural activities. Like I am a member of the Aha
4 Moku Council for my area. I am invited to other 'Ahu
5 Moku meetings, like the one from Kula Kai.

6 I was taken by several cultural
7 practitioners who have now passed on, Renee Silva,
8 Uncle Ed Lindsey. They kind of trained me how to
9 look for cultural sites. How to recognize things. I
10 don't know why, but I'm very grateful because it's
11 something I'm deeply interested in, and have done a
12 lot of research on. I've read many AIS's.

13 Q Have you been on the Petition area?

14 A Yes, I have.

15 Q Have you been there with cultural
16 practitioners?

17 A I have.

18 Q The Commissioners already heard a lot of
19 testimony from cultural practitioners. If you could
20 describe in summary what your understanding of the
21 cultural importance of the site is?

22 A Well, what I've heard from cultural
23 practitioners is, unlike as described in the EIS,
24 this is a vacant area with no particular use, that's
25 a quote from the engineering report.

1 This is an area that is held in high
2 esteem. It was claimed by a very high chief,
3 Hewahewa. It connects with the fishpond that is on
4 the National Historic Register, the Ko'ie'ie
5 Fishpond. The ahupua'a of Honua'ula is small, but it
6 has a tremendous number of drainages in the upper
7 area, probably more than any other place in South
8 Maui.

9 And so it was a place -- this particular
10 parcel had two gulches bordering it. And the
11 Kulanihakoi Gulch, which is quite deep now, was not
12 that deep in ancient times. It was not even that
13 deep 40 years ago, according to practitioners. It
14 has been scoured out by the flooding and so forth of
15 recent years.

16
17 So this is like a delta, and this is why so
18 many cultural sites were found here in relationship
19 to other areas right above the Pi'ilani Highway, and
20 it's why probably the petroglyph stone was here. It
21 probably was a marker of a trail or some sort of way.

22 Petroglyphs are all along Kulanihakoi
23 Gulch. That indicates that people traveled in that
24 area, and traveled mauka-makai.

25 Q And you've read the cultural impacts that

1 are identified in the Cultural Impact Assessment
2 that's in the EIS?

3 A Yes, I have.

4 Q Do you agree with the conclusions that were
5 reached in the CIA?

6 A I am very sad to see the conclusions that
7 were reached. I attended every one of the meetings
8 with cultural practitioners. In fact, I helped Mr.
9 Jencks organize the first one. I invited families
10 that I thought would be involved. It was my hope,
11 and I very strongly feel that Mr. Fredrickson is a
12 great archaeologist and wants to do a good job here.

13 But to hear from people that they have
14 cultural practice; to hear from people that these
15 sites are important to them; and then to come up
16 with -- I will quote.

17 It is the finding of the current analysis
18 that there are no specific valued cultural,
19 historical or natural resources within the project
20 area, nor are there any traditional and customary
21 Native Hawaiian rights being exercised within the
22 project area.

23 That is just not true. And the folks who
24 prepared this document were provided with information
25 that could have been used to draw different

1 conclusion, and for whatever reason, they chose not
2 to.

3 So to me the EIS has failed the test of
4 providing the information that was provided to the
5 preparers to the Applicants and their
6 representatives.

7 Q And the CIA and the EIS in general has
8 identified some mitigation that the developers are
9 willing to do.

10 Can you describe whether that appears to be
11 adequate, based upon what you understand was the
12 input from the cultural practitioners?

13 A Well, it appears, on Volume 1, page 89
14 states:

15 Applicants heard from community members on
16 the site visit that certain sites are valued and
17 important.

18 Now, why they then issued a statement in
19 their Cultural Impact Statement that was released
20 long after this site visit that there was nothing
21 there, I don't know. And they're willing to go
22 consult with myself and Daniel Kanahele.

23 I think because we both wrote a letter to
24 State Historic Preservation saying that the AIS
25 needed a lot more work.

1 I don't know if this body is aware, but in
2 the draft AIS, the Draft Archaeological Survey, that
3 was in the Draft EIS, it just said nine of the 19
4 sites were destroyed. That they weren't there any
5 more. That was not true.

6 That's why Daniel and I, immediately after
7 that came out, wrote this letter to State Historic.
8 And we knew that the sites were not being seen
9 because the area was overgrown. We knew the
10 archaeologist did not mean to imply that they were
11 destroyed. But they needed to go back down when the
12 grass was lower. And they did, and they found the
13 remains of the sites. Two had impacts, and several
14 others had some impacts, but they were all still
15 there in some form, and that was corrected in the
16 Final EIS.

17 But if you were a member of the public, and
18 you read the Draft EIS, you'd say, well, nothing
19 here. There were 19 sites, 9 are now destroyed, and
20 they're going to do data recovery on a lot of them.
21 Sounds good, they're no impacts. Well, that is just
22 not the case.

23 So to me, the FEIS didn't really adequately
24 explain any of that. And it's not -- the idea that
25 these sites would be protected in someway, there is

1 not a single design in the EIS, in their design
2 alternatives, that shows any allowance for protecting
3 of cultural sites. There's no map that identifies
4 where these cultural sites are.

5 And it's my understanding from the brief
6 discussions I've had with the Applicant's reps, that
7 the idea is to kind of move the sites where they
8 might be more convenient, and that would be the
9 compromise.

10 Because the tremendous amount of grading,
11 the entire natural landscape of these parcels is
12 going to be completely altered, from what I
13 understand.

14 Q The agencies that will be decisionmakers
15 using this EIS will have to apply the Ka Pa'akai
16 analysis. Can you describe or explain to the
17 Commission whether or not you feel that the EIS
18 sufficiently provides sufficient analysis for an
19 agency to actually be able to apply the Ka Pa'akai
20 analysis?

21 A I do not. Ka Pa'akai is pretty simple. It
22 says: Are there valued or natural cultural sites?
23 And people informed them that there are valued
24 natural and cultural sites. The little gulch,
25 Ka'ono'ulu Gulch being one of the sites that's

1 natural but is very valued culturally.

2 Is there any practice associated with these
3 sites? Well, there is practice associated with these
4 sites. I've witnessed it. Other people have
5 testified to it. It is there. It is real.

6 The second thing is: Will the project
7 impact this? And I would have to conclude it would
8 if there's not one design alternative that shows any
9 cultural sites being preserved. All we have is like
10 two or three sentences in the EIS, and that's what
11 we're going to rely on.

12 And there is no acknowledgment in Cultural
13 Impact Assessments spanning from 2013 to 2017 that
14 there's going to be, you know, valued cultural sites
15 there and cultural practice. I don't think it meets
16 the Ka Pa'akai test.

17 The third thing you're supposed to do is
18 say how you can mitigate. Well, I guess those two
19 sentences saying they will consult and discuss with
20 Daniel and I, who it shouldn't be with Daniel and I.
21 They should follow the whole process of the 6E
22 process and actually redo the AIS. Give Mr.
23 Fredrickson, who is an excellent archaeologist, a
24 chance to update his excellent earlier work.

25 It's just -- it doesn't meet the standard,

1 in my humble opinion.

2 Q You heard Mr. Kanahale's testimony. He
3 talked about how much the CIA changed between the
4 Draft EIS and the Final EIS?

5 A Oh, yeah.

6 Q If you could just very briefly just
7 identify, based upon your experience and knowledge,
8 working with EIS's, why you feel that doesn't meet
9 the procedural requirements of Chapter 343.

10 A Well, when you read an EIS, you're
11 expecting that the majority of information -- it says
12 at the earliest practicable time you'll present this
13 information. So, of course, you would expect that
14 minor things would be added later, maybe even
15 sections. I'm proud that many EIS's have added many
16 things that I've submitted as testimony, but it's not
17 like a complete shift to go from a nine-page Cultural
18 Impact Assessment that interviews two people who
19 weren't even interviewed for the project, and that's
20 what people see, and an EIS that says nine sites have
21 been destroyed, which wasn't the truth, and that's
22 all people have seen.

23 And then four years later you come out with
24 a Final EIS, that has an AIS that says, oh, yeah,
25 actually all those sites have been relocated, and

1 actually another site is being recorded, and actually
2 we have a couple of memos, that maybe there's some
3 other testing we will do on some other sites that
4 citizens have pointed out.

5 All of this has happened in between. It
6 didn't happen in 2017. It happened in 2014, 2015.
7 They knew a lot of this stuff before the Draft EIS
8 was even published. It could have been in the Draft
9 EIS.

10 I just see that as sort of a sneaky kind of
11 thing to make sure that people didn't really know
12 what is going on. And then you put it in the Final
13 EIS and say it's here now, and great.

14 Q One other thing Mr. Kanahale talked about
15 was the cultural consultation process.

16 Based upon your experience working with the
17 State Historic rules, and also with EIS rules, do you
18 think the consultation process was adequate in the
19 EIS?

20 A Well, you know, the rules of Chapter 6E,
21 you know, Chapter 13-276, whatever it is, are about
22 consulting with knowledgeable and interested people.

23 So the archaeologist and the folks from
24 Hana Pono who did the CIA, it was brought to their
25 attention that there were interested and

1 knowledgeable people before the EIS was issued. And
2 they could have -- and before SHPD signed off on any
3 final revised AIS.

4 Now, the AIS was revised to include more
5 area that hadn't been surveyed before. This area
6 turned out didn't really have any other sites, but as
7 part of that new process, a review of the previously
8 recorded sites was included. And that's where the
9 nine sites were kind of like found again basically.

10 So the process has not really been
11 followed. The consultation should have been folded
12 into that AIS process, and it should have been folded
13 into the CIA process before the EIS. They have just
14 held off -- in fact they did hold off on the EIS for
15 a few months. They should have held off more.
16 Gotten all that in. Gotten all that to State
17 Historic. Had it reviewed. And then issued an EIS
18 that actually told about the real cultural use and
19 the cultural sites there.

20 Since they didn't, I just can't conclude
21 that the EIS process has been followed. In fact,
22 it's even more confusing. There were like three
23 separate iterations of the Cultural Impact Assessment
24 in the Final EIS. The middle one done by Hana Pono,
25 after Daniel Kanahele was interviewed, concluded that

1 some sites should be preserved. In fact, in spite of
2 the fact that a lot of damage had been done to the
3 land, some sites should be preserved, and the
4 developer should work with people.

5 But the final updated one that was done by
6 Cathleen Dagher and Michael Dega (phonetic), so a new
7 firm got involved. They interviewed several more
8 people, they concluded -- like not the mayor -- I
9 mean it's so confusing to the general public.

10 CHAIRPERSON ACZON: Can you answer the
11 question? You want to move on?

12 Q (By Mr. Pierce): The final thing is, with
13 respect to the gulches that are either on or adjacent
14 to the property, can you talk about the flooding, in
15 your opinion, as to whether the hydrological studies,
16 and the analysis of impacts from the development are
17 adequately addressed in the EIS?

18 A They are not.

19 The Applicant always reminds people that
20 the Kulanihakoi Gulch is not on the property. That
21 is true, but it's a major feature of that property.

22 The engineering report clearly acknowledges
23 that at the present time, all the drainage flow from
24 the property, flows directly into the Kulanihakoi
25 Gulch.

1 I've also heard the reps of the project say
2 that they're doing everything that the county
3 requires. But to prepare for a one-hour 50-year
4 storm isn't going to cut it in this area, especially
5 under our current weather conditions.

6 So more analysis should have been provided
7 based on the fact that this is an extremely
8 flood-prone area downslope. Other projects that have
9 developed in this area, actually mauka of the
10 highway, have had to do off-site drainage
11 improvements in order to be okay with the Army Corps
12 of Engineers.

13 The county doesn't always ask for a lot.
14 They have to follow their own laws. But this project
15 should do more than what the county requires. Other
16 projects are starting to do that. It should have
17 been discussed in the EIS, and it just wasn't.

18 MR. PIERCE: Thank you, Mr. Chair.

19 CHAIRPERSON ACZON: Any questions,
20 Petitioner?

21 MS. CATALDO: Yes, Mr. Chair, thank you.

22 CROSS-EXAMINATION

23 BY MS. CATALDO:

24 Q Ms. de Naie, I want to make sure I
25 understand your framework of reference.

1 You were introduced as someone talking
2 about cultural issues, but you were talking about
3 also the AIS, the Archaeological Impact Statement.

4 You mentioned that with the cultural
5 issues, cultural practitioners had taken you under
6 their wing. Has any archaeologists likewise taken
7 you under their wing, or do you have formal training
8 in archaeology?

9 A I do not have formal training. I did take
10 an anthropologist class in college. And I have been
11 taken under the wing of several archaeologists. Boyd
12 Dixon used to call Ed Lindsey and I all the time to
13 go and look at sites. He was the archaeologist for
14 the SHPD here back in the '90s.

15 And I've worked fairly closely with Theresa
16 Dunham on some projects. We co-authored -- well, I
17 was hired to author a book, and she was hired to do
18 the archaeological review part of the book.

19 I've worked with Allison Chin. I've worked
20 with several archaeologists over the years, just, you
21 know, going out, walking around, holoholo, checking
22 stuff out.

23 Q When was the first time you walked the
24 project site?

25 A Oh, many years ago. I would say maybe 2009

1 or something like that, yeah.

2 Q For what purpose?

3 A Because of the gulches. I'm like Daniel.
4 I'm often Daniel's companion on these gulch walking
5 tours, and very interested in what's in the gulches.
6 I've walked most of the gulches of South Maui.

7 Q Is that Kulanihakoi Gulch?

8 A Yes, Kulanihakoi Gulch.

9 Q Which is off the property.

10 A Yes, but you can go right up the banks and
11 you can be right along that property, yeah.

12 It was not all fenced off, as I recall, at
13 that time. I don't think they put the other fence
14 along the gulch up at that point.

15 Q So access was not denied?

16 A It was cultural access. Daniel took me
17 along to take pictures. I had a camera; we were
18 there.

19 Q You went on-site, I guess is what I'm
20 trying to understand.

21 A Yes, yes.

22 Q Since '09, how many times have you been on
23 the property?

24 A Dozens.

25 Q And dozens -- I don't mean to -- 12, 24,

1 36, 48?

2 A Not 48, maybe 25 times, something like
3 that.

4 Q And how many of those times were you
5 on-site with a representative of the developer?

6 A Twice.

7 Q And how many times were you there with Eric
8 Fredrickson?

9 A Once with Eric.

10 Q So the other approximately 22 times, you
11 were there with cultural practitioners?

12 A Yes, for observing the full moon, observing
13 the equinox, eclipses, you know, the Pleiades, the
14 makahiki. You know, it's a beautiful site. People
15 thing it's a nothing plates. It's really -- you're
16 not in Kihei any more when you walk on that land.
17 It's quite a beautiful place.

18 Q Nobody denied you access those
19 approximately 22 times?

20 A It was cultural access. Nobody asked.
21 It's under PASH rights. People who want to exercise
22 their cultural rights, you know, like that.

23 Q When was the first time you observed an
24 equinox from the project site?

25 A Equinox I think was in 2014 or around in

1 there, 2014, maybe 2013. I'm sorry, I don't have a
2 timeline in front of me.

3 Q Other than walking the gulches, what was
4 the first time that you participated in a cultural
5 practice on-site?

6 A I'm sorry, I don't know the exact year. I
7 mean, to me walking the gulch and going up and
8 finding things, and being in examine commune with
9 them is a spiritual practice.

10 Q Understood.

11 So the question is, other than that --

12 A You know, like a gathering or something
13 like that. I don't really know. It was probably
14 within the last five years.

15 I'll tell you a funny story though.

16 Q If I could get through my questioning.

17 With the cultural practitioners that took
18 you under their wing, did anybody talk about this
19 project site previously?

20 A Actually Ka'ono'ulu, as an area, was
21 mentioned by Mr. Silva as being very important. He
22 was friends with Charlie Keau (phonetic) who did a
23 lot of work down at the ocean area of this area.

24 Q How about this particular 75-acre parcel?

25 A No. More in general that that gulch was a

1 very culturally important gulch, Kulanihakoi, yeah.

2 Q Kulanihakoi Gulch, the gulch that is off
3 the project site?

4 A Yes, that adjoins the project site. There
5 is a thin strip between that and the project site,
6 like 15 feet.

7 Q You've listed some, but can you list for me
8 all the cultural practices you understand are taking
9 place on the site presently?

10 A Observation of weather patterns.
11 Observation of celestial phenomenon. Observation of
12 bird life, like the pueo. Identification of
13 significant pohaku that hold cultural significance,
14 that when people are around them, they just start
15 being flooded with reminders of their ancestors.

16 Little hard to explain, but, you know, it's
17 a very individualistic thing.

18 Q Anything else?

19 A Gathering.

20 Q Of what?

21 A Of medicinal plants like uhaloa. Very
22 ubiquitous, but it's a great place to gather the
23 uhaloa.

24 Q Have you ever seen anyone gathering?

25 A Yes.

1 Q When?

2 A One of our accesses. Someone had a sore
3 throat, and some of the hualoa was gathered to take
4 back.

5 Q Within the last five years?

6 A Yes.

7 Q That one time occurrence, is that the one
8 time you've seen gathering?

9 A That's the one time I've witnessed, but the
10 person who was gathering lived not far away, and my
11 guess is they might gather there other times.

12 Q They did not indicate that to you?

13 A Well, I didn't grill them.

14 Q Did you ask?

15 A No.

16 Q Anything else in cultural practice?

17 A Awa ceremonies to reawaken the connection
18 to some of the sites.

19 Q You participated in one?

20 A Yes.

21 Q As part of the celestial --

22 A No, separately, separately. And there was
23 also a group that gathered in the small gulch,
24 Ka'ono'ulu Gulch, and it had rained, and the pools
25 there had water, and they did a ceremony thanking for

1 the water coming to the land.

2 You know, it's kind of hard to characterize
3 all this stuff. It's people doing what they feel.

4 Q You're aware that Mr. Lee was interviewed
5 by Kimoqueo?

6 A Yes.

7 Q Have you read that interview?

8 A I haven't read the whole thing. I think I
9 read parts of it. It was very small print.

10 Q Did you read where Mr. Lee indicated that
11 it was not his intention to stop the development, but
12 he would like preservation?

13 A Yes, I read that in the summary. Yes.

14 Q What did you understand Mr. Lee's
15 description of the cultural practice to be?

16 A Mr. Lee went on the site visit with the
17 archaeologist and shared a great deal of information,
18 and really urged people not to look at the sites as
19 this is just a little stack of stones, but to view it
20 in cultural context that it is marking a relationship
21 between the earth, the clouds, the weather patterns,
22 the rise or fall of different stars or planets.

23 And this is what his traditional
24 knowledge -- and he is not alone -- I've talked to a
25 number of other cultural practitioners who feel the

1 same way. Mr. Chad Kane.

2 Q Where is Mr. Lee from?

3 A He lives in Oahu. His family on his mom's
4 side is from Lahaina.

5 Q You, I think were here, when I was speaking
6 with Mr. Kanahale, and I asked, in his opinion, if
7 the significant amount of activity on the property,
8 cattle ranching, heavy equipment for firebreaks,
9 military training for several years. I didn't
10 mention to him, but cleanup activity from unexploded
11 ordinance following World War II, and the
12 installation of the pipe, if that sort of activity on
13 the property would affect the stones being used for
14 observation might impact interpretation of certain
15 places on the property.

16 I believe Mr. Kanahale said, yes, that
17 might impact. What is your response?

18 A Well, I've hiked many places that have had
19 disturbances over the years, and with cultural
20 practitioners. And probably the most general thing I
21 could say about that is that they feel that the land
22 holds things at different depths.

23 Of course, you know, humans take their -- I
24 mean like at Kaho'olawe. Look at the money we're
25 putting into restoring Kaho'olawe. It was a bombing

1 target for how many years? It's still a worthwhile
2 place. Every cultural practitioner that I have
3 talked to about these places that has some
4 disturbance feels that that does not negate their
5 real value as a place for cultural practice or
6 cultural work.

7 Q I suppose my question was more focused.

8 Explain to me -- do you understand the
9 celestial navigation or celestial observation?

10 A Well, of course, I am not a Hawaiian, and I
11 was not trained in these things, but I've listened to
12 both Mr. Lee, to Mr. Kane who has a preserve on Oahu,
13 Barbers Point area, and both of them are very
14 eloquent about this, that stones are not placed
15 haphazardly. That they actually connect. When you
16 stand at a stone, you then see certain patterns from
17 being at that particular position, whether it's a
18 stack of rocks, a natural formation that's been
19 augmented.

20 And this is a traditional knowledge. When
21 you go to 'Ahu Moku meetings and you hear the amount
22 of knowledge. It's like we live in two different
23 world's, what people know through their culture, and
24 what we know through Western science.

25 It's an amazing divide. And as a

1 non-Hawaiian, I'm just very humbled to be there at
2 the table to be able to listen.

3 Q So if the earth-moving activity on the
4 property, through scores of years, impacted
5 placements of things, placements of rocks, what is
6 the conclusion as to the historic practice, the
7 traditional practice of celestial observation?

8 A Well, if you've walked the rock, you would
9 know, a great deal of that property has not been
10 disturbed. It's natural rolling hills with no
11 evidence of bulldozing. It's more like the edges and
12 the middle where they put the pipeline across.

13 But like Daniel said, it's narrow bands,
14 there are areas that are very pristine, that still
15 have cultural sites very evident that are not
16 scarred, that have never been impacted by a
17 bulldozer.

18 So I just think that there's enough there
19 that you're going to have a working cultural
20 landscape system there.

21 Q Let's turn to the AIS.

22 You are aware that in the 2015 AIS,
23 approximately 18 sites were identified?

24 A Well, in the 2015 they identified the
25 original 19 sites that were still on the land, the

1 petroglyph stone having been removed. And said that
2 two of those were pretty much so altered that they
3 were considered destroyed. And then they recorded
4 one additional new site, which Daniel Kanahele and I
5 had found and sent picture to the State Historic.

6 And Mr. Fredrickson visited and said, yes,
7 this is absolutely a historic site, has evidence of
8 cultural use, and it will be recorded.

9 Q So 18 sites?

10 A 18 sites.

11 Q How many of those sites are submitted for
12 data recovery?

13 A Nine, I believe, at the last I looked, or
14 maybe ten if there's going to be additional data
15 recovery at the new site.

16 Also data recovery proposed at the site
17 along Ka'ono'ulu Gulch.

18 Q There are 12 sites for data recovery, and
19 the developer has, along the gulch that you're
20 indicating is Ka'ono'ulu Gulch, which doesn't have
21 any historic --

22 A Like Daniel, this is what old cowboys call
23 it.

24 Q So 13 of the sites for data recovery, over
25 70 percent of the sites, were you aware of that?

1 A Yes. And data recovery does not ensure any
2 preservation at all. There's no commitment to
3 preservation with recovery.

4 Q It's the first step, though, in
5 identifying -- with further data recovery --

6 A If you had read as many AIS's as I had,
7 ma'am, you would know, it's usually the last step.

8 Q Data recovery is for archaeologists, the
9 most intensive archaeological evaluation available;
10 is that right?

11 A Actually an in depth Archaeological
12 Inventory Survey that has sufficient subsurface
13 testing so that you can do the significance criteria
14 when it's supposed to be done at that part of the
15 process is far more desirable.

16 Q Is it your testimony that that was required
17 here?

18 A It's the 6E process that significance --
19 when this was given significance review in 1994, Mr.
20 Fredrickson did the very best he could with the
21 information that was available. He did not know
22 about the multiple sites upslope from here. He did
23 not know -- he had probably not a lot of support to
24 support -- to preserve any of the sites, except the
25 petroglyph. And he did note that, wow, there aren't

1 a lot of sites that are found here above in the
2 barren zone, so that makes these more significant.

3 Q Ms. De Naie, I want to be very clear.

4 Is it your testimony that the 2015 AIS does
5 not meet legal standard?

6 A It was accepted by State Historic. I'm not
7 going to criticize them, but I feel that they could
8 do a better job.

9 Q Thank you.

10 CHAIRPERSON ACZON: Ms. Apuna.

11 MS. APUNA: No questions.

12 CHAIRPERSON ACZON: Mr. Hopper. Mr.
13 Tabata.

14 MR. TABATA: No questions.

15 CHAIRPERSON ACZON: Commissioners?

16 COMMISSIONER CHANG: Let's start off where
17 we just left off on data recovery.

18 Data recovery is a form of mitigation?

19 THE WITNESS: It is.

20 COMMISSIONER CHANG: Normally in an AIS
21 different forms of mitigation include data recovery.
22 What's generally the -- I know we are going to have
23 an archaeologist, so I don't want to get into too
24 much detail, but data recovery is generally not the
25 preservation of the resource.

1 THE WITNESS: It can leave to preservation
2 if extraordinary things are discovered, but it
3 generally says, okay, we've done this. It's enough.
4 State Historic can feel they've done their job.

5 COMMISSIONER CHANG: Another form of
6 mitigation is preservation?

7 THE WITNESS: And avoidance. Designing
8 things into your project so that the culture is
9 respected, which I think is what practitioners are
10 asking for here.

11 COMMISSIONER CHANG: Most of the sites in
12 the AIS were identified for data recovery, 70
13 percent?

14 THE WITNESS: Yes.

15 COMMISSIONER CHANG: You mentioned Chad
16 Kane. Why was Chad Kane called to the site?

17 THE WITNESS: Actually he's not visited
18 this site, but visited nearby, and showed me
19 formation of stones. He says now, this may look like
20 nothing, but this is actually an alignment that
21 someone would use as part of their navigational
22 practice, and part of their observing of how the
23 planets would rise and fall, and being able to align.

24 He said at certain elevations, you can see
25 things, and South Maui, the south facing shores and

1 leeward sides are those places where those practices
2 were utilized and taught to others as well.

3 COMMISSIONER CHANG: He was not called to
4 participate --

5 THE WITNESS: No, it was not on this site.
6 I'm just saying that Michael Lee is not the only one
7 to say that certain pohaku actually have a connection
8 to navigation and observing celestial phenomena,
9 there are others as well.

10 COMMISSIONER CHANG: You mentioned that you
11 have accessed the site. And you mentioned PASH
12 access.

13 Did you have to ask for permission to
14 access the site, or were cultural practitioners
15 permitted to go onto the site at will?

16 THE WITNESS: Well, it's never really been
17 clearly defined, but the people I went with said
18 we're exercising our PASH rights to come to a place
19 and have cultural practice and do no harm.

20 COMMISSIONER CHANG: Has the landowner
21 required you to get access through them?

22 THE WITNESS: I believe at one point Mr.
23 Jencks, who is not the landowner, but is a
24 representative of the landowner said, well, give me a
25 call if you guys are going to go out there.

1 CHAIRPERSON ACZON: Do you have any more
2 questions?

3 COMMISSIONER CHANG: During the cultural
4 consultation process, were you interviewed for the
5 Cultural Impact Assessment?

6 THE WITNESS: No, I was not.

7 COMMISSIONER CHANG: During the cultural
8 consultation meetings, were notes taken of those
9 meetings?

10 THE WITNESS: Well, yes. I think the notes
11 were published in the appendix in the Final EIS.

12 COMMISSIONER CHANG: Were the participants
13 of that cultural consultation process given an
14 opportunity to see those notes?

15 THE WITNESS: Well, if they got the Final
16 EIS, I guess they were. The people who were
17 interviewed probably were given an opportunity to
18 review their interviews. I can't speak to that. I
19 know Mr. Elden Liu, who's a lineal descendant,
20 refused to have his interview published.

21 COMMISSIONER CHANG: You identified several
22 cultural resources on the site. You went through the
23 analysis with your counsel about Ka Pa'akai.

24 So you identified cultural resources that
25 are on the site?

1 THE WITNESS: Yes, there are existing
2 cultural resources on the site, and lots of midden
3 and stone tools and coral tools. There's all kinds
4 of things. You see new things every time go there.

5 COMMISSIONER CHANG: You mentioned
6 medicinal plants, uhaloa.

7 THE WITNESS: Yes.

8 COMMISSIONER CHANG: Are there other
9 resources on the site that you have not identified?

10 THE WITNESS: That's a good question. You
11 put me on the spot, Commissioner. There probably
12 are. Guess I'm a little nervous and can't think of
13 everything right now.

14 There probably are others. When you talk
15 to more people, you find out more things. And I have
16 not talked to every single person who's accessed the
17 site?

18 COMMISSIONER CHANG: And you've
19 acknowledge, you're not a cultural practitioner
20 yourself, but you have been trained by other cultural
21 practitioners?

22 THE WITNESS: Yeah. Well, I'm not of the
23 Hawaiian cultural, so I'm not a Hawaiian cultural
24 practitioner. I'm a person who respects Hawaiian
25 culture.

1 COMMISSIONER CHANG: And in your -- and
2 you've identified -- you stated that the project will
3 have an impact on continued practice of these, or
4 access to these valuable resources?

5 THE WITNESS: Well, they're going to be,
6 probably, if they're not destroyed, they are going to
7 be relocated to someplace where it's convenient.
8 That doesn't have cultural integrity in the eyes of
9 most cultural practitioners. And there's no
10 discussion of cultural practice. It's off the table,
11 just says there is none.

12 So it's a little hard to know where the
13 Final EIS, when are we going to know about how the
14 cultural practice is going to be dealt with?

15 COMMISSIONER CHANG: Again, I just want to
16 confirm your testimony has been that the conclusion
17 in the CIA was that there are no traditional
18 customary practices on the project site?

19 THE WITNESS: I read you the quote from the
20 CIA, from the 2017 version, yes, that's their
21 conclusion.

22 COMMISSIONER CHANG: And my understanding
23 is you disagree with that conclusion?

24 THE WITNESS: I and all the other folks who
25 testified do disagree with that, yeah.

1 COMMISSIONER CHANG: The AIS identified,
2 and you spoke about Kulanihakoi Gulch, which is not
3 on the project site?

4 THE WITNESS: No, A few feet away from the
5 project boundary.

6 COMMISSIONER CHANG: But from a very
7 traditional cultural practice, were people bound by
8 TMKs?

9 THE WITNESS: No. No, this property had
10 these two waterways, and the Ka'ono'ulu Gulch is not
11 someone's drainage. It is shaped like a natural
12 waterway. It has blue rock formations in it. It's a
13 very special place, and it was shaped by water. And
14 it went all the way down to the ocean.

15 COMMISSIONER CHANG: In reading the AIS, it
16 states that the Kulanihakoi Gulch served as a
17 corridor for inland and precontact times.

18 Based upon in your experience, would you
19 agree with that?

20 THE WITNESS: Absolutely I would. There's
21 petroglyphs all along it. I've seen a number of
22 them. That indicates people walked and left their
23 mark, yes.

24 COMMISSIONER CHANG: Are you aware of the
25 Land Commission Award that was on this property?

1 THE WITNESS: To Hewahewa, yes. Mr. Elden
2 Liu, who is a direct descendant of Hewahewa, has
3 tried to petition for some recognition that his
4 family never actually completely abandoned that
5 award. He has his paperwork.

6 I have not seen his paperwork, but he
7 believes very strongly that he should have a voice.
8 He doesn't want to disrupt the project. He just says
9 something useful should be here like a hospital.

10 COMMISSIONER CHANG: You are not an
11 archaeologist. Is it your experience that in many
12 instances where there are Land Commission Awards, it
13 is an indicator of precontact or previous habitation?

14 THE WITNESS: Oh, yes. And there's much
15 evidence of habitation here. It is described as
16 temporary habitation. But, you know, it's hard to
17 know. This area has had a lot of floods over it.
18 There could have been like 20 times as much shells
19 and coral and rounded pebbles and flakes and evidence
20 of human habitation there, as we found when it was
21 first surveyed in 1994.

22 COMMISSIONER CHANG: In your experience,
23 where there is habitation, did maka'ainana or
24 commoners generally bury their family members where
25 they lived?

1 THE WITNESS: Yes. Kihei is famous for
2 people finding burials when they go to put in their
3 new house. In fact, Vernon Kalanikau, who testified
4 yesterday, has like a little map of all the burials
5 that were just found around where his family lives
6 just downslope from here.

7 COMMISSIONER CHANG: I have no more
8 questions.

9 CHAIRPERSON ACZON: Let me ask the other
10 Commissioners. Vice Chair Scheuer, followed by
11 Commissioner Cabral.

12 VICE CHAIR SCHEUER: Good morning.
13 You testified about your expertise both on
14 cultural matters, Ka Pa'akai analysis, as well as on
15 EIS's in general.

16 THE WITNESS: Yes.

17 VICE CHAIR SCHEUER: There are -- there's a
18 requirement that the EIS look at cumulative impacts
19 of a project.

20 THE WITNESS: Yes, there is.

21 VICE CHAIR SCHEUER: Are you aware of this
22 EIS having any cumulative impact analysis on cultural
23 issues?

24 THE WITNESS: Well, I think it was neatly
25 sidestepped by having all the cultural analysis,

1 which is supposed to be the Cultural Impact
2 Assessment, conclude that there's nothing of value,
3 and there's no one using the lands, kind of means you
4 don't have to talk about any cumulative impacts.

5 VICE CHAIR SCHEUER: Do you believe that an
6 analysis of impacts on cultural practices from a
7 proposed development is supposed to be limited to
8 what is directly on that site?

9 THE WITNESS: No, I do not believe that.
10 Because this site deeply connects to what is below
11 it. There's a muliwai. There is a natural lagoon
12 that functioned as a fishery.

13 VICE CHAIR SCHEUER: By below, you mean
14 makai?

15 THE WITNESS: Makai, yes.

16 And the two gulches that frame this
17 property, the one that passes right through it, and
18 the one on its border, actually originally met at the
19 mouth of that muliwai, which is probably why that
20 lagoon was there.

21 I discovered through hearing the stories at
22 'Ahu Moku meetings, that there are folks who live in
23 the Kihei area who believe there is a mo'o associated
24 with that gulch, and that there's underground
25 passageways, and the mo'o lived in the muliwai area.

1 And there was a certain rock that was
2 associated with that mo'o. These are all things I
3 have heard. I am not competent to say how verified
4 they are. But these are people's families' stories
5 that are associated but do not make it into theses
6 kind of reports because people don't go and make
7 people comfortable to talk about these things.

8 VICE CHAIR SCHEUER: There has been a bunch
9 of discussion during the public testimony portion.
10 People stating that there were certain well-known
11 Native Hawaiian families associated with this area
12 who were not consulted during the process.

13 Is that your understanding as well?

14 THE WITNESS: Well most of the Hewahewa
15 were not consulted. Mr. Brian Naeole who is a
16 descendant of Hewahewa attended several of the
17 meetings and both of the site visits. I don't
18 believe there is any interview from him in the CIA.
19 And he's a very gentle person. You know, he's not
20 very pushy.

21 VICE CHAIR SCHEUER: Do you know if there
22 were attempts to contact him or others?

23 THE WITNESS: I do not know. I think he
24 was listed as some of the people who were contacted.
25 There was a long list. There is a standard issue

1 people that they always contact, Office of Hawaiian
2 Affairs, and Auntie Thelma, different people, and
3 then there were a few individuals as well.

4 VICE CHAIR SCHEUER: Thank you.

5 CHAIRPERSON ACZON: Commissioner Cabral.

6 COMMISSIONER CABRAL: Actually my question
7 might be for the Petitioner.

8 You had earlier referenced that there's, I
9 think you said, eight sites are going to be preserved
10 in the development plan that's being looked at now.

11 Are those the types of sites that she's
12 referring, to which she has referenced 18 or
13 something that had been located, are those different
14 concepts, or are we talking about the same type of
15 preservation? And what kind of preservation would it
16 be of a site?

17 MS. CATALDO: I apologize. 18 sites are
18 identified in the AIS as having archaeological
19 findings. Of those --

20 CHAIRPERSON ACZON: Are you going to go
21 over that on your presentation?

22 MS. CATALDO: I can.

23 COMMISSIONER CABRAL: Thank you.

24 CHAIRPERSON ACZON: Anybody else? Mr.
25 Pierce.

1 MR. PIERCE: Intervenors have no further
2 questions, and I want to thank you permitting us for
3 having these witnesses testify.

4 CHAIRPERSON ACZON: We are going go with
5 County of Maui, but before that, I just want to
6 inform everybody that it is the Commissioners'
7 intention to finish and make decision today. So if
8 you have any flight reservations to change, you can
9 do it during lunchtime. And I probably, maybe half
10 hour, we are going to take a short break.

11 So, Mr. Hopper, please proceed with your
12 presentation.

13 MR. HOPPER: It is the county's position
14 with respect to the community plan zoning issues is
15 that at this time the Commission has a decisionmaking
16 criteria under the Hawai'i Administrative Rules that
17 will determine whether or not the document is
18 acceptable.

19 That is separate from the criteria for
20 determining if the Motion to Amend should be granted,
21 which does include a consideration of the Community
22 Plan, County General Plan, and Maui Island Plan. But
23 because these issues were discussed, the Community
24 Plan issue, the zoning issue, I would like to call
25 William Spence hopefully briefly to go over some of

1 the issues that have been discussed.

2 CHAIRPERSON ACZON: May I swear you in
3 first?

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

6 THE WITNESS: Yes, I do.

7 CHAIRPERSON ACZON: Please state your name
8 and address for the record.

9 THE WITNESS: My name is William Spence.
10 You know what? I can't even give you my business
11 address -- One Main Plaza in Wailuku.

12 CHAIRPERSON ACZON: That will fine.

13 THE WITNESS: I go there every day.

14 WILLIAM SPENCE

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

18 DIRECT EXAMINATION

19 BY MR. HOPPER:

20 Q Mr. Spence, could you state your current
21 position with the county of Maui?

22 A I'm the Planning Director for county.

23 Q How long have you held that position?

24 A Since 2011.

25 Q And prior to that, could you briefly go

1 over your time spent with the Planning Department and
2 your work experience?

3 A I started with the Planning Department in
4 1992, and spent ten years there as a staff planner.

5 I was responsible for virtually all aspects
6 of virtually all functions within that department,
7 including processing discretionary permits, changes
8 in zoning.

9 I was also the staff planner for a number
10 of the community plans which are currently in effect.

11 Q And as your role of Planning Director, you
12 submitted a Position Statement with respect to the
13 acceptability of the Final EIS for this project?

14 A Yes, we did.

15 Q And the letter which you submitted July 14,
16 2017, states that the department recommends approval
17 based on HAR 11-223 Hawai'i Administrative Rules. I
18 wanted to read that section briefly which does
19 outline the acceptability criteria for the Commission
20 to review when determining whether or not to accept
21 an EIS.

22 It states: 11-223, Subsection A.

23 Applicability of a statement shall be
24 evaluated on the basis of whether the statement in
25 its completed form, represents an informational

1 instrument which fulfills the definition of an EIS,
2 and adequately discloses and describes all
3 identifiable environmental impacts and satisfactorily
4 responds to review comments.

5 So when you reviewed the EIS, did you
6 essentially review, based on areas within the
7 county's jurisdiction, as well as the responses to
8 county agency comments?

9 A That's correct.

10 Q And you recommended approval of the Final
11 EIS?

12 A Yes. I believe it adequately addresses,
13 certainly for the county, what it needs to address.

14 Q And to clarify and continue on a point that
15 I have discussed earlier.

16 At this stage the Commission is being asked
17 to accept this Final EIS. In order to accept the
18 Final EIS, there was some discussion of community
19 plan and zoning compliance.

20 In order to accept the Final EIS, does the
21 Land Use Commission have to determine that the
22 project is consistent with the County General Plan or
23 Kihei-Makena Community Plan?

24 A My understanding of the Administrative
25 Rules, there is no requirement for the acceptance

1 of -- consistency with the Community Plan, Maui
2 General Plan documents in order to accept the EIS.

3 Q So at this point, did you read the analysis
4 in the document in the Final EIS regarding the
5 Community Plan compliance, as well as General Plan
6 and Maui Island Plan compliance?

7 A Yes, I did.

8 Q Did you believe that those sections
9 adequately discuss the project in the ways in which
10 it, the Community Plan and those other plans, relate
11 to the project?

12 A Yes. They spent -- the document spends
13 some 70 pages discussing General Plan compliance;
14 33 pages specifically to the Community Plan.

15 And then also under the unresolved issues,
16 they also discuss what so many have testified before,
17 that they believe that this project doesn't comply
18 with the Community Plan, but that is all disclosed.

19 Q You also mentioned that it is disclosed
20 that there is an ongoing dispute with the Intervenor
21 as to whether or not the project is in compliance
22 with the Community Plan?

23 A That's correct.

24 Q And this is something for the Commission to
25 consider in your view in its Motion to Amend

1 proceedings?

2 A Yes. Since there's no requirement with
3 acceptance of an EIS, there is most definitely that
4 requirement that the Commission consider the county's
5 general plans, community plans, et cetera, in their
6 decisionmaking process for an amendment.

7 Q And so that would be done should the EIS be
8 accepted at a future proceeding in which the Motion
9 to Amend would be considered?

10 A That's correct.

11 Q And at this time, the department has not
12 stated a position on whether the Motion to Amend
13 should go granted; is that correct?

14 A That's correct.

15 Q Again, that would be done should the EIS be
16 accepted in a hearing scheduled for that?

17 A That's correct.

18 Q That would also allow the county to call
19 witnesses, present evidence, and cross-examine other
20 party's witnesses?

21 A That's correct.

22 Q I wanted to go over a discussion a bit in
23 the Kihei-Makena Community Plan of the various land
24 use designations in the plan.

25 Are you generally familiar with land use

1 designations that are set forth in community plans?

2 A Yes, I'm very familiar with them.

3 Q Those designations, are they generally --
4 they're generally like one or two sentence
5 descriptions for the land use categories and
6 definition?

7 A That's correct. Our community plan, each
8 one of our community plans has a map, what we refer
9 to as a Land Use Map.

10 Those maps -- all the properties within the
11 county have some kind of designation. They can be
12 designated agriculture. They could be single family,
13 light industrial, hotel, commercial, all those kinds
14 of things.

15 And then within the back of each one of the
16 plans, there's a very brief description of that
17 particular designation.

18 Q And so I'm reading from page 54 of the Land
19 Use Map section of the Kihei-Makena Community Plan.
20 There's various designations, as discussed, one or
21 two sentence descriptions of what's in those
22 designated areas; correct?

23 A Correct.

24 Q Do you believe that those descriptions are
25 intended to be an exhaustive list of all of the

1 permitted uses within those districts?

2 A No. They cannot be a definitive list of
3 all the uses allowed.

4 Q In fact, one of the designations on page 54
5 of the plan is single family. And the description of
6 that area is: This includes single family and duplex
7 dwellings.

8 Are those the only two uses that are
9 allowed within a single family designated area in the
10 Land Use Map?

11 A No. Assuming that the property has gone
12 ahead and obtained zoning for that designation -- and
13 that's part of how you implement your community
14 plans, is you look at your plan. You go, okay, this
15 area is intended for this particular use. Say in
16 this case, single-family residential.

17 The county council, by ordinance, would
18 adopt residential zoning for the property. And then
19 all the uses within that zoning are permitted.

20 Some of the uses other than single-family
21 residences would be parks and playgrounds, truck
22 gardens. We're getting into urban agriculture these
23 days. We want to encourage those kinds of uses.

24 Child care, day care, schools, public
25 facilities, ohana units. You know, we have otherwise

1 known as AD use or accessory dwellings. Those are
2 not considered single-family dwellings. Those are
3 accessory to the primary dwelling on the property.

4 Those are allowed under the zoning code
5 that are not specifically named within the community
6 plan. Also bed and breakfast, home occupations. We
7 could go on.

8 Q So the point being that the descriptions in
9 the community plan land use map are not intended to
10 go over every possible permitted use in that
11 district?

12 A No, they are not intended for that.

13 Q That is true also, in your opinion, of the
14 light industrial community plan designated area?

15 A That is correct.

16 Q Now, light industrial area states, this is
17 for warehousing, light assembly, service and craft
18 type industrial operations.

19 Are other uses, in your view, also allowed
20 in that district based upon the light industrial
21 zoning classification?

22 A Yes. Our light industrial zoning code is a
23 tiered zoning code. It's a very old code, and I've
24 admitted that I don't know how many times publicly.

25 It allows not only the light industrial

1 uses, which are considered more -- considered the
2 most intense uses because of noises and odors and
3 whatnot. It also allows other uses that are
4 considered less intense, which would include business
5 uses, from our different business districts, B-1,
6 B-2, B-3. You can do --

7 So in addition to the light industrial
8 uses, you can also do the business uses, which would
9 include offices, retail space, any of the other
10 things you would find within a business district
11 category. That district also allows for apartment
12 buildings.

13 Q So because the light industrial -- you're
14 looking to the light industrial zoning for influence
15 of what uses may be allowed in the light industrial
16 community plan designated area?

17 A Yes. And when, as said, when the council
18 goes and implements the plans by zoning, we would
19 consider that once that zoning is in place, all the
20 uses within that particular land use district are
21 allowed as a right.

22 Q So it's your understanding that commercial
23 uses and apartment uses are considered allowed in the
24 light industrial community plan designated area?

25 A Yes.

1 Q Is this an interpretation that is
2 consistent with past Planning Directors and the
3 Planning Department?

4 A Since -- I started with the Planning
5 Department in 1992 and that was the case then.

6 I'm aware of previous Planning Directors
7 also, because just discussion with colleagues within
8 the department, that was also the practice before I
9 got there.

10 So for a number of decades now this has
11 been the practice and interpretation.

12 Q And in fact, in your Position Statement to
13 the Commission, you note several areas within the
14 county -- actually multiple areas where commercial
15 uses such as commercial shopping centers, as well as
16 apartment projects, are situated in light industrial
17 community plan designated areas; is that correct?

18 A That's correct.

19 Q Among them include, based on your letter,
20 Maui Marketplace, Kihei Gateway, the Lahaina Gateway.
21 And, in fact, the area right next to the Petition
22 area, which is designated light industrial in the
23 community plan, is a shopping center; correct?

24 A That's correct.

25 It's not exactly a shopping center, but

1 it's an area developed that has a mixture of light
2 industrial, and more commercial type uses. There is
3 retail. There's small businesses. There's some
4 industrial uses, and it's all mixed up.

5 There's also, because the zoning allows for
6 the other uses, the business districts allow schools.
7 We also have our charter school that is located in
8 that area.

9 Q That's the area, you drive on Pi'ilani
10 Highway headed back to airport, you look on the right
11 there, you can see that area that you're referencing?

12 A That's correct.

13 Q Moving on a bit to the zoning issue.

14 There was discussion of light industrial
15 zoning, I believe Mr. Mayer testified, and Mr. Hyde
16 testified that the light industrial zoning ordinance
17 requires that, though commercial uses are listed as a
18 permitted use, the ordinance requires that the
19 property -- that a property only have up to
20 50 percent of the property in commercial use.

21 In your mind, has that ever been the
22 interpretation of that ordinance by either, you as
23 Planning Director, or you any other previous Planning
24 Director in the history of the County of Maui?

25 A No, we have never interpreted it that way.

1 And having witnessed projects go before the
2 county council for light industrial zoning, that's
3 also not the case.

4 Q In fact, from time to time, if a project
5 would go before the county council for a zoning to
6 light industrial, would the department recommend
7 conditions limiting the amount of commercial use that
8 could be done on the property?

9 A Yes.

10 Q You're aware of cases where that's
11 happened?

12 A Yes. Specifically this particular
13 property, when my predecessor Brian Miskay
14 (phonetic), who also was before this Commission when
15 back in '95, whatever, when he went before the county
16 council, he made a recommendation that they should
17 limit the amount of --

18 Q Mr. Spence, just to back up a little bit.
19 You're talking about when Ka'ono'ulu Ranch,
20 in the late '90s, went before the Planning Commission
21 and the Maui County Council for a change in zoning
22 from that property's previous designation of
23 agriculture to light industrial -- I think it was
24 project district, actually, to light industrial.

25 That the issue of the amount of commercial

1 use that could be done on the property was an issue
2 that was discussed at the Planning Commission and
3 Maui County Council level?

4 A That's correct.

5 The director at that time made
6 recommendations that there be a limitation on the
7 amount of commercial that could be done. And the
8 county council chose not to put any conditions on it.

9 Q And the reason the limitations are required
10 was because --

11 MR. PIERCE: Mr. Chair, I'm just going to
12 object because I'm not hearing any analysis on how
13 the EIS is adequate or inadequate.

14 In fact, we constrained ourselves to that
15 as much as we possibly could. What I'm hearing now
16 are the issues that would be discussed at the Motion
17 to Amend stage?

18 MR. HOPPER: I would have much rather kept
19 him to those issues, but those were the issues
20 discussed on the direct testimony of the previous
21 witnesses.

22 CHAIRPERSON ACZON: Redirect your questions
23 to the EIS acceptance.

24 MR. HOPPER: Certainly.

25 Q So just noting for the record, when the

1 change in zoning was granted without any conditions
2 with respect to limiting commercial uses of the
3 property.

4 A That's correct.

5 Q And the discussion earlier about, from the
6 testifiers of the Intervenorors that the light
7 industrial zoning limits the commercial use of the
8 property to 50 percent of the property or less, you
9 would not agree with that analysis?

10 A No, I would not.

11 Q In fact, B-1, B-2, B-3 business district
12 uses and apartment uses in the county zoning district
13 are listed as permitted uses; correct?

14 A That's correct.

15 Q And that should be distinguished from an
16 accessory use, which would be with accessory to a
17 predominantly permitted use?

18 A That's correct.

19 If there was that kind of limitation within
20 the zoning code, that would appear in the standards,
21 and there was no such limitation listed in the
22 standards of the code.

23 Q Thank you, Director Spence. I have no
24 further questions subject to redirect.

25 CHAIRPERSON ACZON: Any questions,

1 Petitioner?

2 MR. SAKUMOTO: Just a couple questions.

3 CROSS-EXAMINATION

4 BY MR. SAKUMOTO:

5 Q Director Spence, are you aware of the
6 letter contained in the FEIS written by the prior
7 director Mike Foley?

8 A Yes, I am.

9 Q On the subject of the zoning code and KMCP?

10 A Yes.

11 Q Are you also aware of the declaration
12 provided by another prior Director Jeff Hunt on this
13 same topic?

14 A Yes, I am.

15 Q Are those two documents consistent with the
16 position that you just articulated?

17 A Yes. As stated, it's consistent with what
18 I just stated, but also the Planning Department's
19 practice, and previous directors prior to my
20 employment at the county in 1992.

21 Q In fact, to your knowledge, have you ever
22 known the county to have taken a different position?

23 A No.

24 Q Thank you.

25 CHAIRPERSON ACZON: Ms. Apuna?

1 MS. APUNA: No questions.

2 MR. PIERCE: No questions.

3 MR. TABATA: No questions.

4 CHAIRPERSON ACZON: Commissioners?

5 Vice Chair Scheuer, followed by
6 Commissioner Cabral.

7 VICE CHAIR SCHEUER: Mr. Hopper, I have
8 questions about the county's allocation of water to
9 this project. Would Mr. Spence be the person to ask
10 this?

11 MR. HOPPER: We would generally refer that
12 to our -- if we were in a district boundary amendment
13 proceeding, we would have the director of the
14 Department of Water Supply to answer that type of
15 question.

16 VICE CHAIR SCHEUER: The reason I brought
17 it up, I believe Mr. Spence to say he coordinated the
18 review of county's agency responses to the EIS.

19 MR. HOPPER: You can certainly ask the
20 question.

21 VICE CHAIR SCHEUER: In the EIS it
22 indicates there is not going to be any impact to the
23 Iao Aquifer from the freshwater use of this project,
24 because the water -- there's still water available
25 from the Iao Aquifer that is unallocated.

1 THE WITNESS: That's my recollection. I
2 remember reading that in the document. I would have
3 to look specifically at it.

4 VICE CHAIR SCHEUER: So my confusion has to
5 do with the water will be provided through the
6 Central Maui Service System, Central Maui Service
7 Area, correct?

8 THE WITNESS: I understand that drinking
9 water will be provided from the Central Maui System,
10 and nonpotable water will be provided from a well
11 on-site.

12 VICE CHAIR SCHEUER: That is my
13 understanding as well.

14 But it is also my understanding that the
15 Central Maui Service System does not only use water
16 from the Iao Aquifer; is that correct?

17 THE WITNESS: I would have to defer that to
18 the water director.

19 VICE CHAIR SCHEUER: My understanding is
20 that there are county wells in the Waihe'e Aquifer,
21 the Iao Aquifer, and treated surface water.

22 THE WITNESS: I know -- I'll give you my
23 non-expert knowledge on the county's water system. I
24 know there are wells scattered, distributed
25 throughout this aquifer.

1 How much comes from each one, how much
2 feeds into the system going to Kihei, I can't tell
3 you.

4 VICE CHAIR SCHEUER: So if I understood
5 your responses to the first questions from Mr. Hopper
6 correctly, you were indicating that you felt that, at
7 least in regards to the parts of the EIS you had
8 reviewed, the EIS was adequate.

9 THE WITNESS: Yes.

10 VICE CHAIR SCHEUER: So what I'm trying to
11 understand is that there were comments related to
12 water service, which is provided by the County of
13 Maui, and the EIS says there's no impact on the Iao
14 Aquifer from this new use, but there is no indication
15 in the EIS that this water will actually be coming
16 from the Iao Aquifer as opposed to surface water
17 treatment plant, proposed future water treatment
18 plant or the Waihe'e Aquifer.

19 THE WITNESS: I don't understand the
20 question.

21 VICE CHAIR SCHEUER: Let me try it again.

22 The EIS states that there will be no impact
23 from the proposed use, because there's unallocated
24 water from the Iao Aquifer.

25 But there is no way to say that the water

1 that will be delivered to this project is actually
2 coming from the Iao Aquifer, as opposed to a
3 different source on the Central Maui Service System,
4 correct?

5 THE WITNESS: If the water director was
6 here, he would correct me, but I believe they refer
7 to the Iao Aquifer as this area right up behind us
8 (indicating).

9 If they refer to the Iao Aquifer -- it
10 covers a large area, it's not just Waihe'e, or not
11 just Iao Valley. There are a number of wells which
12 would serve this system to its transported to Kihei.
13 I don't claim to be a water expert.

14 VICE CHAIR SCHEUER: That's why I prefaced
15 my question with inquiry to Mr. Hopper about whether
16 you were the right person to ask.

17 Thank you very much.

18 COMMISSIONER CABRAL: Hopefully this is an
19 easy one.

20 I was given a map from a testifier
21 yesterday, but I do have the plat map, the TMK tax
22 map in front of me on my screen here, as well as a
23 number of other maps.

24 There is a side that is undeveloped. But
25 what I'm looking at on the left side is the

1 development, in this aerial photo I can see
2 buildings.

3 Can you let me know what is -- is that is
4 light industrial or industrial-type development to
5 the left on my map?

6 THE WITNESS: Okay. So you're referring to
7 where you can see it's developed? I'm looking on
8 that on the left, to the north.

9 Yes, that is the light industrial area that
10 has been referred to that does have a mixture of
11 uses.

12 COMMISSIONER CABRAL: Thank you very much.

13 CHAIRPERSON ACZON: Commissioner Ohigashi,
14 followed by Commissioner Chang.

15 COMMISSIONER OHIGASHI: I think the
16 Intervenorors have argued that the use of the property,
17 or the proposed use of the property is important in
18 determining what impacts so a proper FEIS can be
19 done.

20 And some of the Intervenorors seem to argue
21 that they're lacking specificity on the amount of the
22 use, or the type of exact uses that will be placed
23 upon it to prepare a Final EIS.

24 What is your position with regard to
25 whether or not the Applicant, Petitioner have

1 provided sufficient amount of detail on the uses to
2 form the basis of the different studies that have
3 been done including the drainage studies, for
4 example?

5 THE WITNESS: I think that's -- I'm sure
6 that the Applicant's representative will get into
7 that in much more detail. However --

8 COMMISSIONER OHIGASHI: I'm asking the
9 county's position.

10 THE WITNESS: I think it provides adequate
11 information. You can estimate from the types of
12 uses, the general ground -- how much ground is
13 covered, your impervious surfaces. How much parking
14 is required. All those things, that would all go
15 into your drainage reports, and how to take care of
16 that additional runoff, et cetera.

17 COMMISSIONER OHIGASHI: So are you saying
18 then that more specificity will not yield a better
19 Final EIS?

20 THE WITNESS: I don't think I said that.

21 If you got down to the very colors that the
22 buildings are going to get painted and --

23 COMMISSIONER OHIGASHI: I'm not talking
24 about colors. I'm talking about where the placement
25 of the buildings are. What lot coverage would be

1 taken into account. I think there was mention as to
2 what exactly are the calculations regarding the
3 specific. How those are calculated. What is the
4 total build out? The amount of facilities that are
5 used.

6 I'm just trying to get an idea of the
7 county's position with regard to the sufficiency of
8 the proposal, the Petitioner's proposal.

9 THE WITNESS: As it is, I believe it's
10 adequate for the purposes of analyzing impacts. If
11 there was more specificity, if we put the buildings
12 on the site and everything, you know, that detail
13 would provide additional information.

14 COMMISSIONER OHIGASHI: Since this project
15 has been -- the total amount of the original boundary
16 amendment appears to be 88 acres. And this is coming
17 in with 75 acres.

18 Is there a difference that should be
19 attributed to an EIS if we were considering the whole
20 88 acres?

21 THE WITNESS: I know, as a part of EIS, and
22 I'm not trying to put words in Commissioner's mouth.
23 I'm assuming you're referring to the Honua'ula
24 property that is also going to come in for amendment.

25 I know they're going to have to address the

1 cumulative. So they're going to have to also weigh
2 in on that. I know there is an accumulative impact
3 section of this EIS.

4 Right at the moment, I know they address
5 it. I'm not -- I did not study that part of it in
6 depth.

7 If you want a clearer answer, I would be
8 happy to give that to you.

9 COMMISSIONER OHIGASHI: From my
10 understanding is that you haven't studied it, and you
11 don't have an answer.

12 THE WITNESS: I know that they've
13 addressed --

14 COMMISSIONER OHIGASHI: That's why I'm not
15 asking a follow up.

16 CHAIRPERSON ACZON: Any other questions?
17 Commissioner Chang followed by Commissioner Okuda.

18 COMMISSIONER CHANG: Thank you, Mr. Spence.
19 Appreciate your testimony today.

20 Let me just follow up with Commissioner's
21 questions about cumulative impact.

22 I notice there's a proposed project mauka,
23 I think Kihei Mauka. What is the status of that
24 project, because that seems to be a very large
25 project?

1 THE WITNESS: The Maui Island Plan, the
2 Maui Island Plan adopted in 2012 was the very first
3 time that Maui County has set growth boundaries.
4 That basically those growth boundaries say, if we're
5 going to grow, if there's going to be new housing and
6 new jobs, et cetera, new commercial, these are the
7 areas that they're going to be in. They're not going
8 to be outside of that.

9 So Kihei land use pattern, my personal
10 opinion is unfortunately it's linear along the
11 coastline. It should have gone more mauka-makai
12 direction.

13 But if Kihei is going to grow, if the
14 population projections come true, we're going to need
15 extra room to grow. And that plan designates where
16 additional growth is going to take place.

17 One of those projects is the Kihei Mauka
18 project. I believe it's owned by Haleakala Ranch.
19 And there is -- within that Maui Island Plan there is
20 a description of how many homes, et cetera. That's
21 not very far along at this point.

22 I don't know -- I have not spoken to the
23 ranch or their consultants on what their plans are.

24 COMMISSIONER CHANG: I'm wondering for
25 purposes of the adequacy of the EIS, Maui County has

1 identified that as an area for growth. And my
2 understanding, there's it's a huge, 1500 units.

3 Is that -- the question asked, in your
4 opinion, is the EIS adequate? Is that a
5 consideration that we need to look at? Because I
6 would assume that that would impact traffic, water,
7 just about every aspect of the EIS would need to look
8 at a large project such as that.

9 What's the cumulative impact of all of
10 these projects in this area including such a project
11 that size?

12 THE WITNESS: Well, I think it would be
13 highly speculative. I'm not sure how we can --

14 COMMISSIONER CHANG: It's not reasonably
15 foreseeable?

16 THE WITNESS: No. To the extent that I can
17 say that the residents who will live in those homes
18 will need places to shop and those kinds of things.

19 COMMISSIONER CHANG: So not reasonably
20 foreseeable.

21 There were several witnesses who talked
22 about -- and I'm sorry I don't have the code in front
23 of me -- but they said mostly light industrial.

24 Is that a term of art in your code "mostly"
25 or is that something else?

1 THE WITNESS: That comes out of our purpose
2 and intent of the light industrial zoning district.

3 COMMISSIONER CHANG: Do you have an
4 interpretation of what does that mean, "mostly"?

5 THE WITNESS: That's something that we
6 address direct from Mr. Hopper that it's not -- that
7 has never been interpreted as saying -- as saying you
8 must do 51 percent, or anything like that.

9 Once the zoning is granted, you have a
10 list -- there are a list of permitted uses, and you
11 are allowed to do those uses within that district.

12 If there was to be some kind of limitation,
13 there's different sections in the code, and one of
14 them is the standards where it lists the setbacks and
15 heights and those kinds of things. There would be
16 some kind of limitation within that.

17 COMMISSIONER CHANG: Final question.

18 I assume as a Planning Director, are you
19 the accepting agency for a lot of EIS's?

20 THE WITNESS: Actually rarely. It will be
21 our Planning Commission who's most often the agency.

22 COMMISSIONER CHANG: But you would do
23 reviews of the EIS's?

24 THE WITNESS: Yes.

25 COMMISSIONER CHANG: In your opinion, is

1 The cultural Impact Assessment adequate for purposes
2 of this EIS?

3 THE WITNESS: I can't comment on that. We
4 have a lot of documents come through our office. I
5 cannot review each and every one of them to the best
6 degree that I would like.

7 I depend on our planning staff, and they
8 review.

9 COMMISSIONER CHANG: Thank you very much.

10 CHAIRPERSON ACZON: Commissioner Okuda.

11 COMMISSIONER OKUDA: Thank you, Mr.
12 Chairman, Commissioner Ohigashi asked most of my
13 questions. I just have a couple of hopefully minor
14 questions.

15 Does the EIS tell us how much square
16 footage of retail space is going to be added by this
17 project?

18 THE WITNESS: How much retail space is
19 added?

20 COMMISSIONER OKUDA: Is going to be added?

21 THE WITNESS: Yes, it does.

22 COMMISSIONER OKUDA: Have you considered
23 whether or not the EIS adequately discusses the
24 affect of the added square footage of retail space
25 on, for example, retail taking place in -- I think it

1 was described as Downtown Kihei, the Downtown Kihei
2 area.

3 THE WITNESS: It discusses it. It notes
4 that other projects are around that have approvals.
5 This Downtown Kihei project is one of those. I don't
6 know how much it goes into -- I mean, the competing
7 impacts of, you know, what affect they're going to
8 have on each other or anything.

9 COMMISSIONER OKUDA: That's where I'm
10 going. So are you able to really render an opinion
11 about whether or not this Final EIS adequately
12 discusses the impacts on, for example, the Downtown
13 Kihei retail area? If you don't have an opinion on
14 that, that's fine.

15 THE WITNESS: I don't have an opinion on
16 that. I know they have a marketing study that says
17 there's room.

18 COMMISSIONER OKUDA: Sure, but you don't
19 really have an opinion -- well, I think your
20 testimony speaks for itself.

21 Final thing is, so I'm clear about your
22 response to Commissioner Chang's question. You don't
23 have an opinion about the adequacy of the Cultural
24 Impact Assessment, correct?

25 THE WITNESS: I am not a cultural expert.

1 I don't believe I'm qualified to say whether that's
2 adequate or not. We rely on SHPD and other agencies
3 to determine that kind of adequacy.

4 COMMISSIONER OKUDA: Thank you very much
5 for taking your time, and we know you've attended
6 these hearings, and I know you're a busy person, so
7 thank you very much.

8 CHAIRPERSON ACZON: Mr. Hopper, do you have
9 any followup?

10 MR. HOPPER: Just briefly.

11 REDIRECT EXAMINATION

12 BY MR. HOPPER:

13 Q Following up on Mr. Ohigashi's question
14 about analysis of building footprint areas and things
15 like that.

16 Is that level of detail something you
17 generally see in EIS documents for a district
18 boundary amendment at this level?

19 A I don't think it should be, but very often
20 the questions center around that kind of detail.
21 Everybody wants to know. And I didn't mean to make a
22 snide remark about the color of the buildings, but
23 that's the level of detail people would like to see
24 in these kinds of documents.

25 And I don't think that that level of detail

1 is necessarily relevant to analyzing the impacts.

2 MR. HOPPER: That's all I have.

3 CHAIRPERSON ACZON: Thank you. Thank you,
4 Mr. Spence. We will take a half hour break for
5 lunch. So we'll be back 1:00 o'clock, 1:05.

6 (Noon recess taken.)

7 CHAIRPERSON ACZON: We're back on the
8 record. If you guys are eating, please continue, I
9 don't mind. Just when it's your turn to participate,
10 kind of take a break. Our court reporter might have
11 a hard time understanding what you're saying. So
12 please continue to eat.

13 We're back on record. Ms. Apuna, please
14 offer your comments.

15 MS. APUNA: The purpose of this hearing is
16 for this Commission to determine acceptance of the
17 Draft Final EIS for the Pi'ilani Promenade project.

18 An LUC accepted Final EIS is a required
19 component of a proper District Boundary Amendment
20 Petition filing pursuant to Hawai'i Administrative
21 Rules Section 15-15-50(e)(11). The requirements of
22 the proper EIS filings are provided under HRS Chapter
23 343 and HAR Chapter 11-200.

24 In a letter dated October 7, 2014, OP
25 provided its comments and concerns on the Draft EIS

1 to the Petitioners. The Petitioners subsequently
2 addressed OP's comments and concerns in the Final EIS
3 that is before this Commission today.

4 Among OP's comments and concerns that were
5 addressed by Petitioner include discussion of
6 sustainability under the Hawaii State Plan, Petition
7 area location within the Hawai'i Coastal Zone
8 Management Area, development phasing, traffic
9 mitigation, energy and housing.

10 The Petitioner's amendment, in addition to
11 the Draft EIS, satisfactorily addressed OP's specific
12 comments and concerns.

13 Based on concerns raised by yesterday's
14 public testimony and today's testimony, Petitioner
15 may want to supplement the docket record on cultural
16 resources in preparation for its Motion to Amend the
17 Decision and Order.

18 Also while there is no detailed site plan,
19 a description of uses are sufficiently detailed for
20 district boundary amendment or amendment thereof,
21 which is basically to consider reclassification from
22 Agriculture to Urban.

23 Case law states that neither HRS Chapter
24 343, nor the Administrative Rules of Chapter 200
25 indicate the level of detail or specificity that

1 could be included on any given subject.

2 The statute and rules are designed to give
3 latitude to the accepting agency as to the content of
4 each EIS. Thus, what's required in one EIS may not
5 be required in another, based upon the circumstances
6 presented by the particular project.

7 Accordingly, the standards to consider the
8 sufficiency of an EIS, unquote, rule of reason, is
9 that an EIS may not be exact to the point of
10 discussing all possible details bearing on the
11 proposed action, but will be upheld as adequate if it
12 has been compiled in good faith and sets forth
13 sufficient information to enable the decisionmaker to
14 consider fully the environmental factors involved,
15 and to make a reasoned decision after balancing the
16 risk of harm to the environment against the benefits
17 to be derived on the proposed action, as well as to
18 make a reasoned choice between alternatives.

19 Finally, OP appreciates the interest shown
20 by all testifiers. We are here today to determine
21 not whether the Motion to Amend the District Boundary
22 Amendment should be granted, but only whether the
23 proposed Final EIS should be accepted.

24 With respect to the Final EIS, the document
25 appears to be legally sufficient. Certain issues

1 will be examined further before deciding the Motion
2 to Amend the District Boundary Amendment. But that
3 is a question for another day.

4 The Office of Planning supports the request
5 for acceptance of the Final EIS. Thank you.

6 CHAIRPERSON ACZON: Any questions?

7 MR. SAKUMOTO: No questions.

8 MR. HOPPER: Because it was a statement by
9 counsel, I'm not sure if we're allowed to ask
10 questions.

11 MR. PIERCE: No questions from Intervenors.

12 CHAIRPERSON ACZON: Commissioners, any
13 questions for Office of Planning?

14 VICE CHAIR WONG: OP, I got a question.

15 So you said that the EIS suffice in your
16 opinion. So the question I have is, as the Office of
17 Planning and the position is you're taking part of
18 leaving everything for the state to decide, correct?

19 MS. APUNA: Yes.

20 VICE CHAIR WONG: So I was wondering if you
21 took into account the issues of the DOE's interest on
22 this? Especially if you know, let's say the Kihei
23 High School comes up, how is the kids going to cross
24 the road and all that, secondary impacts. Was that
25 taken into account with your review?

1 MS. APUNA: Yes. The DOE provided its
2 comments, and the Petitioner responded.

3 As far as specifics, regarding -- you're
4 saying that traffic impacts in the area, I believe
5 that the Petitioners will continue working with the
6 Petitioner, but I don't know if that specific issue
7 as far as traffic impacts on the school was
8 addressed.

9 VICE CHAIR WONG: Maybe I'll ask the
10 Petitioner on this. Thank you.

11 CHAIRPERSON ACZON: Commissioners?

12 COMMISSIONER CHANG: I have a question.

13 So as I understand the Office of Planning's
14 position, while they recommend to the Petitioner that
15 they supplement their Cultural Impact Assessment
16 based upon the testimony that you've heard to date,
17 it is OP's position that the EIS is still adequate
18 and you support the approval of the EIS?

19 MS. APUNA: Yes, that's correct.

20 COMMISSIONER CHANG: The EIS document
21 should be a full disclosure document. Is that
22 correct?

23 MS. APUNA: Yes.

24 COMMISSIONER CHANG: In OP's opinion, based
25 upon the testimony regarding cultural practices,

1 regarding potential cultural sites, regarding whether
2 there's a clear identification and participation of
3 people who may have knowledge of the area, including
4 practices or other sites, is it OP's position that
5 that is not necessary for the adequacy of the EIS?

6 MS. APUNA: I believe the Petitioner, in
7 drafting the EIS, and going through the process,
8 making comments and responding to them, that they
9 made a good faith effort in preparing the AIS and the
10 Cultural Impacts Assessment.

11 I think certainly the testimony that was
12 provided, it adds to those studies. And, I mean,
13 it's like the Lima Ola situation, right? That you
14 say that the EIS is deficient. I don't think that's
15 accurate. I think that they have put forth in a good
16 faith effort the information that was required.

17 If there is additional information, such as
18 the testimony that was provided, I think that is a
19 good way to put a spotlight on that, and that
20 Petitioner has the opportunity to supplement for
21 purposes of the Motion to Amend.

22 COMMISSIONER CHANG: I don't mean to put
23 Office of Planning on the spot, as we will ask the
24 Petitioner the same level of questioning, but the
25 Cultural Impact Assessment concluded that there's no

1 traditional customary practices, that whatever was
2 occurring on the property has been abandoned.

3 In your opinion, is that a good faith
4 effort in light of what we've heard over the last
5 day?

6 MS. APUNA: I think that's a difficult
7 question.

8 The EIS is supposed to provide information
9 as a resource document. It's not supposed to say
10 that this is everything that's out there, I don't
11 think. But I think it's a process, and I think the
12 process today and that follows, is about continuing
13 to provide a complete record.

14 So I think that we can still accept the EIS
15 while still adding to the record for this Commission,
16 it should go forward for the Motion to Amend.

17 COMMISSIONER CHANG: Okay. Thank you very
18 much.

19 CHAIRPERSON ACZON: Commissioner Okuda.

20 COMMISSIONER OKUDA: Thank you, Chair.

21 I know, counsel, you talked about, in your
22 presentation, sounds like standards that the LUC
23 should apply in evaluating this EIS; correct?

24 MS. APUNA: Yes.

25 COMMISSIONER OKUDA: I would like to just

1 read a portion out the Kaleikini versus Yoshioka
2 case, which is 121 -- excuse me -- 128 Hawai'i 53 at
3 81 to 82 of the Hawai'i Reports.

4 My question to you is whether or not this
5 statement of the Hawaii Supreme Court accurately sets
6 forth the standard, and what we should be looking at
7 when evaluating an EIS.

8 And I quote: The EIS process shall
9 involve, at a minimum, identifying environmental
10 concerns, obtaining various relevant data, conducting
11 necessary studies, receiving public and agency input,
12 evaluating alternatives, and proposing measures for
13 avoiding minimizing, rectifying or reducing adverse
14 impacts.

15 An EIS is meaningless without the
16 conscientious application of the EIS process as a
17 whole, and shall not be merely a self-serving
18 recitation of benefits and a rationalization of the
19 proposed action.

20 Is that an accurate statement of what we
21 are supposed to consider in evaluating an EIS, not
22 only in this case, but in other instances?

23 MS. APUNA: I haven't done a thorough
24 reading of Kaleikini versus Yoshioka, but I generally
25 would agree with that statement.

1 COMMISSIONER OKUDA: So if that's what the
2 Hawai'i Supreme Court has said we are to do, and
3 we're supposed to make sure that the EIS is not
4 merely a self-serving recitation of benefits and a
5 rationalization of the proposed action, we better
6 follow what the Supreme Court says; correct?

7 MS. APUNA: Correct.

8 COMMISSIONER OKUDA: Thank you. No further
9 questions.

10 CHAIRPERSON ACZON: Vice Chair Scheuer.

11 VICE CHAIR SCHEUER: Aloha. I just want to
12 follow up on a statement of yours.

13 You referenced the very recently concluded
14 Lima Ola Docket as a parallel situation, but I just
15 want to clarify.

16 In Lima Ola, the Land Use Commission was
17 not the accepting agency for the EIS, correct?

18 MS. APUNA: Correct.

19 VICE CHAIR SCHEUER: And we were not making
20 a determination of adequacy of the EIS in that
21 docket; correct?

22 MS. APUNA: That's correct.

23 VICE CHAIR SCHEUER: And in that docket,
24 after the county had already accepted the EIS, the
25 county produced a large number of cultural

1 practitioners who all were unanimous in stating that
2 the impacts of any cultural practices on that site
3 would be minimal; correct?

4 MS. APUNA: Correct.

5 VICE CHAIR SCHEUER: And that's different
6 than what we have here?

7 MS. APUNA: Yeah. I think my only point is
8 that the information that came up during Lima Ola to
9 supplement some of the cultural studies, I don't
10 think that necessarily renders the EIS in that case
11 deficient for an illegal finding there.

12 So here I think that, again, the Commission
13 has the opportunity to listen to, if Petitioner so
14 decide to supplement that record, to make it full
15 enough for consideration under the Motion to Amend.

16 VICE CHAIR SCHEUER: Thank you for that
17 clarification.

18 CHAIRPERSON ACZON: Anybody else? Thank
19 you, Ms. Apuna.

20 If you don't mind, I would like to hear
21 from Honua'ula's representative before you proceed
22 with your presentation.

23 Mr. Tabata, I apologize, I skipped you.

24 MR. TABATA: Honua'ula does support the
25 acceptance of the EIS, and I would just like to

1 supplement some of the legal standards that OP had
2 discussed in the Price v Obayashi case at 81 Hawai'i
3 171, the Supreme Court made it clear that the
4 sufficiency of an Environmental Impact Statement is a
5 question of law, and it's not a factual determination
6 to be made regarding the adequacy of an EIS. And
7 that the only question presented is whether the EIS
8 complies with applicable statutory mandates, such as
9 chapter 343 and the EIS rules.

10 Now, the Kaleikini that Commissioners Okuda
11 discussed laid out a list of minimum inquiries to be
12 made. I would only add to that that a part of the
13 Rule of Reason Test is that the EIS need not be
14 exhaustive.

15 So you may not have all the alternatives
16 stated, or you may not have all of the mitigation
17 measures that people can think of stated, but so long
18 as there's a good faith effort to identify those
19 elements, the EIS should be accepted.

20 Now, the significance of a question of law
21 versus a question of fact, I would say that if you
22 have Findings of Fact, then you would have to delve
23 into the conclusions that were reached in the various
24 studies, the cultural, the engineering, the water
25 supply. And if you agreed or disagreed with those

1 conclusions as a body, you would memorialize those in
2 your Findings of Fact.

3 In other words, because you're not making
4 factual findings, your determination as to the
5 conclusions of these subject matters is not an issue
6 to be determined today. What you're looking at are
7 the statutory and regulatory requirements, and you're
8 making a legal decision.

9 So if you clearly disagree with some of the
10 conclusions that have been set forth in the written
11 EIS, then that is something to be said on a different
12 day at the Motion to Amend and not at this time.
13 That's my reading of the case.

14 And, again, we support the acceptance of
15 the EIS.

16 CHAIRPERSON ACZON: Any questions for Mr.
17 Tabata? Vice Chair Scheuer.

18 VICE CHAIR SCHEUER: Mr. Tabata, you would
19 contend that even if we saw something to be clearly
20 erroneous in the EIS, that wouldn't be a matter for
21 our consideration?

22 MR. TABATA: The case law says you have the
23 latitude to determine adequacy. There is a certain
24 amount of latitude.

25 But the case law also says that the EIS has

1 to assist you in making a decision. It doesn't say
2 it has to assist you in making an approval. That's
3 what we're ultimately seeking, but legally, for
4 today, you're looking at the adequacy of the EIS, not
5 the sufficiency of the evidence.

6 VICE CHAIR SCHEUER: If there is a
7 conclusion that is clearly erroneous, is my question,
8 in the EIS, and it's obvious that it's clearly
9 erroneous, that would not be something that we could
10 take into consideration?

11 MR. TABATA: I think that's something you
12 would take into consideration for the ultimate
13 decision-making.

14 VICE CHAIR SCHEUER: But we would accept
15 the EIS as adequate even though it contained
16 something that was clearly erroneous?

17 MR. TABATA: Adequate is an effort in its
18 preparation, not adequate in its conclusion. That's
19 the major distinction between a legal conclusion and
20 a factual finding, in my opinion.

21 The conclusion whether or not there are any
22 cultural practices taking place, whether you agree
23 with that or not, is for a different day, not for
24 today.

25 CHAIRPERSON ACZON: Commissioner Chang

1 followed by Commissioner Estes.

2 COMMISSIONER CHANG: Obviously you can see
3 this is something that we all feel very strongly
4 about.

5 Mr. Tabata, wouldn't you agree that the LUC
6 is bound by the constitution, and that as we review
7 the EIS, that we have a constitutional obligation,
8 and notwithstanding there will be a Motion to Amend,
9 and looking at the merits of the project.

10 But if we were to accept the EIS as
11 adequate as it stands right now, which is
12 inconsistent with the testimony that has been
13 provided, clearly as Commissioner Scheuer said, the
14 conclusion of the Cultural Impact Assessment, which
15 is beyond a regulatory, it is a constitutional
16 mandate that we have an affirmative obligation to
17 preserve and protect traditional customary practices.

18 It has been brought to our attention that
19 the process upon which they may have prepared the
20 CIA, and the conclusion, is not supported by the
21 facts, that if we were to proceed and adopt and
22 approve the FEIS, don't you believe that we would be
23 subject, if a lawsuit is filed, that we would be
24 subject to having our ruling overturned based upon an
25 on constitutional violation that the record does not

1 support the conclusion?

2 MR. TABATA: You're bound by the
3 constitution and the supreme court case law to
4 consider those customary and traditional practices
5 under the constitution. I believe that goes to the
6 final decision-making process.

7 The adequacy of the EIS at this point is
8 different from whether or not you agree with its
9 conclusions. That's different.

10 So if they have made a good faith effort in
11 producing these documents, these studies, the
12 witnesses, their responses, then that is sufficient
13 for the EIS process, which is not whether or not you
14 agree with its conclusion.

15 COMMISSIONER CHANG: And even
16 notwithstanding the conclusion, based upon what we've
17 heard over the last two days, is it your opinion that
18 they've made a good faith effort, that the document
19 is adequate in light of what has been shared to date?

20 MR. TABATA: Good faith is a subjective
21 standard, as far as I can tell. They have produced,
22 according to the witnesses, a 4,000-page document,
23 multiple studies. And for some disciplines, multiple
24 studies for a single discipline, repeatedly
25 attempting to study the various issues.

1 Without any other evidence to the
2 otherwise, I would say it's good faith. They've made
3 an attempt, produced these studies, they're going to
4 put their witnesses on the stand even today, my
5 understanding. I haven't heard anything otherwise.

6 Again, it's to help you make a decision.
7 It's not to say you're going to approve it, the
8 ultimate decision and the Motion to Amend, but it is
9 them going through the process of identifying the
10 impacts. Maybe not identifying all impacts, but
11 identifying the impacts for certain subject matters.

12 If they miss a subject matter completely,
13 say there's no traffic study whatsoever, then I would
14 say there's a problem. But they have done the
15 studies, the necessary studies for the necessary
16 subject matters, and I believe it's a good faith
17 attempt.

18 At this point you may not agree with their
19 conclusions therein, but they have gone through the
20 process, and like OP said, the Petitioner may want to
21 supplement certain studies. They may want to do more
22 work, which is their right to do so, if they have
23 enough time before the Motion to Amend is heard.

24 So I think it's significant. I think it's
25 important that we look at what we are doing today

1 legally, versus how we feel about the various subject
2 matters that have been testified, whether or not we
3 actually agree with what's been said today
4 substantive-wise.

5 COMMISSIONER CHANG: Thank you for your
6 response.

7 CHAIRPERSON ACZON: Commissioner Estes
8 followed by Commissioner Okuda.

9 COMMISSIONER ESTES: So it's your position
10 that we only have one thing to do, and that is to
11 decide whether or not we think a good faith effort
12 was made, regardless of what conclusions may have
13 been, or anything left out, that our only thing is to
14 decide whether or not a good faith effort is made;
15 that's your position?

16 MR. TABATA: I believe that's what the law
17 states, Commissioner, yes.

18 CHAIRPERSON ACZON: Commissioner Okuda.

19 COMMISSIONER OKUDA: Mr. Tabata, I do agree
20 with you that we're not here today to debate or to
21 decide the ultimate conclusion whether this is a good
22 project or not a project.

23 I just disrespectfully disagree with you
24 that the standard is simply good faith. I believe,
25 and you cited Price versus Obayashi, O-B-A-Y-A-S-H-I,

1 Hawai'i Corporation, which is 81 Hawai'i 171, a 1996
2 Hawaii Supreme Court case.

3 But I believe in that case the Supreme
4 Court said it's not only good faith as the test, but
5 it's also sufficiency of the information.

6 And if you just indulge me and let me read
7 this one statement:

8 Supreme Court said, basically, the EIS will
9 be upheld as adequate if it has been compiled in good
10 faith, and sets forth sufficient information to
11 enable the decisionmaker to consider fully the
12 environmental factors involved, and to make a
13 reasoned decision after balancing the risks of harm
14 to the environment against the benefits to be derived
15 from the proposed action, as well as to make a
16 reasoned choice between alternatives.

17 So it's not only good faith, but it's also
18 basically sufficiency of the information so that we
19 can make the decision.

20 Do you disagree with my reading of this
21 case, or disagree that this is an accurate statement
22 of the law?

23 MR. TABATA: That was an accurate statement
24 of a portion of that paragraph that you're reading
25 from. And I would also add to that, or just repeat

1 that the EIS need not be exhaustive to the point of
2 discussing all possible details.

3 That precedes the section that you just
4 quoted.

5 So I'm not saying this is an easy decision
6 for the Commission, but there is these considerations
7 that need to be made. You're going to find somebody
8 that's going to be able to identify something that
9 was missed. That's going to happen no matter what,
10 every EIS. That's why, I believe, the Supreme Court
11 threw this language in that it need not be
12 exhaustive.

13 I don't envy your position in making this
14 judgment call, but from our point of view, we believe
15 it's adequate.

16 COMMISSIONER OKUDA: And I don't disagree
17 with you that the EIS, to have an EIS that would
18 withstand appellate review, it doesn't have to cover
19 everything under the sun that everybody here and
20 elsewhere says it's got to cover.

21 But you do agree that we do have the
22 discretion to decide, based on the applicable
23 standard, that the EIS might be deficient in giving
24 us enough information to make a reasoned decision?
25 I'm not saying the Cultural Impact Assessment is

1 deficient or not, I'm not saying that.

2 For example, since that was mentioned by OP
3 as something that might be supplemented and looked
4 at, if we come to the conclusion that the CIA was in
5 fact not sufficient for us to make a reasoned
6 decision, whatever that decision might be, that's a
7 basis of us exercising discretion to respectfully ask
8 that the EIS be not accepted, correct?

9 MR. TABATA: The law does state that you do
10 have the latitude to make that decision, yes.

11 COMMISSIONER OKUDA: Thank you, Mr. Tabata.

12 CHAIRPERSON ACZON: Anybody else?

13 Commissioners? Thank you, Mr. Tabata.

14 CHAIRPERSON ACZON: Mr. Sakumoto, please
15 proceed with your comments.

16 MR. SAKUMOTO: Thank you, Mr. Chair.

17 We've handed out a hard copy of a slide
18 show. We have the slides on the screen behind me. I
19 apologize to the people behind me who need to turn
20 around to see it, but it is up on the screen, which
21 is the same thing that is in front of each of the
22 Commissioners right now.

23 So if you will, I would like to go through
24 the slides as quickly as I can, and then following
25 that, we would like to have our planner, Mr. Jordan

1 Hart, provide some testimony, and followed by several
2 of our expert consultants.

3 CHAIRPERSON ACZON: How many do you think
4 you're going to be calling?

5 MR. SAKUMOTO: I belief after Mr. Hart,
6 four or five at the most.

7 VICE CHAIR SCHEUER: Mr. Chair, with your
8 discretion. There's no page numbers on any of these
9 slides in the handouts that we have, so I would like
10 to just have the opportunity to ask you to note what
11 slide we're on, so that if we have questions later,
12 we can refer to that.

13 MR. SAKUMOTO: Absolutely. So we're on
14 slide one which is the title slide.

15 VICE CHAIR SCHEUER: Thank you, I'm clear
16 on that part.

17 (Slide show.)

18 MR. SAKUMOTO: Pi'ilani Promenade North and
19 South, LLC, the Petitioners in this docket are
20 requesting this Commission to deem the Final
21 Environmental Impact Statement submitted to the
22 Commission on June 27, 2017, to be acceptable under
23 the standards set forth in Chapter 343 of the Hawaii
24 Revised Statutes.

25 As has been stated several times today, the

1 focus us of today's proceeding is not whether the
2 contemplated Pi'ilani Promenade project should be
3 allowed to proceed or not, but rather whether the
4 FEIS document before you properly discloses the
5 impacts of the contemplated project.

6 Turn to slide two, please.

7 MS. CATALDO: The proposed 74.87-acre
8 project site is located in Kihei, mauka of the
9 intersection of Kaonoulu Road and Pi'ilani Highway.

10 The project boundary is adjacent to the
11 Kihei Commercial Center to the north, Kulanihakoi
12 Gulch to the south, Pi'ilani Highway to the west, and
13 ranch land to the east extending up to Kula.

14 MR. SAKUMOTO: Slide number three.

15 The project site is comprised of Tax Map
16 Key Nos.: 3-9-001, parcels 16 and 170 through 174,
17 which are owned by the Petitioners.

18 Slide number four.

19 MS. CATALDO: The project site is in the
20 State Urban Land Use District. As shown on this
21 slide, the project site is bordered by land in both
22 the Urban, Agricultural Land Use District.

23 MR. SAKUMOTO: Slide number five.

24 As shown on this slide, the project site is
25 zoned M-1 light industrial under the Maui County

1 Zoning Code.

2 Slide number six.

3 MS. CATALDO: The next slide shows the
4 location of the project site within the Growth
5 Boundaries of the Maui Island Plan Directed Growth
6 Map.

7 MR. SAKUMOTO: Slide number seven.

8 And I'm going to go through the next five
9 slides rather quickly.

10 As you can see from these next several
11 slides, and as you may recall from your site visit to
12 the property, the property is quite dry and arid. It
13 was at one time used for cattle ranching, and doing
14 during World War II it was use by the military for
15 training programs.

16 We're now on Slide 13, which is titled
17 "Project History".

18 MS. CATALDO: The project site is a portion
19 of a larger site that was part of a petition for Land
20 Use District Boundary Amendment that was filed with
21 the Land Use Commission by Kaonoulu Ranch on July 6,
22 1994. This Petition was assigned Docket No. A94-706.

23 The Petition was to reclassify the land
24 from the Agricultural District to the Urban District.
25 The 1994 Petition area was 88 acres.

1 This 88-acre site included the current
2 project site. At that time Kaonoulu Ranch proposed
3 to develop 123 lot commercial and light industrial
4 subdivision.

5 The Petition area was subdivided into seven
6 lots. Of those lots, six of the lots are affected by
7 this FEIS. Maui Industrial Partners, LLC, sold the
8 seventh lot to Honua'ula Partners, LLC, in 2009.

9 Honua'ula Partners is not related or in any
10 way connected with Pi'ilani Promenade, and does not
11 share any common ownership, members, shareholders or
12 control with Pi'ilani Promenade.

13 MR. SAKUMOTO: Slide No. 14 titled "Site
14 Plan".

15 The proposed project has evolved since the
16 original development plan, developed in 2011 by
17 Eclipse Development for the Petitioner. The original
18 plan proposed approximately 695,000 square feet of
19 retail space, with approximately 3,700 parking
20 stalls, with development concentrated in two major
21 commercial development areas, with substantial paved
22 parking lot separating them.

23 As shown in this slide, the Pi'ilani
24 Promenade will involve the development of a mixed-use
25 project consisting of retail, office,

1 business/commercial, light industrial, multi-family,
2 and a public/quasi-public use, referring specifically
3 to the MECO substation.

4 It is anticipated that the project will be
5 constructed in two phases as market conditions
6 warrant.

7 Phase I is the Pi'ilani Promenade North
8 development, which will include development of
9 100,000 square feet of business/commercial uses, 226
10 rental apartments, and 57,558 square feet of light
11 industrial use.

12 Phase I will also include construction of a
13 segment of future Kihei Upcountry highway, and
14 improving the intersection of Kaonoulu Street and
15 Pi'ilani Highway, which provides access to the
16 project.

17 Phase II is the development of Pi'ilani
18 Promenade South, which will consist of 430,000 square
19 feet of business/commercial space.

20 Right now we'd like to provide the
21 Commission with a general overview of the FEIS
22 document itself. And to help us with this, we would
23 like to call upon Mr. Jordan Hart, the President of
24 Chris Hart & Partners.

25 CHAIRPERSON ACZON: May I swear you in

1 first?

2 Do you swear that the testimony that you're
3 about to give is the truth?

4 THE WITNESS: I do.

5 CHAIRPERSON ACZON: Please state your name
6 and address for the record.

7 THE WITNESS: Jordan Edward Hart, and my
8 address is 115 North Market Street in Wailuku.

9 CHAIRPERSON ACZON: Please proceed.

10 JORDAN EDWARD HART

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

14 DIRECT EXAMINATION

15 THE WITNESS: As part of this process, we
16 did do, what I feel, is a thorough community outreach
17 process, beginning around the time of the EIS, EISPN.

18 There was a series of meetings with the
19 Kihei Community. There was a meeting on
20 November 5th, 2013. There was 150 community members
21 in attendance, and at that meeting there was a
22 discussion of the initiation of the preparation of
23 this Final EIS and the process that we were
24 undertaking.

25 There were also series of meetings with

1 other groups, the Maui Chamber of Commerce, the
2 Native Hawaiian Chamber of Commerce, Maui Contractors
3 Association, and the Maui Nutrition and Physical
4 Activity Coalition.

5 We also conducted a series of other
6 meetings, including a site visit. And I do want to
7 clarify the record. There was testimony that
8 happened yesterday about people who weren't allowed
9 access to the site or didn't participate on site
10 visits.

11 There was, in the context of archaeological
12 concerns, there was initial meeting that was
13 organized by one of the testifiers today. And it was
14 in February 25th, 2014, to discuss the archaeological
15 concerns.

16 Following that, later on in the process,
17 there was a site visit. Basil Oshiro was at that
18 site visit. That was in January 22nd of 2016. We
19 walked the entire site at that time, identified sites
20 that were of interest.

21 Later on, there was a meeting in April of
22 2016. At that meeting there was a list of interested
23 sites that were passed from community members to
24 Chris Hart & Partners. And Basil Oshiro was at that
25 meeting as well. Lucienne de Naie was at that

1 meeting.

2 And then there was also two other meetings
3 that were with the 'Ahu Moku Council, Kula Makai
4 Group. They were organized by that group, and we had
5 meeting at those meetings with them at their venue.

6 January of 2017 was at the Kihei Charter
7 School. That was actually in the timeframe where the
8 supplemental CIA was being prepared. There was a
9 discussion about the letters inviting people to
10 participate in that process. And we had a specific
11 discussion about certain people who were in
12 attendance. Brian Naeole was one who had received an
13 invitation.

14 And there was an encouragement by me for
15 everyone to participate in that process, and also to
16 provide us with names of individuals who could
17 further participate.

18 Later after the early version of the Final
19 EIS was circulated to interested parties, we did have
20 an additional meeting with 'Ahu Moku Council
21 organized by the Kula Makai Group at their venue at
22 Lokulani Intermediate School in Kihei where we
23 further discussed the results of the CIA and how the
24 process went, as well as recapping the discussion
25 about participation in the CIA at the time that those

1 invitations were going out.

2 There were also additional meetings that
3 happened during the Draft EIS process. And those
4 included analysis of environmental issues, and then
5 also meetings with individuals who were interested in
6 economic issues.

7 MS. CATALDO: Commissioners, if I could
8 address what I think have been several questions
9 related to the CIA as it relates to who has been
10 contacted.

11 I believe Ms. de Naie, in her testimony
12 referred to what was a long list in the Supplemental
13 CIA. That appears on page 32. The Supplemental CIA
14 is Appendix I-1. There are approximately 20 names
15 that were recipients of letters primarily, sometimes
16 called, sometimes emails, seeking their comments and
17 participation.

18 Mr. Oshiro was contacted and did provide an
19 interview, along with his wife. Keeaumoku Kapu was
20 also contacted. He responded to the preparer of the
21 CIA by providing two names, Basil Oshiro. And,
22 again, Mr. Oshiro was contacted, and a Mr. Kanonohi
23 Lee who did not respond. He did not provide any
24 additional names of local kupuna for followup.

25 During the Supplemental CIA process there

1 were efforts to contact and discuss with two lineal
2 descendants of Hewahewa, Mr. Elden Liu, who was in
3 fact interviewed, and when his summary was presented
4 to him for his determination that it accurately
5 reflected, Mr. Liu at that time indicated that he did
6 not wish to include his summary in the Supplemental
7 CIA.

8 MR. PIERCE: Mr. Chair, I just have a
9 procedural question.

10 We have Mr. Hart present, and I'm now
11 hearing the attorney who appears to be testifying.
12 So I just don't understand exactly what happened
13 procedurally.

14 CHAIRPERSON ACZON: Will you explain?

15 MR. SAKUMOTO: Yes, Mr. Chair.

16 This is part of our presentation, which I
17 think we are make jointly with Mr. Hart. I think
18 there are a lot of things that came up over the last
19 two days that I think warrant clarification, and we
20 would like to make sure that the record is very clear
21 on those points.

22 So if the Commission would indulge us,
23 allow us to make this part of the presentation as a
24 joint effort with Mr. Hart. Once that's done, we
25 will be calling expert witnesses who would be

1 testifying as any witness would.

2 CHAIRPERSON ACZON: Commissioners, do you
3 guys have any objections on that.

4 COURT REPORTER: I can't hear you.

5 COMMISSIONER OHIGASHI: I asked if it was
6 like their opening statement.

7 CHAIRPERSON ACZON: I will allow it,
8 proceed.

9 MR. PIERCE: If I may, just for the record.
10 The one thing that it appears that the
11 attorney is seeking to present factual information
12 instead of argument. So I just want to be clear that
13 the attorney -- none of us will be able, as Mr.
14 Hopper mentioned before, we won't be able to question
15 the attorney because the attorney, I assume, does not
16 want to become a witness.

17 So what we have is, we have -- it's just
18 important for the Commission to understand that what
19 the Petitioner is seeking to do right now is to
20 present argument, not facts.

21 CHAIRPERSON ACZON: We'll give you a chance
22 to rebut later. We will continue.

23 MS. CATALDO: Thank you, Chair. And by way
24 of further explanation, everything that I am talking
25 about appears in the CIA and the Supplemental CIA.

1 I'm not adding to argument or adding to fact. It is
2 already, as I understand, in the record.

3 CHAIRPERSON ACZON: So noted. Please
4 proceed.

5 MS. CATALDO: Between the pages of 30 and
6 36 of the Supplemental CIA, which sets forth the
7 efforts to contact and engage the community in
8 cultural meetings, consultation, particular 32 to 36,
9 what is seen is the preparer of the CIA, the
10 Supplemental CIA, sought to communicate, to contact
11 everyone whose name she was provided. Thank you.

12 THE WITNESS: One other thing I wanted to
13 add. At the January 17th and the May 17th 'Ahu Moku
14 meeting, Keeaumoku was in attendance at those
15 meetings as well, and Lucienne de Naie was also at
16 those meetings.

17 My next slide.

18 The EISPN was published in September 23rd,
19 2013. The Draft EIS was published August 23rd, 2014.
20 At that point we were in the process of completing
21 further investigation to respond to comments.

22 In this timeframe, two adjustments happened
23 to the project team. The first regarding traffic,
24 our consultant was Mr. Phillip Rowell. He became
25 significantly ill to the point where he was unable to

1 continue his analysis and reply to comments. At that
2 point the project needed to identify and select a new
3 traffic consultant. The traffic consultant of SSFM
4 was identified and selected and they prepared a
5 completely new TIAR in order to complete that
6 process.

7 Additionally, in the context of the
8 Cultural Impact Assessment report, we received
9 comments from members of the general public, as well
10 as LUC staff on the desire to see additional
11 interviews. The anticipated quantity of those
12 interviews was significant to the point where
13 anticipated additional assistance was going to be
14 needed to complete all of those.

15 At that point Scientific Consultant
16 Services was brought into the project team in order
17 to prepare a supplemental CIA.

18 A Final EIS was published July 8, 2017, and
19 here we are at LUC hearing.

20 Next slide is a series of studies that were
21 prepared in support of our Final EIS. There is an
22 Environmental Site Assessment, Botanical and Flora
23 and Fauna Survey, an Air Quality Survey.

24 I'm not going to go ahead and read all the
25 updates, but I wanted to convey that those studies

1 were adjusted and updated as we received additional
2 information and comments from the general public and
3 agency.

4 An Acoustic Study, and Archaeological
5 Inventory Survey, Archaeological Monitoring Plan,
6 Cultural Impact Assessment Report. And as I
7 mentioned, a Supplemental Cultural Impact Assessment
8 Report.

9 A Baseline Assessment of Marine Water
10 Chemistry and Marine Biotic Communities. An Economic
11 and Fiscal Impact Assessment. A Preliminary
12 Engineering Report. A Traffic Impact Assessment
13 Report and a Supplemental Traffic Impact Assessment
14 report, as well as a Soil Investigation Report, and a
15 Water Service Report.

16 Some of the general conclusions of those
17 studies as there will be additional studies of others
18 that are not focused on here.

19 The Botanical and Fauna Survey concluded
20 that there are no rare or protected plant or animal
21 species on or near the property.

22 The Air Quality Survey indicated that by
23 employing mitigation measures during construction,
24 long-term impacts on the air quality would be
25 negligible after construction.

1 With the Acoustic Study it was determined
2 that residences that may be affected by the increase
3 in traffic noise have adequate setbacks that result
4 in acceptable noise levels.

5 Traffic Impact Analysis Report determined
6 that application of the proposed improvements will
7 improve the level of service and traffic movements to
8 meet an acceptable standard.

9 Engineering Report determined that a
10 drainage plan will result in downstream stormwater
11 discharge at rates that do not exceed current levels
12 and comply with Maui County's Drainage Rules. No
13 additional potable water source beyond the county
14 water meters are needed to implement the project

15 Soil Investigation Reports that Lots 2A, 2C
16 and 2D can be developed to support mass grading of
17 the site if the recommendations of the report are
18 followed.

19 The Water Service Report determines that
20 adverse impacts are unlikely so long as the proposed
21 action stays within its water allocation.

22 Cultural Impact Assessment Report
23 determines that there are no known cultural practices
24 or resources in the project area.

25 Supplemental Cultural Impact Assessment

1 determines that there are no specific valued
2 cultural, historical or natural resources within the
3 project area, nor any traditional and/or customary
4 Native Hawaiian rights being exercised within the
5 project area. To the extent concerns are raised
6 regarding flooding or drainage, please refer to the
7 Engineering Report in the Final EIS.

8 Baseline Assessment for Marine Chemistry
9 and Marine Biotic Communities determines that the
10 proposed project will not have a significant negative
11 or even measurable affect on the water quality or
12 marine biota in the coastal ocean offshore of
13 property. Changes to the marine environment due to
14 the project will likely be undetectable.

15 Economic and Fiscal Impact Analysis
16 determines that the Kihei-Makena Corridor is
17 under-serviced with commercial, industrial and
18 residential inventory. Development of the project
19 will generate approximately \$450 million in economic
20 activity, and 2,933 worker-years of jobs, with the
21 stabilized operation at 729 million in economic
22 activity and 6,626 worker-years annually statewide.

23 MR. SAKUMOTO: That concludes the testimony
24 for Mr. Hart, Mr. Chairman.

25 CHAIRPERSON ACZON: Any questions for Mr.

1 Hart?

2 MS. APUNA: No.

3 CHAIRPERSON ACZON: Mr. Hopper?

4 MR. HOPPER: No, Mr. Chairman.

5 CHAIRPERSON ACZON: Mr. Tabata?

6 MR. TABATA: No, thank you.

7 CHAIRPERSON ACZON: Mr. Pierce?

8 MR. PIERCE: No questions.

9 CHAIRPERSON ACZON: Commissioners? Vice
10 Chair Wong.

11 VICE CHAIR WONG: Mr. Hart, I guess you
12 helped put together this EIS, correct?

13 THE WITNESS: That's correct.

14 VICE CHAIR WONG: So the question I have
15 is, we're talking -- this is all the information that
16 was provided talked about the major impacts to the
17 area.

18 Was there ever an account to the secondary
19 impacts, such as fire or police?

20 THE WITNESS: There was an analysis of
21 impact on police and fire.

22 VICE CHAIR WONG: Were they asked to give
23 input?

24 THE WITNESS: They did provide comment on
25 the project.

1 VICE CHAIR WONG: I'll check it out. What
2 page?

3 CHAIRPERSON ACZON: Anybody know?

4 MS. CATALDO: Page 113.

5 VICE CHAIR WONG: Would that also include
6 hospitals, medical?

7 THE WITNESS: I don't believe we received a
8 comment regarding hospital. There was an analysis of
9 medical impacts, but I don't believe we received a
10 comment from a hospital organization.

11 VICE CHAIR WONG: Thank you.

12 CHAIRPERSON ACZON: Commissioner Ohigashi.

13 COMMISSIONER OHIGASHI: Mr. Hart, did you
14 review the 1995 -- or Environmental Impact Statement
15 relating back to the 1995 project in preparing this
16 Environmental Impact Statement?

17 THE WITNESS: I didn't personally review
18 it. Much production work was done by staff, and may
19 review portions of that report, but I didn't
20 personally review that '95 EIS.

21 COMMISSIONER OHIGASHI: To the extent you
22 have any knowledge about that, could you tell me what
23 kind of specificity, and the description of the
24 project was in that EIS in 1995, if you know?

25 THE WITNESS: No, I couldn't tell you the

1 specificity. I can reply that in the preparation of
2 this Final EIS, the way we analyzed the impacts for
3 the project was by projecting a maximum volume of
4 square footage of uses, and by using those maximum
5 volume of square footage of uses you can derive all
6 of the other impacts for the technical studies that
7 relate to those various uses.

8 COMMISSIONER OHIGASHI: I notice in one of
9 your alternatives, there's no action alternative that
10 you mention. You mentioned it could be built as 123
11 unit, like originally planned warehouse; is that
12 right?

13 THE WITNESS: My understanding is that
14 there was that determination.

15 COMMISSIONER OHIGASHI: But that's one of
16 the alternatives that you address.

17 THE WITNESS: Yes, that's correct.

18 COMMISSIONER OHIGASHI: Was that 123 units
19 laid out in the proposal, in the original proposal in
20 '95?

21 THE WITNESS: It was.

22 COMMISSIONER OHIGASHI: Was the EIS on that
23 original proposal show the original layout of 123 --

24 THE WITNESS: Excuse me, I'm sorry.

25 COMMISSIONER OHIGASHI: Can I finish the

1 question, and you can talk later?

2 My question is simple. Is that, when the
3 warehouses laid out in their proposal?

4 THE WITNESS: It's my understanding that
5 there wasn't an EIS at that time, but I have seen the
6 layout for the project at that time.

7 COMMISSIONER OHIGASHI: Was that layout for
8 the project in the Boundary Amendment proceeding?

9 THE WITNESS: That layout was presented
10 previously, I believe.

11 COMMISSIONER OHIGASHI: That's all I
12 wanted.

13 CHAIRPERSON ACZON: Vice Chair Scheuer,
14 followed by Commissioner Chang.

15 VICE CHAIR SCHEUER: I'm going to try my
16 questions about water again.

17 On page 18 of your slide show, which I
18 believe is the previous page from what's on display,
19 bottom of the page you note under Water Services,
20 adverse impacts are unlikely so long as the proposed
21 action stays within its water allocation.

22 On page 16 of the EIS, the potential impact
23 is identified of a hydrologic impact to the Iao
24 Aquifer from withdrawal of 171,000 gallons per day of
25 drinking water.

1 Later on the page, it states under the
2 paragraph boldfaced, with why mitigation measures
3 where selected, it states:

4 The issuance of water meters for the
5 project by the DWS carries the implicit approval by
6 the DWS of Pi'ilani Promenade's use of the Iao
7 Aquifer system for drinking water.

8 Is there any other evidentiary basis for
9 that statement in the EIS?

10 THE WITNESS: I'm not aware that there is.

11 VICE CHAIR SCHEUER: Are you familiar with
12 the Central Maui Service System of the Department of
13 Water Supply?

14 THE WITNESS: I am somewhat familiar with
15 it, yes.

16 VICE CHAIR SCHEUER: Are you familiar with
17 the various sources of water for that system?

18 THE WITNESS: Not all of them, but I am
19 aware of the system.

20 VICE CHAIR SCHEUER: You're aware that it
21 takes surface water from the Wailuku River, formerly
22 known as the Iao Stream, into a treatment plant?

23 THE WITNESS: I don't know the full
24 operation of the County of Maui's water system.

25 VICE CHAIR SCHEUER: You're aware that it

1 has wells within the Iao Aquifer?

2 THE WITNESS: I am aware of that, yes.

3 VICE CHAIR SCHEUER: Also wells within the
4 Waihe'e Aquifer that are connected to that system?

5 THE WITNESS: Yes.

6 VICE CHAIR SCHEUER: Is there any way, or
7 any information that determines -- is there any
8 information that determines that the water being
9 provided to this project is coming from the Iao
10 Aquifer groundwater, rather from Waihe'e or from
11 surface water?

12 THE WITNESS: I don't know if there is a
13 method to determine that.

14 VICE CHAIR SCHEUER: Is there a possible
15 way to determine what the impacts would be if you
16 don't know where the water is coming from?

17 THE WITNESS: My understanding is the
18 intent of that statement is to say that the approved
19 water meters have an allocation that's already set
20 aside, and that allocation is within the sustainable
21 yield of the aquifer. And so that by using those
22 three three-inch meters that are allocated for the
23 project site, you're not exceeding the existing set
24 aside sustainable yield for the aquifer.

25 VICE CHAIR SCHEUER: So when you talk about

1 unallocated yield in the Iao Aquifer, you're actually
2 talking about water that has not been permitted by
3 the State Water Commission, correct?

4 THE WITNESS: I believe I was talking about
5 water that the county has access to but hasn't issued
6 meters for.

7 VICE CHAIR SCHEUER: But that's not
8 actually what is stated in the EIS, correct?

9 MR. SAKUMOTO: I'm sorry to interrupt. We
10 will have our project engineer also testify shortly
11 after we're done here.

12 VICE CHAIR SCHEUER: Okay. Nothing
13 further, thank you -- actually, sorry, another.

14 As a professional planner, can you comment
15 on any general rules of practice regarding the
16 freshness or staleness of information that can be
17 used for an adequate EIS? After how much years, for
18 instance, does a TIAR become stale?

19 THE WITNESS: In general, my understanding
20 is approximately three years.

21 VICE CHAIR SCHEUER: What about an economic
22 analysis.

23 THE WITNESS: Well, I don't know the
24 specific deal of the economic analysis.

25 VICE CHAIR SCHEUER: AND you are aware that

1 the Hawai'i Supreme Court has ruled that certain
2 EIS's, the files can become stale after a certain
3 period of time?

4 THE WITNESS: I'm aware of that.

5 VICE CHAIR SCHEUER: This project is
6 proposed for build-out under an unknown number of
7 years; is that correct?

8 THE WITNESS: No.

9 VICE CHAIR SCHEUER: Phase I, immediately;
10 Phase II shortly thereafter; Phase III when market
11 allows?

12 THE WITNESS: Yeah, generally.

13 VICE CHAIR SCHEUER: Might the adequacy of
14 this document to predict impacts not be fully useful
15 if, let's say, it's 20 years from now that Phase II
16 is implemented?

17 THE WITNESS: I think something like that
18 is foreseeable.

19 VICE CHAIR SCHEUER: Thank you.

20 CHAIRPERSON ACZON: Commissioner Chang.

21 COMMISSIONER CHANG: Just a couple of
22 questions. I appreciate seeing the community
23 meetings as it appears as if you guys have had
24 several meetings to discuss this with the community.

25 The meeting that you had on November 5th,

1 2013, you said attendance of about 150 people.

2 What was presented to the community as far
3 as a plan? Were you asking them for comments on the
4 project?

5 THE WITNESS: No, at that time it was
6 basically at the initiation -- well, we weren't in
7 the Draft EIS process. We were -- we had issued the
8 EISPN, and so I think that the way the project was
9 presented was an opportunity for people to broad
10 comment, and certainly if they were providing written
11 comments, and certainly within the Draft EIS process
12 that would be received.

13 But my understanding of the intent of it
14 was to let the community know that we were preparing
15 this process. Engage with them. Provide an
16 opportunity to meet with them and discuss the project
17 with the project consultants and experts, and express
18 opinions, concerns and/or gather information on their
19 own.

20 COMMISSIONER CHANG: Do you recall what was
21 presented to the community to solicit the comments?

22 THE WITNESS: I recall that there was some
23 conceptual level diagrams that were shown.

24 COMMISSIONER CHANG: Is it similar to -- is
25 it this site plan? Or was it greater detail?

1 THE WITNESS: I can't recall specifically
2 what the diagram that was shown at that meeting.

3 COMMISSIONER CHANG: Do you think it was in
4 more detail this?

5 THE WITNESS: I don't -- I recall that
6 there were conceptual level renderings that were
7 being shown, perspective renderings, and things like
8 that. But I believe that that appeared later towards
9 the drafting -- submittal of the Draft EIS.

10 COMMISSIONER CHANG: And it was -- and it
11 was based upon this that you had asked the community
12 to provide comments on the proposed impact of the
13 project?

14 THE WITNESS: Well, that wasn't during the
15 Draft EIS comment period. It was basically
16 engagement with the community to let them know that
17 we were preparing this process and we were beginning,
18 and that we were going to be submitting the Draft
19 EIS.

20 So the Draft EIS was the commencement of
21 the comment process. And I believe that that meeting
22 was more intended to let people know what we were
23 doing, what we were preparing to do as far as
24 beginning the EIS process.

25 COMMISSIONER CHANG: Do you recall what

1 meeting did you hold to inform the public about the
2 proposed project? And what did you share with them?

3 THE WITNESS: Do you mean during draft --

4 COMMISSIONER CHANG: Right, during the
5 drafting of the -- I guess what I'm trying to get at
6 is what kind of information was provided to the
7 community for purposes of soliciting useful
8 information as you prepared your EIS?

9 THE WITNESS: Well, I would say that the
10 Draft EIS was the primary piece of information that
11 we provided to the community.

12 But we did have -- certain members of the
13 community emerged as people who were more interested
14 than the general public, and we did have a series of
15 more intimate meetings with those people.

16 But in general the main piece of
17 information that we provided to the general public
18 for solicitation of comment was the Draft EIS.

19 COMMISSIONER CHANG: When you held your
20 meetings on the cultural consultation, did you attend
21 those?

22 THE WITNESS: I didn't attend all of them.
23 I attended the 'Ahu Moku meetings on January 2017 and
24 May 2017, as well as the site visit on January 22nd,
25 2016.

1 COMMISSIONER CHANG: Do you recall whether
2 any notes were taken of those meetings and then
3 distributed to the attendees?

4 THE WITNESS: No, I don't recall that.

5 The first time we went to the 'Ahu Moku
6 meeting, it was the first time that I had been to one
7 of their meetings. And it was, I would say, somewhat
8 informal. There wasn't a presentation.

9 I just stood up and let them know where we
10 were at in the process. At that time we were
11 preparing the Supplemental CIA, and talked to
12 everybody about what we were trying to do as far as
13 get increased interviews.

14 And there was a discussion with an
15 individual who had received the invitation to be an
16 interviewee, and I encouraged him to participate, but
17 there was no meeting minutes or anything like that.

18 COMMISSIONER CHANG: I want to make sure
19 I'm asking the right person. You didn't prepare the
20 CIA or the Archaeological Inventory Survey?

21 THE WITNESS: No, I did not.

22 COMMISSIONER CHANG: The last question I
23 wanted to ask you is, for purposes of the Land Use
24 Commission, at present it is one project area, which
25 includes both the Pi'ilani Promenade as well as the

1 smaller -- is it the Honua'ula Partners? But this
2 EIS is only covering Pi'ilani Promenade?

3 THE WITNESS: That's correct. There is
4 some studies that analyzed the area as well, but my
5 understanding is that Honua'ula Partners are
6 preparing their own EIS to analyze their own impacts.
7 And there are -- it's presumed going to be the
8 analysis of cumulative impacts, just as the way we
9 did do cumulative impacts.

10 COMMISSIONER CHANG: I guess I'm just
11 wondering for procedurally for LUC, we really only
12 have one project site, and we are going to have two
13 EIS's; is that your understanding?

14 THE WITNESS: That's my understanding of
15 what is going to happen.

16 COMMISSIONER CHANG: Maybe that is more of
17 a procedural question we need to talk about later.
18 It's just not really clear for me how we have one
19 project site, LUC Boundary Amendment was based upon
20 one large project site.

21 But now we've got without a formal, I
22 guess, bifurcation, so I guess that is a question we
23 will need to ask later. That's it.

24 CHAIRPERSON ACZON: Vice Chair Wong.

25 VICE CHAIR WONG: Just a general question

1 so we don't ask the wrong question to the wrong
2 individual.

3 Can you give the list of your witnesses and
4 who's going to do what, so at least we know?

5 MR. SAKUMOTO: Thank you, Commissioner
6 Wong.

7 We will be calling Darren Unemori, who is
8 our project engineer, and he will be testifying on a
9 number of different matters, including drainage and
10 coastal flooding.

11 We will be calling Juanita Wolfgramm, who
12 is our traffic engineer. And she will be testifying
13 on traffic-related matters.

14 We will be calling Mr. Tom Holliday, who is
15 our economic feasibility and market study expert.

16 MS. CATALDO: And also Eric Fredrickson who
17 prepared the AIS.

18 VICE CHAIR WONG: Thank you.

19 COMMISSIONER CHANG: Will you be presenting
20 the author of the Cultural Impact Assessment, or will
21 Mr. Fredrickson be answering those questions?

22 MS. CATALDO: We will not be presenting a
23 separate author of the CIA. Mr. Fredrickson may
24 speak on some of the issues that may have been
25 raised, including iwi, the Drainageway A.

1 COMMISSIONER CHANG: With respect to the
2 preparation of the Cultural Impact Assessment, you
3 will not be having the author presented as a witness,
4 is that correct?

5 MS. CATALDO: That is correct,
6 Commissioner.

7 CHAIRPERSON ACZON: Commissioner Okuda.

8 COMMISSIONER OKUDA: Thank you, Mr. Chair.

9 Mr. Hart, looking at the EIS page 24,
10 paragraph C, which is headed "Alternatives
11 Considered", there is a discussion there about the no
12 action alternative, correct?

13 THE WITNESS: Yes.

14 COMMISSIONER OKUDA: Is there anywhere in
15 the Environmental Impact Statement where the benefits
16 of the "no action alternative" is discussed?

17 THE WITNESS: I think there is -- let's
18 see.

19 We did a more thorough discussion of the
20 "no action alternative", 42, 44, and 45.

21 Whether or not there is a discussion of the
22 benefit for not developing this area, I don't think
23 that there is in the context of its location within
24 the Land Use Designation of the property.

25 COMMISSIONER OKUDA: So the closest that we

1 would come to is the discussion at pages 42 through
2 45?

3 THE WITNESS: I believe, yes.

4 COMMISSIONER OKUDA: But you're saying
5 there's no specific discussion about the specific
6 benefits of the "no action alternative". Is that
7 your testimony? I don't want to put words in your
8 mouth, so you tell me.

9 THE WITNESS: I believe that's the case,
10 yes.

11 COMMISSIONER OKUDA: So there is no
12 discussion, for example, on the benefit to, for
13 example, the Downtown Kihei retail concept from the
14 "no action alternative", is that correct or not
15 correct?

16 Let the record reflect you're consulting
17 with one of your staff people, which is fine, we just
18 want to get information.

19 THE WITNESS: I apologize.

20 Yeah, that is discussed on page 44, which
21 was mentioned.

22 COMMISSIONER OKUDA: Thank you, I have no
23 further questions.

24 CHAIRPERSON ACZON: Mr. Sakumoto, are you
25 done with this witness?

1 MR. SAKUMOTO: Yes, Mr. Chair.

2 CHAIRPERSON ACZON: We're going to take a
3 five-minute break.

4 (Recess taken.)

5 CHAIRPERSON ACZON: We're back on the
6 record. Please continue.

7 MR. SAKUMOTO: Thank you, Mr. Chair.

8 We would like to call Darren Unemori to the
9 witness stand.

10 CHAIRPERSON ACZON: May I swear you in
11 first?

12 Do you swear that the testimony that you're
13 about to give is the truth?

14 THE WITNESS: Yes, I do.

15 CHAIRPERSON ACZON: Please state your name
16 and address for the record.

17 THE WITNESS: Darren Unemori. My work
18 address is 2145 Wells Street in Wailuku.

19 CHAIRPERSON ACZON: Please proceed.

20 DARREN UNEMORI

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

24 DIRECT EXAMINATION

25 BY MR. SAKUMOTO:

1 Q Mr. Unemori, where do you work?

2 A I work at Warren Unemori Engineering in
3 Wailuku.

4 Q What is your position with Warren Unemori
5 Engineering?

6 A I'm a senior civil engineer there. I'm
7 also corporate vice president and one of the
8 company's directors.

9 Q Do you have a college and graduate degrees
10 in civil engineering?

11 A Yes, I do. So I have a Bachelor's degree
12 and a Master of Engineering degree from the
13 University of California at Berkeley.

14 Q What about professional licenses, do you
15 hold any?

16 A Yes, I do. I'm a licensed civil engineer
17 since 1993, licensed in the State of Hawaii.

18 I'm also a licensed land surveyor, and I am
19 also a licensed or registered with the Land Court of
20 the State of Hawaii.

21 Q Does licensure as an engineer require
22 passing any additional tests, or are there any work
23 requirements related?

24 A Yes. In the State of Hawaii licensure as a
25 civil engineer requires graduation from an accredited

1 university, four years of practical work experience
2 under a civil engineer, and also passing two written
3 examinations.

4 Q Are you a member of any professional
5 engineering organizations?

6 A Yes, I am. The American Society of Civil
7 Engineers, and the National Society of Professional
8 Engineers, Hawai'i Chapter.

9 Q How many years of professional experience
10 do you have in infrastructure planning and design for
11 large scale infrastructure and land development
12 projects in Maui?

13 A This year would mark 28 years.

14 Q What are some of the land development
15 projects that you've worked on in Maui, let's just
16 say over the last five years?

17 A In the last five years, I've been involved
18 heavily in the completion of the Kahalani, Wailuku
19 Project District, which is a large Urban Project
20 District in Wailuku.

21 I'm also been heavily involved in
22 development in the Maui Lani Project District, which
23 is 1000-acre urban development in Kahului, Maui.

24 Let's see, that's been most of my last five
25 years.

1 Q Were you involved with the Maui Research &
2 Technology Park?

3 A Thank you, yes.

4 So I've -- I also assisted the Maui
5 Research & Technology Park with their rezoning
6 effort, which was successful, I think, a couple years
7 ago.

8 Q Thank you.

9 Have you ever testified before the State
10 Land Use Commission?

11 A Yes, I have, twice before.

12 Q Do you recall which docket they were?

13 A I'm reading from my CV it's --

14 CHAIRPERSON ACZON: Mr. Sakumoto, will you
15 be calling for him as an expert?

16 MR. SAKUMOTO: Yes, Mr. Chair.

17 CHAIRPERSON ACZON: We have to qualify him.

18 MR. SAKUMOTO: I will be doing that, yes.

19 Thank you.

20 A To continue, Docket A0-754 in 2005, and
21 Docket A10-77 in 2013.

22 Q At this time -- well, let me ask one more
23 question.

24 In those dockets, what were you recognized
25 as an expert in?

1 A In civil engineering.

2 MR. SAKUMOTO: Mr. Chair, at this time I
3 would like to ask that the Commission recognize Mr.
4 Unemori as expert in the field of engineering.

5 CHAIRPERSON ACZON: Any objections from the
6 parties?

7 MS. APUNA: No objection.

8 MR. HOPPER: No objection.

9 MR. PIERCE: No objection.

10 MR. TABATA: No objection.

11 CHAIRPERSON ACZON: No objections, Mr.
12 Unemori is going to be an expert witness on
13 engineering.

14 MR. SAKUMOTO: Thank you, Mr. Chair.

15 Q Mr. Unemori, did you prepare the
16 Preliminary Engineering Report attached to the Final
17 EIS as an appendix?

18 A Yes, I did.

19 Q Based on your education and experience as a
20 professional civil engineer, and your analysis of the
21 off-site and on-site runoff, what is your conclusion
22 as to the hydrologic impact on the downstream
23 properties resulting from the proposed development?

24 A Okay. So when we did the analysis, we
25 basically looked at the two flows that affect the

1 project area. The off-site flows, which represent
2 the lands up above the project which drain through
3 the project; and also the project lands themselves,
4 which would urbanize, and thereby increase the
5 runoff.

6 In the case of off-site flows, we are
7 proposing to pass those through the project, and
8 therefore, not change those project flows from
9 existing levels.

10 The post development, or after development
11 flows for on-site flows, we would construct
12 improvements for detention basins and filtration
13 systems and other things that would address the
14 impact of the off-site flows, and therefore,
15 downstream there would be no increase, and therefore
16 no impact.

17 Q Let's take each component separately.

18 Let's talk about the off-site runoff first.

19 A Okay.

20 Q Please explain to the Commission what is
21 off-site runoff and where does it flow in this
22 instance?

23 A In this specific instance, the off-site
24 flows I'm referring to are coming from the lands that
25 are above the project site, outside the project lands

1 but above the project site. It measures about
2 471 acres, pasture lands owned by Haleakala Ranch and
3 Ka'ono'ulu Ranch. These flow into, what I term in my
4 report, Drainageway A, which is a small gully that
5 bisects the project.

6 Those flow into the gully across the
7 project, and enter a pair of culverts at Pi'ilani
8 Highway. They then cross down below the highway and
9 join the larger stem of Kulanihakoi Gulch about
10 500 feet below the highway.

11 Q Is the diagram that -- it's in the slides
12 right after General Conclusions, Commissioners.

13 Does that help depict what you just
14 described?

15 CHAIRPERSON ACZON: What page is that?

16 MR. SAKUMOTO: I believe that's 20.

17 CHAIRPERSON ACZON: Is that the slide that
18 you've got up on the screen there that you're
19 referring to?

20 MR. SAKUMOTO: Yes.

21 A Yes, it does. It depicts the larger
22 watershed, actually, in which the Promenade project
23 resides.

24 Down at the bottom there, that little
25 yellow dot is the Promenade area, project area to

1 scale within that watershed. And if you notice on
2 the left-hand side of that watershed there's a
3 marked-out area.

4 Q Mr. Unemori, why don't we hand you a laser
5 pointer so that we can all see what it is you're
6 referring to. This is a big picture.

7 Maybe you can start off again by explaining
8 what is this large pink area, and then get to what I
9 think you were talking about before, the 471 acres.

10 A My laser pointer seems to be out of range
11 here.

12 (Discussion off record.)

13 So if you'd point to the large pink area
14 generally -- sorry about that.

15 The large pink area where the red dot is
16 circling, represents a 15 square mile area, the
17 watershed for Kulanihakoi Gulch, that drains to the
18 ocean. It starts at a ridge behind Haleakala Crater
19 and comes 15 miles down to the ocean. Again,
20 15 square miles.

21 Near the very bottom of that pink area,
22 there is a little yellow area, that is the Pi'ilani
23 Promenade project site examined in the FEIS to scale
24 within that watershed, the little yellow dot.

25 I guess slightly to the left and above it

1 there is a hatched, crosshatched area within the pink
2 that is part of the larger pink area. That
3 represents the 471 acres that I'm referring to as
4 off-site -- as the origin of the off-site flows I was
5 referring to that essentially flow into Drainageway A
6 and pass through the project site in that small
7 gully.

8 Q So just to restate. The storm runoff from
9 approximately 471 acres of undeveloped land mauka of
10 the project area is then conveyed to the project
11 property through what is labeled Drainageway A, and
12 then to the eastern boundary of the project area; is
13 that correct?

14 A That's correct.

15 COMMISSIONER CABRAL: Excuse me. I have a
16 question, but it will help me since I'm into maps.

17 On this, (indicating) which is impossible
18 to see there (indicating), the pink/red comes down,
19 your 471 acres. And then there is a section that's
20 yellow with little bit of green in it. That is the
21 subject property; is that correct?

22 THE WITNESS: Yes. So the yellow area
23 that's at the very base of that pink area, that's
24 Pi'ilani Promenade.

25 COMMISSIONER CABRAL: So it's not that --

1 it's not that that is not part of this largest
2 floodway or waterway of concern, the yellow does not
3 mean there's no water there, it's a mountain or
4 something, it means it's the property?

5 THE WITNESS: Oh, definitely. The pink
6 area generally shows you the broad outline of the
7 area which drains into Kulanihakoi, of which Pi'ilani
8 Promenade is also a part of it.

9 COMMISSIONER CABRAL: Thank you.

10 Q (By Mr. Sakumoto): Just to complete the
11 path of the water.

12 Once the runoff crosses the eastern
13 boundary Drainageway A, continues across the project
14 area in and east/west direction; is that correct?

15 A Yes, so it crosses the project in an
16 east/west direction, yes.

17 Q And it goes to a -- did you say a culvert?

18 A Yes. There's a culvert at Pi'ilani Highway
19 which crosses the highway, passes the water under the
20 highway.

21 Q And once it passes under Pi'ilani Highway,
22 what happens thereafter?

23 A It continues downhill, and about 500 feet
24 below the Kulanihakoi Bridge, about 500 feet below
25 the highway, that portion of Drainageway A connects

1 to the main Kulanihakoi Channel down below the
2 highway.

3 Q In terms of off-site runoff, could you
4 please explain -- I'm sorry, we just did that.

5 Let's talk about on-site runoff.

6 Could you summarize your findings on
7 on-site runoff once the project is developed?

8 A Okay. So in urbanizing the project, paving
9 it, creating roof tops, that sort of thing, there's
10 usually a spike in the flow of rate of runoff,
11 because of the all the impervious surfaces you
12 create. That's the primary impact of development as
13 far as hydrology and drainage.

14 So to deal with that, we recommend a series
15 of improvements, in this case detention basins,
16 drainage basins aboveground and underground,
17 principally, as well as an urban-type storm drain
18 system with inlets and pipes underground, which
19 together function to reduce the flow rate back to
20 what it originally was.

21 In other words, if the project wasn't
22 there, we match that flow rate. So thereby, the
23 on-site post-development site is basically no worse
24 hydrologically, as far as sending water downstream,
25 than the original undeveloped site.

1 Q Is this, basically what you just described,
2 a county standard or county requirement when it comes
3 to developing property in Maui?

4 A Well, the county requirement is really a
5 performance requirement. And basically it's don't
6 make the drainage conditions worse. So in other
7 words, don't release more after development than
8 exists before development.

9 So that's the performance standard. What I
10 described was the way arrived at the performance
11 standard, the way we meet performance standard.

12 Q Let's talk about coastal flooding for a
13 minute.

14 Figure 2-2 in your report indicates that
15 while the project is itself not in a flood zone, it
16 is located upstream of a coastal area which is prone
17 to flooding.

18 Can you explain, using this map,
19 Kulanihakoi Gulch Watershed, where the runoff, which
20 causes this coastal flooding, comes from?

21 A So as I was explaining earlier, the
22 Pi'ilani Promenade project, that 79 acres, sits
23 within a much, much larger watershed that fills
24 Kulanihakoi Gulch every time it rains.

25 So that 15-square mile area, 9,600 acres,

1 if you are looking at it in acres, is where the water
2 comes from that floods the Kihei Coast, that low
3 lying flat coastal area that's near Maui Lu and those
4 adjoining areas, that the testifiers yesterday were
5 complaining about.

6 And that's a recognized problem. And
7 that's what -- that large watershed is where the
8 water is coming from. So it's not just the little
9 yellow dot, it's the entire big red area.

10 Q What does the -- relative to that big red
11 area, what does Pi'ilani Promenade project site
12 represent percentage-wise?

13 A It's less than one percent. I think on the
14 exhibit there I calculated a .8 of a percent, 8/10th
15 of a percent of the total area that drains to the
16 coast.

17 Q Is it your opinion that Pi'ilani Promenade
18 project site either now or post-development, would
19 contribute significantly to flooding?

20 A Although it is a contributor, because it
21 lies within the watershed, it is by no means the
22 controlling factor in the flooding.

23 Q Can anything be done about the flooding, in
24 your opinion?

25 A Well, so very recently, I think last month,

1 the Department of Public Works, Maui County
2 Department of Public Works released their Pre-Final
3 Drainage Master Plan for actually Kihei. And within
4 that document is a plan to basically deal with the
5 flooding situation that the Kihei residents have been
6 complaining about and has long been known.

7 They describe in there, I believe it's four
8 phases of improvement done over 20 years, costing
9 about \$57 million. That would, if implemented,
10 eliminate the flooding problem that everybody is
11 worried about.

12 It's a regional issue, and that is the
13 regional solution to deal with it. That's what can
14 be done.

15 Q Thank you.

16 There was testimony earlier about the fact
17 that this project has water meters.

18 Do you know how many water meters the
19 project has?

20 A Yes. The project was issued three 3-inch
21 diameter water meters by Maui County Department of
22 Water Supply.

23 Q And I don't want to steal your question,
24 but I want to be sure that this information is
25 provided.

1 There was a question about the impacts of
2 this project on the Iao Aquifer. Do we know anything
3 about that? Is it within our ability to know
4 something about that, given that we have these county
5 issued water meters?

6 A Could you clarify the question? When you
7 say "we", you mean Pi'ilani Promenade?

8 Q Does Pi'ilani Promenade -- is Pi'ilani
9 Promenade in a position to know the impact on the Iao
10 Aquifer based on the fact that the county has given,
11 or has issued three water meters?

12 A No. It would be very difficult for
13 Promenade to determine the impact of a system that is
14 managed by Maui County Department of Water Supply,
15 basically a separate entity which it does not
16 control. I think that answers your question.

17 Q Last question.

18 There were several people who testified
19 earlier about a 50-year storm standard.

20 A Yes.

21 Q And I assume there is 100-year storm
22 standard. Have these standards been applied in your
23 report to either on-site or off-sites to the project?

24 A Yes. Yes, they have been.

25 The standards themselves originate with

1 Maui County Department of Public Works, who has
2 regulatory jurisdiction for developments in the Maui
3 County, and in this area in particular.

4 Their drainage standards specify for
5 areas -- where you're analyzing areas that are larger
6 than 100 acres, you use basically a 100-year storm
7 for analysis.

8 For areas that are smaller, you use a
9 50-year storm for analysis.

10 So it's basically a prescribed analysis,
11 and if there's -- that's the origin of the 50-year
12 number.

13 Q What about the 100-year standard, when is
14 that utilized?

15 A Again, the 100-year standard is applied in
16 situations where you're dealing with a hydrologic
17 analysis of an area larger than 100 acres, in this
18 case it's applied to the off-site areas.

19 Q I'm sorry, I missed that the first time.

20 I have no further questions.

21 CHAIRPERSON ACZON: Any questions?

22 MS. APUNA: No questions.

23 CHAIRPERSON ACZON: Any questions for the
24 witness?

25 MR. HOPPER: No, Mr. Chair.

1 CHAIRPERSON ACZON: Mr. Pierce?

2 MR. PIERCE: One moment.

3 CHAIRPERSON ACZON: Mr. Tabata?

4 MR. TABATA: No questions.

5 CHAIRPERSON ACZON: Commissioners? Vice
6 Chair Scheuer.

7 VICE CHAIR SCHEUER: Aloha. I have a
8 series of questions. That'll give Mr. Pierce some
9 time.

10 And I'm a little confused now by the
11 questions from counsel about could you make an
12 assessment of the impact on the Iao Aquifer from this
13 project.

14 We qualified you as a witness in civil
15 engineering, or in engineering in general, but not on
16 impact analysis; correct?

17 THE WITNESS: Yes.

18 VICE CHAIR SCHEUER: So it's a bit outside
19 your expertise anyway, the impact of water
20 withdrawals on ecosystems or --

21 THE WITNESS: Definitely that kind of
22 thing, yes.

23 VICE CHAIR SCHEUER: Okay. That said, the
24 EIS actually does identify the withdrawal of water as
25 a potential impact. Isn't that correct? On page 16.

1 THE WITNESS: I'm sorry, I'm very familiar
2 with the engineering report, I'm not so familiar with
3 the earlier statements in the --

4 VICE CHAIR SCHEUER: I tried to ask
5 questions earlier about water on the main EIS, then I
6 was asked to wait for you to come as the witness.

7 So when do I get to ask these questions?

8 MR. SAKUMOTO: I don't know that we have a
9 witness that will be able to answer that specific
10 question.

11 Like I mentioned, we have Mr. Unemori, our
12 engineer. We had the EIS preparer, Mr. Hart. We
13 don't have any other experts left today that we could
14 probably call, other than the ones I just mentioned.

15 VICE CHAIR SCHEUER: Okay. Let me move off
16 of the water well issue then for a second.

17 When you testified about the diagram that
18 is still up behind us -- what page number is it?

19 Page 20 of the PowerPoint, you include a
20 calculation that says this is .8 percent of the
21 watershed.

22 THE WITNESS: The area represented by
23 Pi'ilani Promenade, yes.

24 VICE CHAIR SCHEUER: But area is only one
25 component of what its contribution would be to

1 drainage to the coast, correct?

2 THE WITNESS: Certainly, yes.

3 VICE CHAIR SCHEUER: What are some of the
4 other impacts or factors that impact drainage?

5 THE WITNESS: In the case of -- in the
6 context of flood control and drainage for this
7 particular watershed, really the land use in the form
8 of how much hard impermeable surface is present,
9 underlying soils, I guess.

10 VICE CHAIR SCHEUER: How much precipitation
11 the area typically gets. Distance from the coast.
12 If a drop of rain that's falling at the top of the
13 watershed has a greater chance of infiltrating, than
14 a drop of rain right next to the coast.

15 THE WITNESS: Actually, the location of
16 that drop of water doesn't matter as much as where in
17 the watershed you're measuring flow.

18 VICE CHAIR SCHEUER: But if we're measuring
19 flow at the coast, closer to the coast, precipitation
20 that falls closer to the coast does have a greater
21 impact?

22 THE WITNESS: I guess if I could clarify
23 the situation there.

24 If I were to measure the runoff coming off
25 of Pi'ilani Promenade at the coast, and I measure it

1 at the highway, it would still be the same number.

2 But if I look at the watershed, as I go up
3 the hill, the watershed gets smaller, the area that's
4 contributing, so then the flow would increase until
5 it reached the maximum at the coastline.

6 VICE CHAIR SCHEUER: I'm just trying to get
7 to the point of .8 percent is a measurement of area,
8 not a measurement of the impact of this area on the
9 coast?

10 THE WITNESS: Yes. So it's the amount of
11 runoff generated would not be directly proportional
12 to just this area. You would have to consider other
13 factors in there.

14 VICE CHAIR SCHEUER: Thank you. I'll take
15 a break.

16 CHAIRPERSON ACZON: Vice Chair Wong.

17 VICE CHAIR WONG: Looking on page 21,
18 that's the next slide for everybody. That's your
19 drainage issue, right? I mean where the water is
20 going to flow and all that; is that correct?

21 THE WITNESS: I think it's the diagram of
22 predevelopment flows, if I'm not mistaken.

23 VICE CHAIR WONG: So there is that box or
24 rectangular side up on the top right, that's not part
25 of your study?

1 THE WITNESS: So, yeah, on your screen I
2 think there's a yellowed in area. So that yellowed
3 in area is the area which the study considered.

4 The little white notch there is actually
5 the 13-acre Honua'ula parcel that's not included in
6 this engineering report.

7 VICE CHAIR WONG: This is a layman's
8 question.

9 How could you not take that portion that
10 the water look like it's going through, as part of
11 the study?

12 THE WITNESS: I guess what -- I do consider
13 that area, but I don't consider it developed. So
14 imagine if I'm going to do an impact analysis of the
15 site, I base the analysis on what changes. So the
16 yellow area is what changes. The white area doesn't
17 change.

18 So the impact I'm looking at, the
19 difference between before and after, is really
20 looking only at what changes after I urbanize the
21 yellow area. So I can kind of selectively control
22 which areas I view as being urbanized and which are
23 not.

24 VICE CHAIR WONG: So that white area would
25 still be grass and dirt and all that, while the

1 yellow would be all cement -- not all, but something
2 like that?

3 THE WITNESS: Yeah. So I only look at the
4 change occurring within the yellow area.

5 VICE CHAIR WONG: So the impacts are just
6 for this project?

7 THE WITNESS: For the Pi'ilani project,
8 yes, that's correct.

9 VICE CHAIR WONG: Thank you.

10 CHAIRPERSON ACZON: Commissioner Ohigashi.

11 COMMISSIONER OHIGASHI: Have you been
12 retained to do the drainage report for Honua'ula?

13 THE WITNESS: Yes.

14 COMMISSIONER OHIGASHI: So you know what
15 they're planning on the Honua'ula property, right?

16 THE WITNESS: Yes.

17 COMMISSIONER OHIGASHI: With that
18 knowledge, you didn't include that as part of your
19 drainage report in this project?

20 THE WITNESS: Oh, so the reason that --

21 COMMISSIONER OHIGASHI: I'm just asking, is
22 that true?

23 THE WITNESS: No, that's not the reason.

24 COMMISSIONER OHIGASHI: I'm just asking if
25 it's true you didn't include that.

1 THE WITNESS: Yes, that it is not included,
2 yes.

3 COMMISSIONER OHIGASHI: Now, you can tell
4 me. I just want to do lawyer.

5 THE WITNESS: I understand.

6 So the Engineering Report for Pi'ilani
7 Promenade specifically looked only at Pi'ilani
8 Promenade, it didn't look at Honua'ula. That was
9 looked at as separate analysis. So it was not
10 included in the Engineering Report for Pi'ilani
11 Promenade.

12 COMMISSIONER OHIGASHI: But it is mauka?

13 THE WITNESS: So it's on the mauka north
14 corner, yes.

15 COMMISSIONER OHIGASHI: Of the first phase?

16 THE WITNESS: It's its own project, but
17 it's mauka of the first phase of the Promenade,
18 that's correct.

19 CHAIRPERSON ACZON: Commissioner Chang.

20 COMMISSIONER CHANG: We're going to go
21 down -- I'm going to continue on. We are all adding
22 onto this discussion.

23 For purposes of our review of the adequacy
24 of the EIS, we need to look at, or we are expecting
25 the Petitioner to look at cumulative secondary

1 impacts.

2 So is your conclusion that the drainage
3 plan will result in downstream stormwater discharges
4 at rates that do not exceed current levels and comply
5 with the Maui County Drainage Rules.

6 Is that only based upon the Pi'ilani
7 Promenade project?

8 THE WITNESS: Yes. So the conclusion of
9 the preliminary Engineering Report, which only
10 focused on the Pi'ilani Promenade project, comes to
11 that conclusion specifically for the Pi'ilani
12 Promenade project.

13 COMMISSIONER CHANG: Were you asked to look
14 at other projects to determine cumulative and
15 secondary impacts?

16 THE WITNESS: Not in any specific way.

17 COMMISSIONER CHANG: If you were, are you
18 aware of other projects in this area?

19 THE WITNESS: I am aware of one other
20 project that affects this watershed. And that
21 particular project is mitigating itself, just like
22 Pi'ilani Promenade is.

23 So it has no cumulative impact on Pi'ilani
24 Promenade. And the project I'm talking about is the
25 Maui Lu development down on the coast.

1 COMMISSIONER CHANG: Would your conclusion
2 change if there are other projects reasonably
3 foreseeable around this area within this Kulanihakoi
4 Gulch Watershed? If there are other projects within
5 the near vicinity, would your conclusion change if
6 you were asked to do an assessment of the cumulative
7 impacts of all of these projects?

8 THE WITNESS: So if I were asked to do a
9 cumulative assessment of all these projects, and
10 these projects are all held to essentially the same
11 standards as Pi'ilani Promenade, in other words,
12 don't make the situation worse, don't release
13 anything more than you currently release, there
14 actually would be no cumulative impact, because all
15 these developments would mitigate their own impact
16 on-site, just like Pi'ilani Promenade.

17 So downstream at the mouth of the river,
18 you don't see the affects of development, because
19 they are taken care of before it crosses the makai
20 border boundary of the project.

21 COMMISSIONER CHANG: What kind of
22 mitigation measures are they taking to contain the
23 drainage within their respective properties?

24 THE WITNESS: Let me give you Pi'ilani
25 Promenade as an example.

1 So when we deal with the development of a
2 site, what we're really do is we're improving the
3 ability of water to flow off it. We pave the parking
4 lots, we roof the buildings, very hard impermeable
5 surfaces that move water very quickly.

6 As a result, what happens after you develop
7 a site like that, is the water speeds up. It gets
8 off the site very fast. So what you see is an
9 increase in the flow rate. And what we do to counter
10 that, is we come up with ways to slow it down again.

11 So a good analogy would be this. If you
12 took a five-gallon bucket of water and poured it into
13 your bathroom sink, small sink. And you take that
14 five-gallon bucket, you fill it up to the top, and
15 you dump it on your sink, it would overflow your
16 sink.

17 If you took that same five-gallon bucket
18 and poured it slowly into the sink so it doesn't
19 overflow, you're getting rid of the same amount of
20 water, but you're doing it over a longer period of
21 time.

22 And that's effectively what a detention
23 basin does. So that's the way we mitigate the flow
24 coming off-site. It's a way of time shifting the
25 water so that it doesn't move fast, we slow it down.

1 COMMISSIONER CHANG: I am a layman. I'm
2 going to do what Commissioner Wong does often, in
3 layman's terms, I can see that if all the projects
4 are proceeding at different times.

5 If you have multiple projects constructed
6 at the same time, and you have a large flooding
7 coming down, wouldn't that potentially have a greater
8 impact than all of these different projects
9 cumulatively have a greater impact because they're
10 all constructing within a close time period and
11 everybody is throwing water on the sink at the same
12 time?

13 THE WITNESS: If you're talking about just
14 that limited temporary construction period, that's
15 probably the most vulnerable point, because there you
16 don't have your permanent drainage improvements in
17 place yet. You're still building the basins and
18 pipes and other things that are going to slow down
19 the water. And you've taken off the ground cover
20 because you're grading and all that.

21 So during that temporary period of time,
22 that three months, four months, six months, that is a
23 very vulnerable time. So we would normally put in
24 site management practices, things like silt fences,
25 shape the ground so that the water runs into smaller

1 basins, temporary basins. They're smaller temporary
2 features that are very vulnerable to very, very large
3 storms, like a 50-year storm.

4 So we do have to take that chance during
5 the construction period, because it does take time to
6 build some of these facilities.

7 In the construction phase, you're correct,
8 if you had a whole bunch of projects that are
9 constructing at the same time and a big storm came
10 along, it would create something of a vulnerability.

11 Once those sites are all completed, and
12 they all have their own required mitigation, like
13 County of Maui requires where you have to drain the
14 bucket slowly into the sink, then downstream you
15 don't actually notice any difference, because
16 everybody has taken care of their -- you know it
17 speeds up, but it slows down before it leaves the
18 site.

19 Overall, in theory, it should, as long as
20 there is no nothing going on, it should -- everyone
21 should mitigate their own flow to preexisting levels.

22 Now, that doesn't mean the flooding problem
23 goes away, because we have still got all that land
24 sending all that water down there. So it's possible
25 to create no impact from your project, but you still

1 have this preexisting flooding problems.

2 So until you deal with it on a regional
3 level, like Department of Public Works is trying to
4 do, you don't solve the problems for the guys down at
5 the bottom.

6 COMMISSIONER CHANG: You were talking about
7 the \$56 million, that would be the regional
8 improvements, but you were not asked to do a
9 cumulative analysis, only to look at the impact of
10 the Pi'ilani Promenade with respect to drainage?

11 THE WITNESS: Yes, for the specific
12 Preliminary Engineering Report. We did not
13 deliberately look at cumulative analysis, but in
14 answer to your question of what a cumulative analysis
15 would show as far as hydrology and drainage, if those
16 county requirements were met, that's effectively what
17 I would see.

18 Correctly applied, I should see no
19 difference with that watershed more developed, than
20 less developed because all of those projects would
21 have had to mitigate themselves, just like Pi'ilani
22 Promenade is required to do.

23 COMMISSIONER CHANG: And assuming that
24 they're not all constructing at the same time, during
25 that vulnerable period?

1 THE WITNESS: Again, the vulnerable period
2 would probably be the one instance that if you were
3 to get hit by hurricane or something, you probably
4 would see a larger release, because, again, we're
5 kind of on our way to getting everything in place
6 that needs to be in place, but we're not quite there
7 yet. So it would be an unfortunate at situation.

8 But you're correct, that would be the one
9 vulnerable period in a development.

10 COMMISSIONER CHANG: Thank you very much.

11 MR. SAKUMOTO: Commissioner Chang, if I
12 could just direct you to page 320 of FEIS, there is
13 in Table 16a an analysis of other nearby
14 developments, and the runoff from those projects.

15 So you're asking about other projects in
16 the area. This table accounts for Kaiwahine Village,
17 Maui Lu Resorts, Kihei High School, Kenolio
18 Apartments, et cetera.

19 COMMISSIONER CHANG: Did Mr. Unemori, who
20 is your expert, did he provide a separate cumulative
21 analysis given all those other projects?

22 MR. SAKUMOTO: I'm not aware that this came
23 from Mr. Unemori. I'm just saying the cumulative
24 analysis is in the FEIS.

25 COMMISSIONER CHANG: Thank you very much.

1 CHAIRPERSON ACZON: Commissioner Okuda.

2 COMMISSIONER OKUDA: Just a couple short
3 questions dealing with information being provided for
4 us to consider in the Environmental Impact Statement.

5 Calling your attention to Slide 21 of the
6 PowerPoint slide, there's a map, and you testified
7 that the yellow portion is the portion that is
8 covered by your report, correct?

9 THE WITNESS: Yes, that is the focus of the
10 study area considered by the analysis.

11 COMMISSIONER OKUDA: And then there's a
12 little notched piece in white, you've also been
13 retained to prepare a similar analysis for that
14 portion, correct?

15 THE WITNESS: Yes, I have.

16 COMMISSIONER OKUDA: Was there any reason
17 -- let me back up.

18 Are you going to use, or are you planning
19 to use the same methodology and expertise that you
20 used in preparing the report for the yellow portion,
21 as to the little white portion of the other owner?

22 THE WITNESS: Yeah. The method for
23 analysis is pretty much proscribed, so it would be
24 the same type of analysis.

25 COMMISSIONER OKUDA: Was there anything

1 that prevented you from providing us or providing a
2 report or appendix to the Environmental Impact
3 Statement which would have provided an analysis, a
4 drainage analysis for the entire parcel, so that we
5 can have perhaps a more full and complete
6 understanding of the options and the risk, benefits
7 and relevant facts, because we don't have a
8 bifurcation so far on the record, and we're dealing
9 with an order that covers an entire parcel.

10 I'm just trying to find out if there is
11 something practical or legal that's preventing you
12 from doing so, or it just turned out this way?

13 THE WITNESS: Exactly because of the way
14 the process, it just turned out that this Promenade
15 analysis was separate. But there is no technical
16 reason why such an analysis cannot be done as you
17 described.

18 COMMISSIONER OKUDA: You do agree that if
19 we are looking at a decision which may affect an
20 order which covers, not only the yellow portion, but
21 affects an order which originally covered this entire
22 portion, indicating a boundary line on slide page 21,
23 you could understand why, at least a few of us, might
24 have a concern that we might not have enough
25 information to have a legally sustainable

1 Environmental Impact Statement?

2 THE WITNESS: I understand the concern.

3 I can also tell you, although I don't have
4 it written in this report, I can tell you the answer
5 that I would find, or you would see in the analysis.

6 COMMISSIONER OKUDA: I think I probably
7 could anticipate what that answer is, but the problem
8 is we're dealing with a semi-judicial record here,
9 and it's what's in the record that controls us, even
10 though there might be other things. But thank you
11 very much for your testimony, appreciate it.

12 CHAIRPERSON ACZON: Anybody else?

13 Mr. Pierce, are you ready for your
14 questions?

15 CROSS-EXAMINATION

16 BY MR. PIERCE:

17 Q My first question is, and tell you I'm
18 looking at the Preliminary Engineering Report, that's
19 what I'll be referring to. I just have those page
20 numbers in front of me.

21 One of things I see is a table, and one of
22 the questions I have is page 796, which refers to
23 on-site storm flows. But there is a table. And I
24 think that's -- there may actually be a picture
25 that's similar to that in these, I'm not sure, but it

1 a shows Drainageway A and a Drainageway B, which
2 appear to be natural drainageways currently.

3 Then there's Kulanihakoi Gulch as well.

4 A Yes.

5 Q So the way I understand it is that the
6 intention is, as part of the improvements to the
7 property, is to move Drainageway A and B; is that
8 right, or change the path?

9 A Realign it, yes. That's correct.

10 Q And then I understand it's going to be
11 going more along, I guess, the south side of the new
12 road?

13 A Yes, it will follow East Ka'ono'ulu Street.

14 Q Are you planning on retaining any of that
15 water, or just passing it through your property
16 before it goes to the 102-inch highway culvert that's
17 shown on your map?

18 A The water that you're seeing coming out of
19 Drainageway A and B are effectively the opposite
20 flows that I referred to earlier, and those would be
21 strictly a pass through affair.

22 The only detention that occurs is for the
23 on-site water.

24 Q And with Drainageway B flows into
25 Drainageway A before it goes across the Honua'ula

1 parcel and Pi'ilani parcel; is that right?

2 A In the post development?

3 Q No, predevelopment. I'm looking at Figure
4 2-3.

5 A It converges with Drainageway A, and flows
6 across the Honua'ula parcel.

7 Q Drainageway A -- is that one of the things
8 with the testimony was related to the cultural
9 resources there, and that it is a cultural resource
10 itself.

11 Was there any attempt to seek to leave
12 Drainageway A in its current location?

13 A Let's see. Not while I was familiar
14 with -- not while I was working on this project.
15 There may have been other considerations prior to
16 2010 before I picked up the current version of this
17 project.

18 Q And there is no analysis in your PER where
19 it would be permitted to stay in its current
20 location?

21 A Definitely not in the PER, no.

22 Q The area where Drainageway A goes currently
23 would ultimately be paved over where there would be
24 buildings there, some kind of hardened surface area?

25 A Yes, that's the assumption of the report.

1 Q And then Drainageway A, is it safe to say
2 that it's not a tight stream, but it's actually more
3 a broader sheet flow aspect going across the
4 property?

5 A Drainageway A changes in size, depending on
6 where you are along it. In some cases the
7 drainageway is very shallow and flat. In other areas
8 it's a little more well-defined.

9 On the Honua'ula parcel, it's more -- the
10 upper portion of it is shallow and flat. So it does
11 resemble sheet flow, but there is a definite flow
12 line for that drainageway.

13 Q And currently in predevelopment conditions,
14 it is being captured by an existing 102-inch culvert?

15 A Yes. It enters that culvert at the
16 highway.

17 Q And the post-development, after it's
18 rerouted and goes further south and down the road, it
19 will also go through the 1002-inch culvert?

20 A Essentially ends up at same highway
21 culvert.

22 Q The water that's coming off of the road
23 that is being planned, the one that's actually going
24 to become, I guess, be conveyed to the county and
25 state, and become a public road.

1 Is that -- are you including in your
2 analysis, capturing the water from that and dealing
3 with that water?

4 A The water that comes directly over the East
5 Ka'ono'ulu Street is captured and held in the
6 detention basins.

7 Q It is not held in the detention basins?

8 A It is not.

9 So it will go into the state highway -- the
10 highway culverts.

11 Q And that's that 102-inch culvert you're
12 referring to?

13 A Ultimately, yes.

14 Q So that road will be built with no analysis
15 of the water impacts?

16 A No. Actually, if you are talking impact,
17 the water that is shed by the road, the water that is
18 shed by the on-site developments, basically are all
19 considered in the analysis.

20 And what is essentially done, is because of
21 the ability to capture water on that road is much
22 more limited, what we have done is we basically
23 increased the capture on the two adjoining developing
24 lots to basically offset the road.

25 So we end up zeroing everything out at the

1 makai boundary.

2 Q So you're taking more than you would have
3 before in order to make up for the road?

4 A Yes. So the private developments take up
5 more than the public roads.

6 Q So in other words, you're saying that the
7 amount of water flow from the 102-inch culvert is not
8 going to change, even though it now has Drainageway A
9 and B redirected, and even though you're going to
10 have a paved road, fairly large paved road going
11 towards the culvert?

12 A That's correct.

13 Q And so the detention basins, there is three
14 detention basins identified on your Figure 2-4, and
15 one detention pond. Those are designed for a 50-year
16 flood?

17 A The report analyzes them with a 50-year
18 storm, yes.

19 Q Do they have the capacity to handle a
20 100-year flood?

21 A The 100-year flood would be in excess of
22 what the County of Maui requires, but there is no
23 technical reason why they could not.

24 Q But have you done the calculations to know
25 that it actually can handle a 100-year flood?

1 A Well, the size of the facility that we
2 provide is based on the requirement, the performance
3 requirement that we have to meet. So if the
4 performance requirement is raised to 100-year storm,
5 then we would provide a larger facility.

6 Q You would have to provide at that time?

7 A Yeah, so we're not fixed to the 50-year
8 storm.

9 Q But your analysis is based upon what the
10 county is requiring, which is a 50-year flood and for
11 one hour; is that right?

12 A Yes, so the analysis contained in the
13 Engineering Report looks at that 50-year situation.

14 Q So right now the detention system that you
15 have is not designed to handle greater than a 50-year
16 one-hour event?

17 A The analysis presumes a 50-year storm. The
18 factual facility hasn't really been designed yet.
19 It's really just a -- initial sizing was come up to
20 exemplify what size storage capacity we need to
21 capture the 50-year storm.

22 Q That's all the developer is promised is to
23 build for 50-year one-hour storm event at this time?

24 A I don't believe that's a promise. I think
25 the developer will build the facilities that he's

1 required to build.

2 Q But at this time you're not anticipating
3 that the county is requiring a 100-year flood event,
4 right? Because you didn't include it in here, right?

5 A So up to this point, the greatest
6 requirement that has been asked of the developer is
7 to meet the county drainage standard, which criteria
8 for this particular size site is the 50-year one-hour
9 storm.

10 Q Then did you evaluate in your PER what the
11 current capacity, based upon existing developments,
12 and the ones that you know about in the area that
13 would be affected, did you evaluate what is the
14 current capacity of the 102-inch highway culvert, the
15 one that's going to be taking drainageway A and B?

16 A Yes, we did.

17 Q What was your understanding of its capacity
18 to handle the current, plus the cumulative affects
19 that are known to be happening there in the
20 foreseeable future?

21 A We found, in looking at highway culvert and
22 the post-development situation, that the existing
23 culverts are actually a little bit bigger than they
24 need to be.

25 So there is no problem using the existing

1 culverts as a conduit to pass the 100-year flow under
2 the highway.

3 Q So we were hearing testimony yesterday that
4 folks were saying that the -- well, I guess the next
5 question would be is, if you evaluated the culvert,
6 did you evaluate the drainageways themselves and
7 their capacity to handle the water drainageways makai
8 of the culvert?

9 A The drainageways, if you're referring to
10 Kulanihakoi --

11 Q Correct.

12 A -- it is -- we did not analyze it, because
13 it's not specifically on the project. But FEMA has,
14 Federal Emergency Management Agency has analyzed that
15 channel as part of its Flood Insurance Rate Program,
16 and they have found that channel too small for the
17 flow that it would carry in a 100-year storm.

18 Q Is the developer proposing to be a
19 contributor to dealing with that issue under your PER
20 analysis?

21 A No, under the PER analysis there is no --
22 there are no improvements proposed on Kulanihakoi
23 Gulch.

24 Q And then I see the drainageway, the
25 diverted Drainageway A and B, plus the water that

1 will be coming from the new road, the East Ka'ono'ulu
2 Road, that is going to be going through the culvert,
3 and then across an undeveloped property that I
4 believe is owned by the Betsill Brothers, are you
5 familiar with that, the one that's just makai of the
6 highway?

7 A You're describing the correct route, I'm
8 not certain of the current ownership that you
9 mentioned.

10 Q Did you include or evaluate what happens to
11 that water after it passes through?

12 Now, I'm not focused on Kulanihakoi. I'm
13 focused on that portion of the drainageway before it
14 gets to Kulanihakoi. I see it's mauka of a developed
15 area, but it's going across undeveloped land.

16 A No, we did not do an analysis below the
17 highway culverts.

18 CHAIRPERSON ACZON: How many more questions
19 have you got?

20 MR. PIERCE: I'll make it quick.

21 Q Mr. Jordan Hart was talking before about
22 the phases of the development. Will all the
23 detention basins be put in during the first phase?

24 A I believe the detention basins would
25 normally go in with the improvements associated with

1 each phase, so probably first set of basins
2 associated with Phase I would go in with Phase I,
3 Phase II, et cetera.

4 Q Do you have any idea how many 50-year flood
5 events that we've had in the last five years in South
6 Kihei?

7 A Not specific -- not that specifically. In
8 other words, I don't know of the storm events we've
9 had, which would equate to the 50-year storm
10 analysis.

11 Q Were you aware that the prior project, the
12 light industrial park project actually was designed
13 in a more park-like setting to keep more water
14 on-site?

15 A Do I know if that was the case?

16 Q Yes.

17 A I do not know.

18 CHAIRPERSON ACZON: Do you have any more
19 questions?

20 Mr. Pierce, do you have any more followup?

21 MR. PIERCE: No, Mr. Chair.

22 CHAIRPERSON ACZON: Mr. Sakumoto, do you
23 have any more for the witness?

24 MR. SAKUMOTO: No further questions for
25 this witness.

1 CHAIRPERSON ACZON: Thank you, Mr. Unemori.
2 Vice Chair Wong.

3 VICE CHAIR WONG: Mr. Chair, I want to move
4 to go into executive session to consult with the
5 Board's attorney on questions and issues pertaining
6 to the Board's powers, duties, privileges and
7 liabilities regarding this issue.

8 CHAIRPERSON ACZON: Any second?

9 COMMISSIONER OKUDA: Second.

10 CHAIRPERSON ACZON: Moved and seconded to
11 go into executive session. Those in favor say
12 "aye", opposed? Motion carries.

13 (Executive session.)

14 CHAIRPERSON ACZON: We're back on record.
15 Mr. Sakamoto, please continue.

16 MR. SAKUMOTO: Thank you, Mr. Chair. We
17 would like to call Juanita Wolfgramm to the stand.

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

20 THE WITNESS: Yes.

21 CHAIRPERSON ACZON: Please state your name
22 and address for the record.

23 THE WITNESS: Juanita Kanehailua,
24 K-a-n-e-h-a-i-l-u-a, Wolfgramm, W-o-l-f-g-r-a-m-m.

25 CHAIRPERSON ACZON: Please continue.

JUANITA KANEHAILUA WOLFGRAMM

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

DIRECT EXAMINATION

BY MR. SAKUMOTO:

Q I'm going to ask her a series of questions
to qualify her as an expert.

Where do you work?

A SSFM International.

Q What is your position at SSFM
International?

A I am a traffic engineer, and I'm in the
SSFM Strategic Services Group.

Q As a traffic engineer at SSFM, what type of
work do you do?

A I perform transportation corridor studies,
traffic impact analysis studies. I even do -- well,
the traffic impact studies, I do it for either
residential developments, commercial, health care
facilities, schools or even mix use centers.

I also do transportation management plans
and traffic signal designs. But I primarily work on
the traffic impact analysis studies.

Q Could you summarize your post high school

1 education?

2 A I graduated from the University of Hawai'i
3 at Manoa in two degrees. I have a Bachelor of
4 Science in civil and environmental engineering, and
5 Bachelor of Arts in the Hawaiian language.

6 Q To become a traffic engineer, do you first
7 need to be a civil engineer?

8 A Yes.

9 Q With focus in traffic?

10 A Yes.

11 Q Are you licensed as a professional engineer
12 by the State of Hawaii?

13 A Yes. I obtained my civil engineering
14 license in 2014 at the State of Hawaii.

15 Q Can you briefly describe for the Commission
16 the process to obtain a license as a professional
17 engineer in Hawai'i?

18 A Yeah. You need to get your Bachelor's
19 Degree at an accredited college. From there you need
20 to take an engineering and training, or fundamental
21 exam once you get your degree. If you pass, then you
22 need to be supervised under a licensed engineer for
23 four years.

24 Once you do that, you can apply to take
25 your professional engineering exam. You also need to

1 provide verification from your supervisors if the
2 Board of Hawai'i, if they review your application,
3 and they think it's okay, then you can take your
4 test. And if you pass that, then you become a
5 certified -- you become a licensed engineer.

6 Q Are you a member of any professional
7 organizations?

8 A Since 2015 I've been a member of the
9 Institute of Transportation Engineers.

10 Q 2015?

11 A Oh, sorry, 2005, sorry.

12 CHAIRPERSON ACZON: Mr. Sakamoto, for the
13 period of time, if the parties and Commissioners have
14 no objection, how many more expert witness you going
15 to be calling?

16 MR. SAKUMOTO: After Ms. Wolfgramm, two
17 more.

18 CHAIRPERSON ACZON: Can we stipulate for
19 them to be expert witness?

20 MR. SAKUMOTO: We would like to qualify
21 each of them as expert witnesses. Did I
22 misunderstand the question?

23 CHAIRPERSON ACZON: Can we stipulate that
24 the three will be expert witnesses?

25 MR. SAKUMOTO: Certainly.

1 CHAIRPERSON ACZON: Just tell me what area
2 they going to be.

3 MR. SAKUMOTO: That's fine with me.

4 CHAIRPERSON ACZON: Parties?

5 MR. PIERCE: Mr. Chair, on behalf of
6 Intervenor, I have no problems with us taking it one
7 at a time, and for purposes of this witness, no
8 objection stipulating for her being an expert.

9 CHAIRPERSON ACZON: OP?

10 MS. APUNA: No objection.

11 MR. HOPPER: No objection.

12 MR. TABATA: No objection.

13 CHAIRPERSON ACZON: Commissioners? If
14 there is no objection, just stipulate that all
15 remaining witnesses will be expert.

16 COMMISSIONER CHANG: I think Intervenor was
17 just stipulating one at a time.

18 MR. PIERCE: I'll try to do it very
19 quickly. I just want to know who the testifier is a
20 little bit more. I'm sorry, I don't quite have that.
21 We're okay with this witness right now.

22 CHAIRPERSON ACZON: We just kind of bring
23 in the witness, and have Mr. Sakumoto identify what
24 kind of expertise they have rather than go through
25 all those things. Is that okay?

1 MR. PIERCE: I anticipate we will have no
2 problem with it, but I would like for there to be an
3 offer of who the witness is beforehand. I'm
4 certainly fine with that.

5 CHAIRPERSON ACZON: We just did that.
6 Let's try it again.

7 MR. SAKUMOTO: The witnesses after Ms.
8 Wolfgramm are Eric Fredrickson, and he will be an
9 expert in archaeology. Mr. Tom Holliday, an expert
10 in economic impact analysis and market studies.

11 CHAIRPERSON ACZON: Is that okay?

12 MR. PIERCE: Okay, no objection on those.

13 CHAIRPERSON ACZON: Any other objections?

14 MR. TABATA: No objection.

15 CHAIRPERSON ACZON: Commissioners? Thank
16 you. Please proceed.

17 MR. SAKUMOTO: Thank you, Mr. Chair.

18 There will be six slides associated with
19 Ms. Wolfgramm's testimony. They're the six slides
20 next in order in your packet, starting with the one
21 titled "traffic".

22 BY MR. SAKUMOTO:

23 Q Are you familiar with the Phillip Rowell
24 and Associates' TIAR dated June 6, 2014, attached as
25 appendix to the Draft EIS?

1 A Yes.

2 Q When SSFM was initially contacted by the
3 Applicant, what was the status of the Phillip Rowel
4 TIAR?

5 A Phillip Rowell provided his TIAR to the
6 State Department of Transportation for their review
7 and their comments.

8 DOT provided their comments, but Mr. Rowell
9 wasn't able to address their comments because he was
10 unable to, because he was sick.

11 Q So SSFM was asked to complete the work
12 needed to have the TIAR accepted by the DOT?

13 A Yes.

14 Q Were there any particular aspects of the
15 Phillip Rowell TIAR that SSFM believed required
16 updating, given the time that had elapsed between the
17 draft of Mr. Rowell's report from 2014 and the time
18 of SSFM's engagement?

19 A Yes. The comments received from DOT needed
20 to be addressed. And then because of the passage of
21 time, we felt that we -- that traffic counts needed
22 to be updated; new real estate developments in the
23 surrounding area needed to be taken into account; and
24 that DOT'S latest background model for Maui, the Maui
25 Long Range Land Transportation Plan needed to be

1 incorporated.

2 There is a figure up there, and it shows
3 six of the ten intersections that we studied.
4 They're the same ten intersections that Phillip
5 Rowell studied, so we took additional counts there in
6 2016 and then -- yeah.

7 Q Were you here yesterday to hear the
8 testimony, and today as well?

9 A Yes, I was.

10 Q And there were several comments that were
11 made regarding projects that were supposedly not
12 taken into account in your study.

13 Did you, in fact, take into account other
14 projects as part of your study?

15 A Yes. The next slide.

16 So the Figure 3 shows the development in
17 the nearby areas that we took into account, and these
18 include Kaiwahine Village up north. And then there's
19 Maui Lu Resort, Kihei High School, Kihei Residential,
20 Downtown Kihei, that's across development off of
21 Pi'ikea Avenue.

22 We also included Honua'ula off-site
23 affordable housing, and the Maui Research and
24 Technology Park. Also included was Wailea and
25 Makena, the resort, and that was included because --

1 I don't know if I'm getting too technical here, I
2 might be babbling. I apologize.

3 In the Maui Long Range Transportation Plan
4 they take in all these forecasts for developments,
5 and that -- Wailea and Makena were included in that,
6 and so we accounted for those developments that are
7 coming up, yeah.

8 Q Both the Phillip Rowell TIAR and the SSFM
9 Supplemental TIAR used the term LOS.

10 What does LOS mean?

11 A LOS is abbreviation for level of service.
12 In general LOS is summarized in seconds of delay. It
13 is an operational analysis rating system using
14 traffic engineering to measure the effectiveness of
15 vehicular roadway operating conditions.

16 Up there is a table showing the level of
17 service and the delay for each letter. So there's
18 six LOS, ranging from A to F.

19 A is defined as being the least interrupted
20 flow conditions with little or no delay.

21 LOS F is defined as conditions where
22 extreme delays exist. The delay for LOS F is more
23 than 80 seconds at a signalized intersection, and
24 more than 50 seconds at an unsignalized intersection
25 or intersection that's controlled by a stop sign.

1 Q Your Supplemental TIAR indicates that the
2 AASHTO's guidelines from a policy on geometric design
3 of highways and streets, states that the appropriate
4 LOS for an urban arterial or collector is LOS D or
5 better; is that correct?

6 A Yes, that's correct. That's a guideline
7 that is nationally used.

8 Q Do these guidelines provide a definition of
9 LOS D?

10 A No, the definition can be found in the
11 Highway Capacity Manual.

12 Q How does the Highway Capacity Manual define
13 LOS D?

14 A Signalized intersection, if you look up at
15 that table, LOS D is 35 seconds to 55 seconds. And
16 then at a stop-sign controlled intersection, it's
17 25 seconds to 35.

18 Did I just say that? Is that right? Okay.

19 Q Is Pi'ilani Highway an urban arterial?

20 A Yes, it is. And that's the classification
21 from the State Federal Aid System.

22 Q The Supplemental TIAR uses two different
23 future points in time: 2025 and 2032; is that
24 correct?

25 A Yes.

1 Q And what do these two years represent?

2 A 2025 is the year that the project is
3 anticipated to be 50 percent complete; and 2032 is
4 when it's 100 percent complete.

5 Q Would you summarize for the Commission in
6 lay terms what the anticipated LOS will be for the
7 project in 2032?

8 A Okay. The analysis indicated that in 2032
9 with the project, as well as all the other
10 developments that we accounted for, the intersections
11 that Ohukai, at Pi'ikea Avenue, and Kaonoulu Street
12 resulted in LOS F during the p.m. peak hour.

13 It also resulted in LOS F at Kaonoulu
14 Street during weekend peak hour. The a.m. peak hour
15 resulted in LOS E -- you know, it's approaching F,
16 but it's not there yet -- at the intersection of
17 Kulanihakoi Street, at Ohukai Street and Pi'ikea
18 Avenue.

19 LOS E also resulted in the weekend peak
20 hour at the intersection of Ohukai Street.

21 The four other signalized intersections
22 were all at LOS D or better during all three peak
23 hours that we analyzed.

24 Q Does the Highway Capacity Manual provide
25 suggested mitigation measures when they are

1 anticipated delays in traffic?

2 A No. The Highway Capacity Manual does not
3 provide suggested mitigation measures. The
4 professional practice is to look at ways to add
5 capacity to mitigate the anticipated delays in
6 traffic.

7 This can be done by adding lanes, such as a
8 turn lane or a through lane, or adjusting the signal
9 timing, whether increasing the cycle length, or the
10 green time for an approach, or even modifying the
11 phasing, whether it can be split phase, where you
12 have one street go at one time and then another
13 street go at another time, or you give it green hours
14 for like the left-turn lanes.

15 The synchro model that we used is designed
16 to do this, and we can adjust these type of factors
17 and see how it effects the operation at the
18 intersection. The Signal Traffic Software is
19 accepted by DOT as an appropriate tool to use to
20 determine the intersection operations.

21 Q Does the SSFM Supplemental TIAR
22 incorporates these types of practical mitigation
23 measures?

24 A Yes, it does.

25 Improvements at the intersection at

1 Pi'ilani Highway and Kaonoulu Street include adding a
2 traffic signal. It will also be extending Kaonoulu
3 Street mauka of Pi'ilani Highway. And the layout of
4 the lanes will be changed. So southbound, that's
5 going towards Wailea, you'll get two left-turn lanes,
6 two through lanes, and one right-turn Lane.

7 North bound for Kahului, we are going to
8 have one left-turn lane, two through lanes, and a
9 right-turn lane. West bound, or makai, we will have
10 two left-turn lanes, one through lane, and one
11 right-turn lane, with an acceleration lane.

12 And eastbound or mauka approach, you're
13 heading mauka, they'll have a left-turn lane, a
14 through lane, and a right-turn lane.

15 And there's also plans to construct the
16 shared use and pedestrian and bicycle path along the
17 mauka side of Pi'ilani Highway, as well as within the
18 project site.

19 And the results indicated that future
20 roadway capacity will be needed on Pi'ilani Highway.

21 Q Has the State Department of Transportation
22 reviewed the SSFM Supplemental TIAR, and have you
23 been interacting with them?

24 A Yes. We have a good working relationship
25 and dialogue with DOT for this project. Initially,

1 we met with DOT to clarify their comments on Phillip
2 Rowell's TIAR, and we provided our direction forward
3 to complete the Supplemental TIAR.

4 We continued discussions back and forth,
5 whether they were through face-to-face meetings, or
6 emails or phone calls, to ensure that the TIAR we did
7 addressed their comments.

8 We sent a copy of the Supplemental TIAR to
9 DOT in December 2016, which incorporated all of DOT'S
10 comments.

11 More recently DOT asked to test various
12 scenarios at the intersection of Pi'ilani Highway and
13 Kaonoulu Street to see if we could increase the
14 capacity, and how it would impact the operations.

15 We did this using a synchro model and
16 provided the results for the requested scenarios to
17 DOT. Through this collaboration we were able to
18 assist DOT with any concerns they may have, and we
19 are always open to have continued coordination with
20 DOT.

21 MR. SAKUMOTO: Thank you, Mr. Chair, I have
22 no further questions.

23 CHAIRPERSON ACZON: Questions?

24 MS. APUNA: No questions.

25 MR. HOPPER: No.

1 CHAIRPERSON ACZON: Mr. Pierce?

2 MR. PIERCE: Yes.

3 CROSS-EXAMINATION

4 BY MR. PIERCE:

5 Q The bubble concept that is on the screen
6 right now, and that's also part of -- is that part of
7 the TIAR, do you know?

8 I don't know what page this is of the
9 screen that's up there?

10 A I don't know what page this is that's up on
11 the screen right now.

12 I mean the Conceptual Plan, we put that in
13 our TIAR.

14 Q Does it include the annotations, the
15 colored annotations that talk about where
16 identifying, for example, number one says: Construct
17 East Kaonoulu Street extension.

18 A We discussed that in the TIAR.

19 Q So this is a diagram that's in there or a
20 figure, do you know?

21 A No.

22 We did that just to kind of maybe assist in
23 what the improvements are just so it's a little bit
24 visually, you know, a little bit better.

25 Q So with respect to number 3, Install Bike

1 Lane on Pi'ilani Highway.

2 Do you know what width of that bike lane
3 is?

4 A We would need to work with DOT to see what
5 width we would use after we do the construction
6 plans, but it should be like about 5-6 feet.

7 Q Have you personally been out to the site?

8 A Uh-huh.

9 Q Are you familiar with the width that's
10 there currently?

11 A Of just the bike lane?

12 Q Right.

13 A No. Is it on the shoulder though?

14 Q Actually maybe should not even be called a
15 bike lane, it's a shoulder.

16 I know, because -- and you know the traffic
17 speeds that are along in there, right?

18 A Yeah.

19 Q Do you know if this is going to be a
20 separate corridor where it will actually be separated
21 from the traffic?

22 A That's something we've got to work out with
23 DOT. Usually the bike lanes are adjacent to the
24 travel-way.

25 Q Has the developer told you what their

1 commitment is in terms of making sure it's truly a
2 safe and appropriate bikeway?

3 A You know, with our coordination with DOT,
4 they will make sure it's a safe bike lane.

5 Q But that would be -- I guess DOT approved
6 the current one, which bicyclers would find fairly
7 unsafe because of the speed of the traffic that's
8 going along there.

9 A Sure.

10 Q But is it your understanding then that the
11 developer is making a commitment to fund whatever is
12 necessary to make an appropriate bikeway there, or
13 would that be out of your --

14 A You can ask the developer what they
15 committed to.

16 Q Is there a reason why the specific location
17 of the intersections is not identified?

18 A What do you mean?

19 Q Right here, what I see are just generalized
20 locations. I don't see that we know exactly where on
21 Kaonoulu Street where the intersections will actually
22 be going in and out of the development?

23 A Oh, like the drive A, B, C and D?

24 Q Right.

25 A That was mentioned in the initial TIAR.

1 Q Can you explain to us, is it known where
2 those are going to be currently?

3 A I'm not sure.

4 Q That would effect traffic flow in terms of
5 their location though, right? In terms of how much
6 back-up traffic you can have, that kind of thing?

7 A It could.

8 Q And then I think I heard you say that the
9 developer asked you to assume that 50 percent of the
10 project would be complete by 2025.

11 A Yeah, about that.

12 Q And then you used -- your other assumption
13 was that the Pi'ilani project would be complete by
14 2032?

15 A Right.

16 Q Do you have -- within that, what was your
17 assumption with respect to the Honua'ula parcel, when
18 it would be complete?

19 A We assumed it would be finished in 2025.

20 Q And then what is page 41 of the TIAR, there
21 is a discussion of the phase project related trip
22 generation volumes.

23 A Uh-huh.

24 Q And so there's a -- at the left-hand bar
25 says, commercial/light industrial/apartment. Are

1 those each different scenarios, or is that what is
2 actually planned?

3 A That's our best guess of what was going to
4 be planned. Commercial, we assumed it was a shopping
5 center, because we didn't get more detail, we did our
6 best guess of what it would be. So for the
7 commercial, we used the shopping center land use that
8 is provided in the ICE Trip Generation Manual. And
9 from that manual they provide different rates, based
10 off of different square footage of a shopping center,
11 or the acres of a light industrial use place.

12 Q So the bracketed number that's underneath
13 commercial, it says A20. What does that mean?

14 A That's the land use that we use. That was
15 our assumption.

16 Q So with respect to commercial, what was the
17 size of the -- how did you actually apportion that?
18 What is the apportionment between commercial and
19 light industrial? Are you basing that on the size of
20 the development or on the number of -- I guess that
21 would be the question.

22 In terms of commercial, what amount of
23 commercial were you assuming was being placed on
24 within the Pi'ilani parcels?

25 A We assumed 530,000 square feet, and then

1 five acres light industrial.

2 Q I'm sorry, for the light industrial?

3 A Five acres.

4 Q For the apartment, of course, that's going
5 to be the size that they have actually specified?

6 A 226.

7 Q So if the 530,000 square feet of commercial
8 changes, and goes up, does that change the value of
9 the estimates that are in Table 15 on page 41?

10 A It was my assumption that 530,000 square
11 feet is the max that it would be, so it's really --
12 it shouldn't be going up.

13 Q It's my understanding the developer hasn't
14 made a representation as to what the maximum
15 commercial is going to be, so assuming that for a
16 moment. If I'm wrong, I apologize.

17 So assuming for the moment the developer
18 has not committed to a maximum of 530,000 square
19 feet, if it does go, then the value of the trip
20 generation numbers here goes down in terms of how
21 much we can rely upon it.

22 Would that be a fair assumption?

23 A Wait you're, saying if it's higher than --

24 Q Let me state that a different way.

25 We cannot rely upon the information except

1 for the hypothetical that you've given, right,
2 530,000 square feet of commercial, and five acres of
3 light industrial?

4 A Yes.

5 Q So if they change that, and make it, for
6 example, 100 percent commercial, that would change
7 the trip generation. Would that be safe to say?

8 A Yeah.

9 Q Are the trip generations more intensive for
10 commercial than they are for light industrial under
11 the models that you use?

12 A Yes.

13 Q Do you have an estimate of how much more
14 intense they are?

15 A I can't give you a percentage rate, but it
16 is higher. A shopping center, you got a lot more
17 people going there rather than light industrial.

18 Q And then I noticed that you're identifying
19 for the -- there is 226 apartments or units that are
20 assumed for the apartment use; is that right?

21 A Uh-huh.

22 Q So for that, what you are assuming for the
23 trip generation is 114 in the morning total, and
24 142 in the afternoon?

25 A Yes, during the peak hours.

1 Q Okay, during the peak hours.

2 Can you explain to us how that works in
3 terms of the model, because at least in my mind I'm
4 thinking that I understand there's going to be one,
5 two, and three bedroom apartments. And I think a lot
6 of us know that in many cases there are more than two
7 workers in one of those apartments.

8 So how is it that you end up with only less
9 than, well, roughly half of the trip generation of
10 the actual units. How does your model cause that to
11 happen?

12 A Okay, so --

13 Q Or can you explain the assumptions that
14 cause it to be like that?

15 A When we do these trip generation rates, we
16 don't just say there's 226 units, and there is two
17 cars, and so what would that be? 400 something,
18 right?

19 What we do is we look at the peak hour, and
20 we get these rates of trip generation from this
21 manual, this handbook. They've done studies
22 nationwide of different areas, of different type of
23 land uses for the peak hour, based off of the size of
24 the property.

25 And after you get a bunch of those, they

1 kind of create an equation. And from there we take
2 those equations, we put in the number of units for an
3 apartment. And from there that's how we get our trip
4 generation rate.

5 So although it may look like we're not
6 accounting for all 226, we're basing off this manual
7 that has gone through, it's on its 8th or 9th edition
8 right now that has been going through a lot of -- a
9 lot of studies are coming in. And we're not just --
10 I'm not sure what I'm trying to say to you. That's
11 it.

12 Q I think understand that.

13 So the peak hour in this instance for the
14 morning is what time?

15 A About 7:15, 8:15-ish.

16 Q Is that designed by you or is that designed
17 by the model?

18 A No. That's based off of taking traffic
19 counts during the morning and in the afternoon.

20 Q And truly identifying what the peak hour in
21 that particular neighborhood?

22 A Right, at the intersection, that is we're
23 looking at.

24 Q No further questions, Mr. Chair.

25 CHAIRPERSON ACZON: Let's take a

1 five-minute recess.

2 (Recess taken.)

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

5 Commissioners, any questions? Vice Chair
6 Scheuer.

7 VICE CHAIR SCHEUER: Aloha.

8 I just want to make sure I understand the
9 TIAR. Based on the conclusion of the TIAR in the
10 summary on page 58.

11 The project, or the conditions with the
12 project, with the proposed mitigations, will result
13 in level of service F for certain intersections.

14 THE WITNESS: It will.

15 VICE CHAIR SCHEUER: And it identifies that
16 there might be other actions taken by other parties
17 that could improve, but doesn't specify what those
18 are.

19 THE WITNESS: They're the same as saying
20 that additional roadway capacity is needed.

21 There is some discussion about the
22 north/south collector road. That's between South
23 Kihei Road and Pi'ilani Highway.

24 You know I didn't really --

25 VICE CHAIR SCHEUER: But there's no

1 analysis there, because those are still conceptual?

2 THE WITNESS: Right.

3 VICE CHAIR SCHEUER: I just wanted to
4 clarify. Your description at the beginning of the
5 TIAR for the project I believe uses a figure of
6 68 acres of land total.

7 THE WITNESS: Oh, yeah.

8 VICE CHAIR SCHEUER: How big is the
9 project, how many acres?

10 THE WITNESS: Okay, I know there's 80
11 but --

12 VICE CHAIR SCHEUER: There's 88 acres of
13 petition area. Is your study totally for Pi'ilani
14 Promenade, or is it for Pi'ilani Promenade plus the
15 housing project that's Honua'ula Partners?

16 THE WITNESS: Okay, so this TIAR is for
17 Pi'ilani Promenade. I hope it's the 68 acres.

18 VICE CHAIR SCHEUER: I think it's not
19 exactly 68 acres.

20 THE WITNESS: My bad. But we do
21 incorporate Honua'ula affordable housing within our
22 TIAR. So the traffic that's generated by that
23 development, it's analyzed in there.

24 VICE CHAIR SCHEUER: I'm sorry, one more
25 time.

1 THE WITNESS: Okay, what are your concerns?

2 VICE CHAIR SCHEUER: My question, is the
3 TIAR based on the entire 88 acres, or just on
4 Pi'ilani Promenade?

5 THE WITNESS: In my mind, it's -- I'm just
6 looking at Pi'ilani Promenade. That's the project
7 I'm primarily focusing on. Yeah.

8 MR. SAKUMOTO: Is your question does the
9 analysis assume both projects being developed at the
10 same time, or you know, so the cumulative impacts
11 would have to be addressed in the same document? I
12 think she said yes to that.

13 Or is the question, does her study area
14 include all 88 acres?

15 I think that's what's been sort of a point
16 of confusion in several of the different reports
17 where the question was: Did you take into account
18 the Honua'ula Partners property? Because you can
19 take it into account as a cumulative impact, assuming
20 you know, the development of it.

21 Or, for example, if you do a study of
22 something dealing with flora or fauna, you would
23 actually study the ground itself and take that into
24 account.

25 So I think, you know, that concept has been

1 used in different fashions throughout this
2 proceeding. So maybe that's the source of the
3 confusion for the question you just asked.

4 I just want to make sure she answers your
5 question.

6 VICE CHAIR SCHEUER: She's doing fine,
7 thank you. I'll get back to that.

8 COMMISSIONER OHIGASHI: So I was just
9 looking at your diagram on, I guess that would be
10 Figure 7 surrounding area development, right? And in
11 that figure it shows Honua'ula affordable units as
12 being in the surrounding area development; is that
13 right?

14 THE WITNESS: Yeah.

15 COMMISSIONER OHIGASHI: I think you
16 testified you believe the build-out would be 2025.
17 You use that figure to determine what would be the
18 traffic count coming from the Honua'ula affordable
19 units?

20 THE WITNESS: I included Honua'ula. I
21 assumed Honua'ula would be pau in 2025.

22 COMMISSIONER OHIGASHI: And so, therefore,
23 you treated, in your traffic TIAR, you treated the
24 Honua'ula project as -- what is it -- contiguous as a
25 property that has to be reviewed for the purposes of

1 determining traffic counts in the area?

2 THE WITNESS: Right.

3 COMMISSIONER OHIGASHI: And it is
4 especially important, because it's contiguous to the
5 site, is that right?

6 THE WITNESS: Right.

7 COMMISSIONER OHIGASHI: And that's why you
8 used it, because it was primarily important in
9 determining what would be the traffic count out of
10 that area?

11 THE WITNESS: Right.

12 CHAIRPERSON ACZON: Anybody else?

13 COMMISSIONER OKUDA: Did you present any
14 opinion about what the comparison in traffic impact
15 would be if no action was taken?

16 In other words, only light industrial would
17 be on the property, or there would be no change or
18 amendment to the prior Land Use Commission order?

19 In other words, there wouldn't be this
20 retail development?

21 THE WITNESS: No, I only looked at whatever
22 I put in here. I didn't look at a separate analysis,
23 just looking at light industrial itself.

24 COMMISSIONER OKUDA: So your study wouldn't
25 give us information on the, no -- what's called "no

1 action alternative", correct?

2 THE WITNESS: Correct.

3 COMMISSIONER OKUDA: Thank you.

4 CHAIRPERSON ACZON: Anybody else? Mr.
5 Sakamoto, follow up?

6 MR. SAKUMOTO: No further questions, thank
7 you.

8 CHAIRPERSON ACZON: You done with the
9 witness?

10 MR. SAKUMOTO: Yes.

11 MS. CATALDO: Mr. Fredrickson has a back an
12 injury. You might have noticed him standing for the
13 last two days in the back of the room. He's going to
14 do his best to sit through, and I'm going to do my
15 best to go quickly.

16 CHAIRPERSON ACZON: You can stand up.

17 THE WITNESS: If I need to, I will.

18 CHAIRPERSON ACZON: May I swear you in
19 first?

20 Do you swear that the testimony that you're
21 about to give is the truth?

22 THE WITNESS: Yes.

23 CHAIRPERSON ACZON: Please state your name
24 and address for the record.

25 THE WITNESS: Eric Mayland (phonetic)

1 Fredrickson, 29 Ulana Street, Makawao.

2 ERIC FREDRICKSON

3 Was called as a witness by and on behalf of the
4 Petitioner, was sworn to tell the truth, was examined
5 and testified as follows:

6 DIRECT EXAMINATION

7 BY MS. CATALDO:

8 Q Mr. Fredrickson, based on the stipulation
9 of the parties, you're testifying as an expert in the
10 field of archaeology.

11 Did you prepare the 2014-15 AIS that's
12 appended to the FEIS?

13 A Yes.

14 Q And prior to your preparation of that AIS,
15 did you prepare an AIS in 1994?

16 A Yes. That was the original inventory
17 survey for Ka'ono'ulu Ranch.

18 Q I'm going to ask that we put up Slide 30.
19 Can you see that, Mr. Fredrickson?

20 A Yes.

21 Q Is that a map of the subject property?

22 A Yes. It does not show the off-site project
23 area because there were no sites on that portion.

24 Q And scattered throughout the project site
25 there are a series of numbers. Do you see that?

1 A Yes.

2 Q And do those numbers reflect sites that
3 were located in the 1994 or 2015 and 15 AIS?

4 A Yes.

5 Q And what does it mean to identify a place
6 as a site?

7 A When you conduct an archaeological
8 inventory survey, you conduct a pedestrian survey
9 first to see if anything shows up. And once surface
10 features are identified, then you go back and you
11 document them.

12 Sometimes that includes clearing an area,
13 includes mapping. It can include testing, subsurface
14 testing to see if any subsurface components are there
15 as well.

16 Q Now, if we look at Slide 31, is that a
17 table listing the sites you've identified?

18 A This table is from the 2015 Inventory
19 Survey Report, yes.

20 Q What is cairn, stone cairn?

21 A It's almost a conical pile of rocks.

22 Q The fact that a site is listed, does that
23 indicate that it is precontact?

24 A On the table?

25 Q In your AIS.

1 A Any site over 50 years old, anything that's
2 over 50 years old, so that would include me, is
3 considered historically significant.

4 Q We should all be so lucky.

5 Based on your experience, can you describe
6 the level of archaeological investigation on this
7 project site?

8 A This property has been covered quite
9 intensively over the course of 1999 and then 2014 and
10 2015.

11 Q You mentioned 1999 --

12 A Excuse me, 1994.

13 Q The AIS that you prepared in 1994 was
14 submitted and approved by the State Historic
15 Preservation?

16 A Yes.

17 Q And was that true also for the 2015 AIS?

18 A Yes.

19 Q Can you, going back to Slide 30, can you
20 tell from where you're sitting, which of the sites
21 are in red and which are in black?

22 A I can't see that far.

23 Q Because your historically significant?

24 A Yeah.

25 I have a table here. Thank you, I'll have

1 to put my glasses on for that one. Would you like me
2 to list them?

3 Q No.

4 What is the significance of listing some
5 sites in red?

6 A Of the 18 sites that are depicted on the
7 figure up there, 12 on that figure are in red. And
8 the red denotes the sites that will undergo data
9 recovery, and the State Historic Preservation
10 concurred with that mitigation.

11 Q What is data recovery?

12 A Data recovery is the most intensive form of
13 archaeological investigation that is available in the
14 process of identifying sites. And then if further
15 work is warranted, then that would be the next step
16 after an archaeological inventory survey has been
17 accepted by the State Historic Preservation Division,
18 and assuming that they concur with that form of
19 mitigation.

20 Q How did you determine which sites would be
21 determined for data recovery?

22 A Some of it was based upon the site type,
23 and some of it was based upon the community interest
24 in some of the sites. So it was an effort to get as
25 much additional information on a particular site.

1 Q How many sites did you designate for data
2 recovery based on community input?

3 A Well, there were -- of the 12 sites that
4 were in the report, that were recommended for data
5 recovery, the stone cairns that were recommended for
6 data recovery, those were added in, because of the
7 community interest. The enclosures and the surface
8 scatters were put in there in an effort to get
9 additional information on them.

10 Q Have you designated one additional site for
11 data recovery after submission of your 2015 AIS to
12 SHPD?

13 A Yes. The gully that has been the focus of
14 much community interest during the proceedings
15 contains a site 3740. And it's a long site, and
16 there's components on either side of the gully. And
17 that has been added to the data recovery, proposed
18 data recovery.

19 And that was at the developer's request,
20 given the interaction that the developer's
21 representatives had with the interest to community
22 members.

23 Q Is data recovery a form of mitigation?

24 A Yes.

25 Q Will any other mitigation be applied to the

1 project site as it relates to the archaeology?

2 A Yes. The data recovery process is a very
3 lengthy process. And there will be a lot of
4 additional information gathered and testing done,
5 mapping done.

6 Once that has been completed, the State
7 Historic Preservation Division will basically review
8 the amount of effort that's been put in. And
9 assuming that the state at that point concurs that
10 the data recovery field work has been adequate, then
11 the data recovery report would be prepared, and then
12 the state would review that.

13 Following that review, if any site is
14 deemed for preservation as a result of, say, the data
15 recovery process, a preservation plan would be
16 prepared. That would be reviewed by the state,
17 interested parties, could comment. And then that
18 plan would be in place.

19 Following all of those steps, then an
20 archaeological monitoring plan would be prepared.
21 That gets reviewed by the State Historic Preservation
22 Division.

23 Following that, at that point then
24 earth-moving activities could move forward.

25 But the process is -- I mean it's not over.

1 And some folks felt that, and that isn't the case.
2 There's an awful lot more archaeology that has to
3 occur on this project.

4 Q And when the earth moving begins, that
5 would be subject to an archaeological monitoring
6 plan?

7 A Yes. There would be a plan in place that
8 could only occur when there is an approved SHPD
9 accepted plan in place. And then, and only then,
10 could an archaeological monitoring actually occur.

11 Q If there was evidence of subsurface
12 cultural resources, would you anticipate that those
13 would be identified, either during data recovery, or
14 during the monitoring with the earth moving?

15 A Yes, those two approaches allow for the
16 maximum amount of information.

17 Also if something -- I think it was Basil
18 Oshiro had voiced concerns about what happens when
19 construction occurs. That's what the monitoring is
20 for. If anything turns up at that point, there's
21 archaeological monitors on ground, and they're there
22 for that reason.

23 Q Mr. Frederickson, did you identify any iwi
24 on the project site?

25 A Human, no.

1 Q Based on the topography and the type of
2 land that is the project site, would you expect to
3 find iwi?

4 A The challenge of this property is -- I
5 shouldn't say challenge -- but this property it's
6 very shallow soil deposit. It's very shallow.

7 So in most places, if someone had interred
8 human remains, iwi, there would need to be something
9 over them like a stone pile or something, because
10 there's really no soil to inter remains.

11 Q And you found no evidence of such piles or
12 human iwi?

13 A No. The piles -- there's some rock piles
14 that are noted that were investigated in the report.
15 And those, the interpreted function, those are
16 agriculture, potential agriculture clear piles.
17 They're real small rocks.

18 Typically when Hawaiians, if they did put a
19 rock on top of a burial, they used larger rocks, not
20 lots of real small ones.

21 Q As a result of your interaction with
22 community members, were you asked to identify
23 something referred as an "eclipse rock" or "eclipse
24 stone" as an archaeological site?

25 A I went on a field visit, and that

1 terminology was used by one of the -- by a few of the
2 community members. And I did see the boulder. But
3 there was no -- I have no archaeological basis to say
4 that is what it is.

5 Q Other than the boulder, were you asked to
6 identify any other features as archaeological sites
7 in your AIS by community members?

8 A There was a, my recollection, a ring of
9 boulders, semi-circular ring of boulders. And,
10 again, no archaeological basis.

11 Q To designate them --

12 A As a site. In respect to that feature,
13 there were heavy equipment scars that were, I believe
14 each of the boulders, and I don't know where the
15 boulders originated from, but they clearly -- there
16 had been some level of disturbance, mechanical
17 disturbance in the past.

18 Q Thank you, Mr. Fredrickson.

19 CHAIRPERSON ACZON: Any questions, Ms.
20 Apuna?

21 MS. APUNA: No questions.

22 CHAIRPERSON ACZON: Mr. Hopper?

23 MR. HOPPER: No, Mr. Chair.

24 CHAIRPERSON ACZON: Mr. Pierce? Mr.
25 Tabata?

1 MR. TABATA: No questions.

2 CHAIRPERSON ACZON: Commissioners? Vice
3 Chair Scheuer.

4 VICE CHAIR SCHEUER: Aloha. I want to
5 follow-up on one of the questions you were asked by
6 counsel.

7 When you were told that litigation, or
8 whether data recovery is a form of mitigation, and
9 you were asked and you said yes.

10 In what sense is it a form of mitigation?

11 THE WITNESS: The sites that have been
12 identified on the property are -- and the state has
13 concurred with these interpretations -- are
14 considered significant for their information content.

15 And in order to mitigate a site, if it
16 meets a bar where it's important enough to do
17 additional investigation, that's when data recovery
18 would come in as a form of mitigation, additional
19 information?

20 VICE CHAIR SCHEUER: Data recovery results
21 in the destruction of sites?

22 THE WITNESS: It can, not always, but it
23 can.

24 (Commissioner Estes leaves.)

25 VICE CHAIR SCHEUER: In this case?

1 THE WITNESS: We haven't done the work yet,
2 so I don't know. Potentially I would I imagine some
3 would be.

4 VICE CHAIR SCHEUER: You're familiar with
5 the requirements of Ka Pa'akai O Ka 'Aina?

6 THE WITNESS: (Witness nods head up and
7 down.)

8 VICE CHAIR SCHEUER: And that requires the
9 Land Use Commission to identify valued natural and
10 cultural resources in an area to the extent to which
11 there are practices associated with it, and what
12 actions can be taken. What effect might happen from
13 the project, and what action can be taken to protect
14 practices, if possible.

15 We had witnesses, our public testifiers
16 testify as to their cultural value of some of these
17 sites to them. If they are eliminated, if those,
18 through data recovery, it will be difficult for those
19 practices to continue? It's a question.

20 THE WITNESS: Yes.

21 VICE CHAIR SCHEUER: So data recovery is
22 not a mitigation in relationship to our Ka Pa'akai
23 duties, correct?

24 THE WITNESS: My understanding is that the
25 developer has agreed to preserve some of those sites

1 that the community members had voiced concerns about.

2 VICE CHAIR SCHEUER: Do you know if they
3 are all of the sites?

4 THE WITNESS: No, not offhand.

5 VICE CHAIR SCHEUER: Do you know of any map
6 that you've been asked to help develop in
7 relationship to the conceptual diagram for the
8 project?

9 THE WITNESS: Not at this juncture.

10 VICE CHAIR SCHEUER: Or this preservation
11 might protect those sites?

12 THE WITNESS: Not at this juncture.

13 VICE CHAIR SCHEUER: Thank you very much.

14 CHAIRPERSON ACZON: Commissioners?
15 Anybody?

16 COMMISSIONER CHANG: I just have a few
17 questions. Please feel free to stand up. I won't be
18 offended by it.

19 And I've known Eric for awhile. Thank you
20 for being here and waiting so patiently.

21 I'm going to walk us through a series of
22 questions as I'm trying to understand the
23 Archaeological Inventory Survey that was done for
24 this site to determine whether, once the AIS and CIA
25 are adequate.

1 The area's impact, as I understand it, is
2 approximately 101 acres, and that included both the
3 Pi'ilani Promenade, and it included the off-site
4 areas, and it included the proposed Honua'ula
5 affordable housing.

6 THE WITNESS: Correct.

7 COMMISSIONER CHANG: Within that 100 acres
8 -- rather than me making an assumption. What was
9 your trenching strategy for the archaeological
10 inventory survey when you initially did it in 1994?

11 THE WITNESS: There wasn't a trenching
12 strategy, because the soil is very, very shallow.

13 But the initial step we took was surface
14 walk over the project area.

15 COMMISSIONER CHANG: You did 100 percent
16 pedestrian walk?

17 THE WITNESS: Yes.

18 COMMISSIONER CHANG: How many trenches did
19 you do?

20 THE WITNESS: Well, we did excavation
21 units.

22 COMMISSIONER CHANG: How many excavation
23 units?

24 THE WITNESS: Off the top of my head, I
25 don't know.

1 COMMISSIONER CHANG: 20?

2 THE WITNESS: I don't think that many.

3 COMMISSIONER CHANG: Out of 100 acres,
4 20 -- so one trench pit for five acres?

5 THE WITNESS: Only where sites were
6 located, we tested those sites. Much of the property
7 is -- there's sheet erosion that occurs, and it's
8 pretty much down to what's called "parent material".
9 There's nothing much left. The topsoil has been
10 washed away.

11 COMMISSIONER CHANG: So the excavation was
12 in areas where there was some subsurface indication
13 of a --

14 THE WITNESS: Surface indication.

15 COMMISSIONER CHANG: Surface indication.

16 So not the entire area. There wasn't -- in
17 a lot of instances there'll be a strategy, like so
18 many per acre looking at -- but in this case, you
19 first did the pedestrian surveys, identified surface
20 features. Then based upon that, then you did some
21 trenching?

22 THE WITNESS: Not trenching, hand
23 excavation. When trenching is mentioned, that's a
24 mechanical trenching. The soil is typically less
25 than four inches.

1 COMMISSIONER CHANG: So that's about the
2 depth that you went, maybe four inches?

3 THE WITNESS: In much of the property.
4 Some of the areas where these sites were, they were
5 located in areas where there happened to be some more
6 soil. So that's -- we put test units in when we were
7 able to actually have something to excavate into.

8 COMMISSIONER CHANG: What was the use of
9 this property prior to, you know, historically?

10 THE WITNESS: It was used as cattle, to
11 graze cattle for by Ka'ono'ulu Ranch, the former
12 landowner for over 100 -- little over 100 years.

13 COMMISSIONER CHANG: Prior to that, do you
14 know what the area was used for?

15 THE WITNESS: Given the location, it would
16 have been used for, most likely, for transiting,
17 because of the -- it's a marginal -- in terms of an
18 environmental area, it's a marginal area. That's not
19 to say nothing occurred there. There's physical
20 evidence that Hawaiians did use at least portions of
21 the project area in transit.

22 COMMISSIONER CHANG: And I notice there is
23 one LCA that has come up. Is that correct?

24 THE WITNESS: That's Hewahewa. That's a
25 large LCA. I believe it's over 5700 acres. Most of

1 Ka'ono'ulu Ahupua'a is contained in that LCA. But
2 the project area is contained in a portion of that
3 large Land Commission Award.

4 COMMISSIONER CHANG: Were there any kuleana
5 lands that you were able to identify?

6 THE WITNESS: No, not on the property.

7 COMMISSIONER CHANG: During your
8 archaeological inventory survey, you identified --

9 THE WITNESS: There were originally 20
10 sites.

11 COMMISSIONER CHANG: Were there any
12 indication of subsurface resources?

13 THE WITNESS: Are you asking --

14 COMMISSIONER CHANG: Habitation, any
15 indication that there may have been habitation?

16 THE WITNESS: There was one enclosure that
17 was identified in 1994. And then an additional
18 enclosure identified in 2015.

19 And both of those, based on excavation,
20 were interpreted as temporary habitation areas. But
21 the midden, the amount of food remains and other
22 cultural material remains that were recovered, were
23 very modest. But still, it indicates that those
24 enclosures had been used for temporary habitation,
25 again, probably mauka-makai transiting.

1 COMMISSIONER CHANG: Mauka-makai
2 transiting. Are you aware of any trail systems that
3 go mauka-makai?

4 THE WITNESS: Not in this area.

5 When we were there in 1994, it was still
6 being grazed by cattle. And there were a lot of
7 trails, but they were animal trails. We didn't
8 identify like any paved trails or anything like that.

9 COMMISSIONER CHANG: Was there any attempt
10 to find out whether there were any trail systems
11 running through here?

12 THE WITNESS: Through the property itself?

13 COMMISSIONER CHANG: Or through any oral
14 history or archival research?

15 THE WITNESS: Yes, I believe a testifier
16 said that there were couple that the Kulanihakoi
17 Gulch, the large gulch to the south, and then to the
18 east of the project area, was used for transiting.

19 COMMISSIONER CHANG: So would you agree
20 that generally where there is habitation, temporary
21 or otherwise, that is an indication that people lived
22 there at some point in time? And that Hawaiians,
23 generally maka'ainana, not royalty, maka'ainana, they
24 were probably -- you look at -- there were very --
25 some Hawaiians say there were 300,000 Hawaiians, some

1 say as much as 800,000, but a lot of Hawaiians that
2 lived there.

3 Would you disagree that in many instances
4 where there is habitation, Hawaiians tended to bury
5 where they lived?

6 THE WITNESS: No, and that's been --
7 there's been many instances of that.

8 In this particular property, there's almost
9 no soil. And so that's why I was speaking a little
10 earlier about there being some sort of mounding, I
11 mean just necessary in order to have the remains, so
12 they were covered.

13 COMMISSIONER CHANG: But there could be
14 potential instances where there might be subsurface
15 human burial remains, slight, but there could be?

16 THE WITNESS: Yes. And one of the reasons
17 that monitoring would be occurring, would occur down
18 the road, is you never can say 100 percent guarantee
19 about anything in archaeology.

20 COMMISSIONER CHANG: There have been
21 instances -- there's been hundreds of years of
22 plantation, agricultural use. And then we find
23 subsurface, we will find a burial. You will agree
24 that has happened here on Maui?

25 THE WITNESS: Oh, yes. The one thing about

1 this property is that there is very, very shallow,
2 very shallow soil there.

3 COMMISSIONER CHANG: For purposes of
4 regulatory processes, if you find a burial during an
5 archaeological inventory survey, that would be
6 considered a previously identified?

7 THE WITNESS: Correct.

8 COMMISSIONER CHANG: And a determination,
9 disposition of that burial whether to preserve it or
10 relocate it would be made by the Maui-Lana'i Island
11 Burial Council in this case?

12 THE WITNESS: Correct.

13 COMMISSIONER CHANG: If you find human
14 burial remains during an inadvertent archaeological
15 monitoring, it would be considered inadvertent, and
16 that determination would be made by State Historic
17 Preservation Division?

18 THE WITNESS: The culture history branch,
19 correct.

20 COMMISSIONER CHANG: So there is a very big
21 distinction between consultation process, if it is a
22 previously identified, there is a public process for
23 one, the burden is upon the applicant to seek out
24 potential lineal cultural descendants, and it's a
25 much more involved process. And the Burial Council

1 can ultimately determine to preserve that burial in
2 place?

3 THE WITNESS: That's their kuleana.

4 COMMISSIONER CHANG: If you find them
5 during an archaeological monitoring, which at this
6 point in time this project would proceed forward
7 under an archaeological monitoring plan, right?

8 THE WITNESS: Assuming that the data
9 recovery process is undertaken, and eventually there
10 would be a monitoring plan prepared, and monitoring
11 program established.

12 COMMISSIONER CHANG: Let's knock on wood.
13 Hopefully we wouldn't find any human burial, but if
14 we did under the monitoring, SHPD would make that
15 determination?

16 THE WITNESS: In consultation with the
17 regional geographic representative for Maui-Lana'i
18 Island Burial Council.

19 COMMISSIONER CHANG: But no lineal cultural
20 descendant would be required to be consulted with?

21 THE WITNESS: My experience has been that
22 Hinano Rodrigues always reaches out to see if there
23 is lineal descendant.

24 COMMISSIONER CHANG: And mahalo to Hinano,
25 and you're right, I do believe he does that.

1 But there is no legal requirement to do
2 that?

3 THE WITNESS: The requirement, I believe,
4 is that they have to consult with Maui-Lana'i Island
5 Burial Council. But it's a consultation, it's not
6 their kuleana.

7 COMMISSIONER CHANG: Because under -- if
8 it's a previously identified, there is actually a
9 burial treatment plan that's prepared, a 90-day
10 period for review, publication in the newspaper to
11 determine whether there are any descendants. Much
12 longer process which would require consultation?

13 THE WITNESS: Correct.

14 COMMISSIONER CHANG: Versus inadvertent --
15 fortunately Hinano reaches out, but the law says you
16 have 24 hours upon which to make a determination
17 whether to relocate it and preserve it.

18 So hopefully we don't find any.

19 However, in this case, where the developer
20 -- let me ask you this.

21 There is a data recovery plan.

22 THE WITNESS: It's pending. The review
23 process is ongoing, it's not approved yet.

24 COMMISSIONER CHANG: In your opinion, if
25 anything -- if in one of these enclosures, a burial

1 bundle is discovered.

2 THE WITNESS: That would not be an
3 inadvertent find.

4 COMMISSIONER CHANG: You would agree if
5 it's found during data recovery, that would be
6 considered a previously identified?

7 THE WITNESS: At that point it would be.
8 It would go forward to the Burial Council, it's not
9 like it's a monitoring situation.

10 COMMISSIONER CHANG: And so everything
11 would stop in the project, nothing would be permitted
12 to proceed forward?

13 THE WITNESS: Testing to could occur
14 elsewhere during the data recovery project, but that
15 find would need to be examined and SHPD and the
16 Burial Council would comment on it.

17 COMMISSIONER CHANG: That would be a risk
18 the developer would assume by proceeding forward,
19 when there is potential outstanding that Burial
20 Council may determine to preserve it in place?

21 THE WITNESS: The Maui-Lana'i Island Burial
22 Council takes each case always on a case-by-case
23 basis.

24 COMMISSIONER CHANG: With respect to data
25 recovery, Commissioner Scheuer asked a question about

1 data recovery is a form of mitigation. But in your
2 experience has data recovery resulted in
3 preservation, or has it resulted generally in just
4 information?

5 THE WITNESS: Majority of the time, it's
6 information gathered.

7 COMMISSIONER CHANG: That's been my
8 experience as well. It's information, so it's not
9 preservation.

10 THE WITNESS: No.

11 COMMISSIONER CHANG: Because I don't see
12 any of the sites, at least on the recommended
13 mitigations for preservation. It's either no further
14 work or data recovery.

15 There has been representation that the
16 developer has agreed to preserve certain sites, but
17 at least on the mitigation measures that have been
18 presented to SHPD and approved, it is only data
19 recovery and no further work?

20 THE WITNESS: That's correct. The
21 commitment by the developer to preserve some of these
22 community sites was made by the developer.

23 This was after the Inventory Survey Report
24 SHPD had accepted it.

25 COMMISSIONER CHANG: And what is pending

1 before SHPD at this point in time is the mitigation
2 recommendations of either data recovery, or no
3 further work. But there is nothing on the mitigation
4 measures agreeing to preservation?

5 THE WITNESS: The data recovery plan is a
6 plan to undertake data recovery.

7 COMMISSIONER CHANG: At this point in time
8 there is no commitment by the developer before SHPD
9 for preservation?

10 THE WITNESS: That's correct.

11 Because of the situation, I would expect to
12 contact SHPD once it's known what's going to be
13 happening with the project and say, hey, these
14 certain sites have been requested to be preserved, so
15 we may withdraw those from the actual data recovery
16 plan, or just not do data recover on it.

17 COMMISSIONER CHANG: Because from a -- in
18 your experience, from a Hawaiian cultural
19 perspective, is it more important to get the
20 information, or is it more important to preserve the
21 site in its present state?

22 THE WITNESS: That's on good question. And
23 it would be to preserve.

24 COMMISSIONER CHANG: Because I did notice
25 that there was petroglyph in 1994.

1 THE WITNESS: On a boulder.

2 COMMISSIONER CHANG: It was identified in
3 your plan as to be preserved, but it was relocated.

4 THE WITNESS: The previous landowner
5 removed it from the property and relocated it to
6 Kula, and a different firm prepared the
7 after-the-fact preservation plan.

8 COMMISSIONER CHANG: Was there a plan that
9 was accepted by SHPD or it was --

10 THE WITNESS: It was accepted.

11 We didn't prepare that after-the-fact
12 preservation plan.

13 COMMISSIONER CHANG: So that removal by
14 that previous landowner was in disregard to the
15 agreed-upon commitment to preserve that petroglyph in
16 place? And I know it's not you.

17 THE WITNESS: I would have preferred that
18 the boulder was not removed.

19 CHAIRPERSON ACZON: Commissioner Chang,
20 where are you going with this?

21 COMMISSIONER CHANG: I am trying to
22 establish that the Archaeological Inventory Survey
23 that's been presented and the representation --

24 CHAIRPERSON ACZON: Let me give the other
25 Commissioners a chance.

1 COMMISSIONER CHANG: I'm sorry.

2 CHAIRPERSON ACZON: I'll get back to you.

3 COMMISSIONER CABRAL: I have a quick one.

4 There had been public testimony earlier
5 regards to gathering rights or gathering taking place
6 on the property, and that there is leaves and there's
7 plants on the property.

8 Does your study include that type of thing?
9 And my question about those type of plants, are they
10 somewhat available in abundance elsewhere, or are
11 they rare and unique and only available on that site?

12 THE WITNESS: The hualoa that was referred
13 to is an indigenous plant. I'm not a botanist, but
14 it's pioneer species. It can go into marginal areas.

15 So different places in Kihei and elsewhere
16 too would have that.

17 COMMISSIONER CABRAL: Thank you.

18 CHAIRPERSON ACZON: Commissioner Ohigashi?
19 Anybody else? Commissioner Chang.

20 COMMISSIONER CHANG: No, I'm fine.

21 CHAIRPERSON ACZON: Sure now?

22 COMMISSIONER CHANG: I was going to go
23 more, but I got kind of cut off there. I'm
24 completed.

25 CHAIRPERSON ACZON: Follow-up Mr.

1 Sakumoto -- Cataldo, Ms. Cataldo.

2 MS. CATALDO: I had to practice too, Chair.

3 No. No further questions.

4 CHAIRPERSON ACZON: So you folks done with
5 this witness?

6 MS. CATALDO: With this witness, yes.

7 CHAIRPERSON ACZON: Thank you.

8 THE WITNESS: Thank you, Commission
9 members, for your volunteer time.

10 CHAIRPERSON ACZON: Next witness.

11 MR. SAKUMOTO: Thank you, Mr. Chair. We
12 would like to call Mr. Tom Holliday.

13 VICE CHAIR SCHEUER: Mr. Chair, what's the
14 time to head out to the airport?

15 THE WITNESS: I will try to be as quick as
16 possible.

17 VICE CHAIR SCHEUER: 6:00 o'clock, and it's
18 5:00 now.

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

21 THE WITNESS: Yes.

22 CHAIRPERSON ACZON: Please state your name
23 and address for the record.

24 THE WITNESS: Tom W. Holliday. I'm a
25 Director for The Hallstrom Group CBRE. We are

1 located at 1003 Bishop Street, Suite 1800, Honolulu.

2 CHAIRPERSON ACZON: Thank you.

3 TOM W. HOLLIDAY

4 Was called as a witness by and on behalf of the
5 Petitioner, was sworn to tell the truth, was examined
6 and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. SAKUMOTO:

9 Q Did you prepare the market study economic
10 analysis and --

11 CHAIRPERSON ACZON: Can you state what his
12 particular area of expertise?

13 MR. SAKUMOTO: I believe the parties have
14 stipulated that Mr. Holliday is testifying as an
15 expert in the field of market studies, economic
16 impact analyses and public fiscal assessments.

17 CHAIRPERSON ACZON: Thank you, please
18 proceed.

19 Q (By Mr. Sakumoto): Did you prepare the
20 market study economic impact analysis and public
21 fiscal assessment for Pi'ilani Promenade project
22 attached to the EIS?

23 A Yes.

24 Q As part of the Draft EIS process, were
25 comments made with respect to your draft report?

1 A Yeah, quite a few that came in.

2 Q Did you receive them?

3 A Yes, I did. And we address them, which is
4 the reason why the report shows a revision date of
5 2015 as opposed to the original date of 2013.

6 Q Is a copy of your final report attached as
7 an appendix to the Final EIS?

8 A I assume so.

9 Q Your report is essentially organized, if I
10 may, as a market study, then a location absorption,
11 then economic impacts, and finally public fiscal
12 impacts; is that correct?

13 A Yeah, correct. If I could go over real
14 quick. I've done this many times and testified
15 before the State Land Use Commission on these.

16 And basically the first step of the study
17 is market study of the components that comprise the
18 project, in this case you have commercial, industrial
19 and residential.

20 The second thing is to study the
21 appropriateness of the site for the proposed use.

22 The third thing is to do the absorption
23 estimates for each of the product types.

24 From that you develop an economic model
25 that shows the project from groundbreaking through

1 stable -- as they build out and stabilization.

2 And then the last piece is to figure out
3 how it works in taxation. How many tax dollars it
4 generates versus the potential tax liability
5 associated with it.

6 Q Were you here for the prior testimony from
7 the public witnesses, as well as from the other
8 witnesses?

9 A I've been here the last day and a half,
10 like all of us, yes.

11 Q Thank you for your patience.

12 There was some testimony with regard to
13 vacancy of commercial spaces on Maui. And I'm
14 wondering if you have any thoughts or responses to
15 the comments that were made along those lines?

16 A Well, Colliers did an in-depth study, and
17 it was published in the Maui newspaper in April, I
18 believe. And it looked at different areas on the
19 island.

20 And someone testified yesterday that it
21 showed that there was a 31 percent vacancy rate in
22 Kihei. That is totally wrong, and not what it says
23 in the article. And there is a 31 percent vacancy
24 rate of office space, but the subject is not going to
25 build office of space. In fact, the article says

1 that -- and I'm looking at it here -- says that South
2 Maui is the strongest of all the sectors on Maui, in
3 regards to commercial space vacancy. And that it
4 absorbed some 33,000 square feet of space last year,
5 while most of the other areas have declined.

6 And to quote -- I'm sorry, I'm running
7 through here -- the strongest retail space market for
8 owners in terms of vacancies was in South Maui where
9 the inventory was 823,000 square feet, 76,000 square
10 feet was vacant, for a vacancy rate of 9.28 percent.

11 Now, even at that level you have to start
12 analyzing the vacancy rates. There a lot of spaces
13 in Kihei that are obsolete, and will never be filled.
14 The largest single space is the old theaters at the
15 Kukui Mall. And that thing's been sitting vacant for
16 a decade. They tried to shoehorn a school in there,
17 but it can't do it. And as a result, that 12,500
18 square feet, the 5,000 square foot restaurant space
19 next to it that was dependent upon the theater, and
20 inline retail next to it have all sat vacant all
21 these years. And they will probably not never be
22 competitive.

23 Most of the space available that's in Kihei
24 is noncompetitive. It's second floor. It's that
25 space I just discussed, or it's in some secondary

1 poor location.

2 When you start looking at the newer centers
3 that are well located and embrace the best qualities
4 of a commercial site, they do quite well, like
5 Pi'ilani Village, over 95 percent occupancy. And
6 many of the better located ones are well over
7 90 percent.

8 So it's not a question of there being a
9 lack of business demand for space in Kihei, it's that
10 so many of the spaces are old and obsolete and it's
11 time to be replaced.

12 (Commissioner Cabral leaves.)

13 I found it interesting that nobody has, in
14 two days, said this is a bad site for commercial use,
15 because everybody recognizes it's a great site for
16 commercial use.

17 It's got all the characteristics necessary.
18 It's in an interceptor gateway location. It's got
19 direct access to major thoroughfares. It's got
20 extensive frontage on major thoroughfares, and it's
21 got high exposure. All those things will make it a
22 great site.

23 In fact, the best support for the project
24 came from the guy who's doing Downtown Kihei. He
25 spoke for Krausz. He said if they build that

1 project, that's where every new business, based on
2 his 30 years of experience, that's where all the
3 businesses are going to go is to that project,
4 because it will embody the very things that modern
5 commercial, retailers, and restaurants desire.

6 So it's not a question of the site being
7 inappropriate. If I could back up just a second and
8 go through some of the market indications. I don't
9 know what number it is.

10 Q I'm sorry, you have some slides. Is this
11 the market site indication?

12 A We'll start with that one. I don't know
13 what number that is, please forgive me.

14 So demand for suburban uses is all a matter
15 of end user. You need families that need new homes,
16 before you -- you have to put land for them. You
17 need people to buy patronized industrial and
18 commercial spaces before there is a demand for them.

19 Well, Kihei-Makena, which is historically
20 kind of under-serviced relative to the rest of the
21 Maui market, because it's been tied with this
22 umbilical cord to Kahului. It needs to have
23 significant additions in commercial, industrial and
24 residential inventory.

25 And that's going to be as a result of the

1 population, both residents and visitor populations,
2 growing by 50 to 70 percent by 2035.

3 We estimate, based on our models, that
4 950,000 to 1.5 million square feet of new competitive
5 retail, restaurant and service and medical space will
6 be needed in South Maui by 2035.

7 And as an aside, this is more than
8 sufficient to absorb the subject.

9 CHAIRPERSON ACZON: I believe what he is
10 testifying to is in the EIS.

11 MR. SAKUMOTO: I believe this is part of
12 his report, yes.

13 CHAIRPERSON ACZON: Can we move onto some
14 other --

15 THE WITNESS: Well, a point I would make.

16 CHAIRPERSON ACZON: It's on the record.

17 THE WITNESS: I'll add a couple thoughts
18 that aren't on the record.

19 One is that our estimate of demand is
20 sufficient to absorb the subject space and Downtown
21 Kihei space, and space in the Maui tech park that's
22 been rezoned, and even still some extra.

23 So it's not as if this project is going to
24 swallow the market whole, and there'll be no demand
25 that flows elsewhere.

1 In fact, Downtown Kihei has the benefit of
2 coming out of the ground first, and will be able to
3 do it.

4 It's an underserved industrial market, and
5 when it grows, and there is more commercial activity,
6 and economic activity, industrial people are there.

7 And I don't think there is any doubt that
8 there is a huge need for rental apartments. We just
9 finished a recent study and it shows that rentals are
10 in short supply. They have short exposure periods,
11 they can rent in a short time, and rents are
12 continually going higher.

13 Moving on to the next page, which is market
14 study indications. Again, Pi'ilani Promenade is one
15 of the best vacant commercial and industrial
16 development sites on the whole island, outside of
17 Kahului.

18 And we estimate that the commercial and
19 industrial floor space will require about 15 years to
20 absorb, and for the rental apartments, it's likely
21 that many of them will be absorbed in a lottery, and
22 certainly shortly after completion.

23 The economic impacts, which is the next
24 slide. That's all within the report, so probably we
25 don't have to go over that, if you're in a hurry.

1 And the only thing we want to note is that
2 with the rental apartments on-site, and those
3 proposed at Honua'ula just above, that's creating a
4 lot of potential customers for the commercial and
5 industrial spaces that are in the project right
6 on-site. And they'll be able to go there without a
7 car, without -- you know, by walking or biking on one
8 of the paths.

9 The next slide says economic impacts. And,
10 again, this just shows that we also apply -- the
11 studies that we do are independent, and they're meant
12 to look at a project in kind of a micro level within
13 its existence.

14 But we also want to apply the state
15 input-output economic model to see how it turns out.
16 And in every variable in every case, the state model
17 shows it will have a greater economic impact than
18 what our model shows.

19 And then lastly, public fiscal impacts.
20 The bottom line is that this is a net benefit to the
21 county first. Some 25.9 million during development,
22 and about 600,000 annually stabilized after it's
23 built out. And to the State of Hawaii it will turn,
24 if you will, a profit of \$194 million during
25 development, and a stabilized profit of \$20.7 million

1 per year.

2 That kind of covers it really quickly.

3 Q (By Mr. Sakumoto): Just one more question
4 for you from me.

5 Were you here when there was testimony
6 about some of the big box tenants closing in Maui?

7 A Yeah.

8 Q And I believe they were referencing some of
9 them, for example, along Dairy Road. And I believe,
10 if I heard it correctly, the assertion being made was
11 that is a sign that Maui is incapable of sustaining
12 retail demand. Did you hear that?

13 A Yes, I did.

14 Q What is your assessment of that?

15 A First of all, that was not part of my
16 study. So I haven't studied the Kahului market in
17 particular, but I'd be happy to comment on it.

18 Q Thank you.

19 A One is, it's -- shopping centers do become
20 obsolete over time. A lot of it is because of
21 traffic. Like I say, one of the most important
22 things is to be in an interceptor gateway location.
23 Dairy Road used to be great, but now it's become this
24 incredibly congested stretch of street that no one
25 wants to go to. And it's not that like Lowes folded

1 up shop and is going off island. They wanted a
2 better location. And this location 20 years ago was
3 a good location, but now we've got traffic problems.
4 And all these people want to be on the outside of
5 that Dairy Road congestion, you know, like Wal-Mart
6 is and like Target is.

7 If you talk to the brokers, people are
8 interested in those spaces, it's just they're going
9 to have to take time because they're going to have to
10 be carved up into smaller spaces. But the brokers
11 indicate that there is interest in these spaces, it's
12 just they have lost those original tenants who have
13 the money and the power and the need to be in a
14 different location.

15 And one other kind of point -- little off
16 from there -- is the 123 lot subdivision that was
17 originally approved from here is obsolete. No longer
18 are industrial lands in modern suburban Hawai'i done
19 by just owner users, single owner users. Which is
20 traditionally the way it was.

21 And if you look in the old part of Wailuku,
22 Kahului and Honolulu, but nowadays it's multi-tenant
23 buildings with mainland investors, and franchises
24 from elsewhere, and they need more space. In the old
25 days a guy would start a plumbing shop. He would

1 have his industrial lot, and that was part of his
2 retirement, because he would own that shop until he
3 decided to retire, and he'd sell the land along with
4 it.

5 But that's not how it works. And so the
6 reality is that they built that 123 lot subdivision,
7 you probably would get businesses coming in and
8 buying ten lots, and consolidate them together to
9 create the space they need to put in their modern
10 businesses, because modern businesses is require
11 certain levels of space, parking, exposure and other
12 things, that in this 123 lot subdivision would not
13 likely happen. And it would have taken decades to
14 sell 123 lots.

15 Q Thank you. I have no further questions.

16 CHAIRPERSON ACZON: Any questions for the
17 witness?

18 MS. APUNA: No questions.

19 MR. HOPPER: No questions, Mr. Chair.

20 MR. PIERCE: No questions.

21 MR. TABATA: No questions.

22 CHAIRPERSON ACZON: Commissioners?

23 COMMISSIONER SCHEUER: Just one question.

24 I know it's a question I directed to Mr.
25 Hart earlier. What's the sort of shelf-life of one

1 of your economic analyses?

2 THE WITNESS: Well, actually quite long.
3 Because, although the near-term market may change,
4 and the near-term market has changed somewhat from
5 the original 2013, and we tried to revise a little in
6 2015. But we were projecting out over several
7 decades.

8 And so if we were to redo it today, we
9 would probably project it out to 2040 instead of
10 2035. But the trending is the same, and the gross
11 level of demand that is created by an increasing
12 population of local residents and visitors would show
13 the same trends.

14 And so while the near-term moves up and
15 down, the long-term, which is what we're really
16 looking for, doesn't change that much.

17 Now, regards to the economic impacts,
18 obviously 2018 is different than 2013, and so we
19 would have to inflate everything up; the cost, the
20 amount spent, the wages created.

21 But it's just a question of inflating up
22 from a previous time to a current time. We would
23 still have about the same number of jobs. Still have
24 the same basic modeling answers, it would just be the
25 different level of currency 2018 versus 2013.

1 VICE CHAIR SCHEUER: Thank you.

2 CHAIRPERSON ACZON: Anybody else,
3 Commissioners? Everybody got shy.

4 Anybody, any followup for the witness?

5 MR. SAKUMOTO: No, Mr. Chair.

6 CHAIRPERSON ACZON: Any final comments from
7 the Commission, any final questions?

8 Commissioners, what is your pleasure?

9 Thank you, Mr. Holliday, sorry.

10 COMMISSIONER OHIGASHI: You going to ask if
11 final statements?

12 CHAIRPERSON ACZON: They don't -- I asked
13 them, they don't have anything.

14 What is the pleasure of the Commissioners?

15 COMMISSIONER OHIGASHI: Chair, I move that
16 that the Land Use Commission find that the Pi'ilani
17 FEIS does not comply with the content requirement for
18 an FEIS, is therefore not accepted pursuant to HRS
19 Chapter 343 and HAR Chapter 11-200, because:

20 The FEIS does not contain a thorough
21 discussion of the cumulative impacts of the project
22 and other developments in the area on the economy,
23 police and fire protection services, schools, solid
24 waste, civil defense services, utilities and medical
25 facilities and of the secondary impacts of the

1 project, particularly in regard to the potential
2 impacts on future developments mauka of Pi'ilani
3 Highway brought about by the construction of the KUH,
4 as required by HAR Section 11-200-17, paragraph (i).

5 Further, that the LUC authorizes the
6 Executive Officer to notify and submit a record of
7 this non-acceptance to Pi'ilani and OEQC by July 27,
8 2027 deadline for the LUC action.

9 CHAIRPERSON ACZON: There's a motion on the
10 floor. Any second?

11 COMMISSIONER OKUDA: Mr. Chair, I'll second
12 the motion, but I would also move that the motion be
13 amended to provide that the Commission authorize the
14 Chair to sign the order, and the Executive Officer to
15 notify and submit a record of the non-acceptance to
16 the parties by the appropriate deadline, which I
17 believe is July 27, 2017. But if my date is wrong,
18 then the date which is the deadline should control.

19 CHAIRPERSON ACZON: Are you okay with that,
20 Commissioner Ohigashi?

21 COMMISSIONER OHIGASHI: I'm okay.

22 COMMISSIONER CHANG: Are we in
23 deliberations?

24 CHAIRPERSON ACZON: A motion has been made
25 by Commissioner Ohigashi and seconded by

1 Commissioners Okuda that the Land Use Commission not
2 accept the proposed FEIS.

3 We're in discussion, Commissioners.

4 VICE CHAIR SCHEUER: I'll briefly speak in
5 favor of the motion.

6 I'll start at the outset, I'm very clear on
7 what our proceedings are today, this is not a comment
8 about the project, this is a comment about the
9 acceptability of the EIS under state law.

10 In particular, I want to highlight for me,
11 one of the reasons that I am voting in favor of the
12 motion was that I found that on Maui, of all places,
13 where impacts to water resources for new developments
14 are very significant, the EIS was most significantly
15 lacking, and at points contradictory in its analysis
16 of what the impacts might have been from the proposed
17 project.

18 I also share some of the concerns that I
19 believe are going to be voiced by another colleague
20 regarding the Cultural Impact Assessment.

21 CHAIRPERSON ACZON: Thank you, Vice Chair
22 Scheuer.

23 Commissioner Chang.

24 COMMISSIONER CHANG: If I may, in addition
25 to the motion, I would add that based upon the

1 testimony that was presented, the public testimony
2 that was presented yesterday, that the Cultural
3 Impact Assessment, which because there was no expert
4 testimony, it stands on its own record, which
5 concluded that there is no traditional customary
6 practices.

7 There was, in my view, substantial
8 testimony to the contrary. So I find that the
9 Cultural Impact Assessment is not, one, procedurally
10 and legally is inadequate.

11 So for me that would be another basis upon
12 which to not accept the EIS. I do not believe that
13 the Cultural Impact Assessment was adequate, nor as
14 well as the Archaeological Inventory Survey was
15 prepared, I think that the mitigation measures are
16 primarily -- there is no guarantee that these sites
17 will be preserved, and that there will be further
18 consultation. So I find that's inadequate as well.

19 CHAIRPERSON ACZON: Commissioner Okuda.

20 COMMISSIONER OKUDA: Thank you, Mr. Chair.

21 I seconded the motion because I do not
22 believe that the evidence on this record satisfies
23 the standard which is required by a number of cases,
24 including, which was cited by our colleague here,
25 Price versus Obayashi, Hawaii 81 Hawaii 171, a 1996

1 Hawaii Supreme Court case. We recognize that this is
2 not a comment on the merits of the project. It's
3 simply whether or not the Environmental Impact
4 Statement satisfies the standard of what should be
5 contained in there.

6 I would find, based on listening to the
7 witnesses, and evaluating and observing their
8 demeanor and substance of testimony, that, for
9 example, there was lack of sufficient information to
10 allow us to make a determination of the effect of the
11 proposed development on the Kihei-Makena Community
12 Plan. And also with respect to the Downtown Kihei
13 retail issues.

14 There was not sufficient information to
15 allow us to satisfy our obligations under Ka Pa'akai
16 versus Land Use Commission, which is 94 Hawai'i 31, a
17 Hawai'i 2000 Hawaii Supreme Court case.

18 There was not sufficient information about
19 really what this project was about. We understand
20 that it's not necessary in an Environmental Impact
21 Statement to have detail, piled upon detail, but
22 simply a conceptual development plan where many of
23 the material or potential material issues are left to
24 guesswork or substantial question, does not satisfy
25 the standards shown in Obayashi, and in other

1 relevant cases, and the statute, and the
2 administrative rules, as far as giving us sufficient
3 information to make a decision.

4 And, finally, in listening to, and
5 evaluating the traffic expert, I would also find that
6 there was lack of sufficient information about the
7 impact of traffic with this development, as compared
8 to the traffic impacts if the existing Land Use
9 Commission orders were to stay in effect.

10 Finally, and briefly, I would just like to
11 say this. I don't believe people should take the
12 questions about cultural impact and Hawaiian
13 practices to conclude that this is a Hawaiian thing.
14 It is not. It's provisions that are in our state
15 constitution, adopted after a constitutional
16 convention in 1978, where there were only a handful,
17 very few Native Hawaiian delegates at the
18 constitutional convention.

19 These provisions were adopted by the voters
20 of the this State of Hawaii. It reflects community
21 values.

22 So this should not be taken as an ethnic
23 thing or a racial thing. It's a statement of
24 enforcement of community values. And the Hawai'i
25 Supreme Court has made it very clear that we, as a

1 government agency, must take those obligations
2 seriously.

3 But even without those obligations, I would
4 still find that the EIS does not meet the requisite
5 standards, especially as enunciated and explained by
6 the Hawaii Supreme Court.

7 Thank you, Mr. Chair.

8 CHAIRPERSON ACZON: Any further discussion?
9 Commissioner Ohigashi.

10 COMMISSIONER OHIGASHI: In addition to what
11 has been said, for the record I noticed that on
12 August 24, 2012, there was a decision and order filed
13 in regard to the entire 88-acre parcel. And I
14 believe that we are bound by that determination in
15 determining whether or not the FEIS is sufficient to
16 cover that 88-acre parcel.

17 The submittal was for 75 acres. And
18 although there were some people -- some of the
19 studies took into account the other 13 acres, there
20 were studies that were not taken into account the
21 13 acres.

22 I think that the project, as it stands now,
23 since it hasn't been bifurcated nor has there been a
24 request for an order that it be treated as bifurcated
25 for the purposes of filing an EIS, the Commission

1 should review the FEIS in context with the project as
2 a whole, the 88 acres. That's my position.

3 CHAIRPERSON ACZON: Thank you. Vice Chair
4 Wong.

5 VICE CHAIR WONG: Chair, I just want to say
6 that, you know, the Pi'ilani portion, the EIS
7 portion, to me, was okay.

8 However, because we're taking the whole
9 project, all 88 acres, as Commissioner Ohigashi said,
10 we have to look at the whole 88, not just Pi'ilani
11 Promenade, because that's the way the Order to Show
12 Cause was set up.

13 So I have to support this motion, even
14 though, for the life of me, I want to say yes to this
15 EIS, but I cannot, because we have to follow the
16 Order to Show Cause right now.

17 CHAIRPERSON ACZON: Thank you.

18 Any further discussion? If no further
19 discussion, Mr. Orodenger, please poll the
20 Commission.

21 EXECUTIVE DIRECTOR: Thank you, Mr. Chair.

22 The motion by Commissioner Ohigashi is to
23 find that the EIS is insufficient and should not be
24 accepted. It was seconded by Commissioner Okuda with
25 technical amendments.

1 Commissioner Ohigashi?

2 COMMISSIONER OHIGASHI: Aye.

3 EXECUTIVE DIRECTOR: Commissioner Okuda?

4 COMMISSIONER OKUDA: Yes.

5 EXECUTIVE DIRECTOR: Commissioner Scheuer?

6 VICE CHAIR SCHEUER: Aye.

7 EXECUTIVE DIRECTOR: Commissioner Chang?

8 COMMISSIONER CHANG: Yes.

9 EXECUTIVE DIRECTOR: Commissioner Wong?

10 VICE CHAIR WONG: Yes.

11 EXECUTIVE DIRECTOR: Chair Aczon?

12 CHAIRPERSON ACZON: Yes.

13 EXECUTIVE DIRECTOR: Thank you, Mr. Chair.

14 The motion carries with six votes.

15 CHAIRPERSON ACZON: Thank you everyone.

16 It's been a long day. Any other further business
17 today?

18 This meeting is adjourned.

19 (The proceedings adjourned at 5:31 p.m.)

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CERTIFICATE

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, JEAN MARIE McMANUS, do hereby certify:

That on July 20, 2017, at 8:30 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 20th day of July, 2017, in Honolulu,
Hawaii.

/s/ Jean Marie McManus
JEAN MARIE McMANUS, CSR #156