

STATE OF HAWAII

LAND USE COMMISSION

August 8, 2019

Commencing at 9:40 a.m.

Kaua'i Community College

Rooms 106 C & 106 D

3-1901 Kaumuali'i Highway, Lihu'e, Hawai'i 96766

VOLUME 2

AGENDA

I. Call to Reconvene and Continue Proceedings from
July 25, 2019, Agenda Item IV.

JULY 25, 2019, AGENDA (Continued)

IV. ACTION

A17-803 KEALIA PROPERTIES LLC (Kaua'i)
To Consider Acceptance of the Final
Environmental Impact Statement to Petition for
Land Use District Boundary Amendment to amend
the Agricultural Land Use District Boundary
into the Urban Land Use District for
approximately 53.4 acres of land at Kealia,
Kawaihau, Puna, Island of Kaua'i, State of
Hawai'i

V. DISCUSSION & ACTION (IF NECESSARY)

Consider establishment of a Legislative Affairs
Committee to address and respond to anticipated
LUC issues and concerns for the 2020 Hawai'i
State Legislative Session

VI. ADJOURNMENT

BEFORE: Laura Savo, CSR #347

1 APPEARANCES:

2 COMMISSIONERS:

3 NANCY CABRAL, Vice Chair and Acting Chair
4 EDMUND ACZON
5 DAWN CHANG
6 DAN GIOVANNI
7 LEE OHIGASHI
8 GARY OKUDA
9 ARNOLD WONG

10 RANDALL NISHIYAMA, ESQ.
11 Deputy Attorney General

12 STAFF:

13 DANIEL ORODENKER, Executive Officer
14 RILEY K. HAKODA, Chief Clerk/Planner
15 BERT SARUWATARI, Planner

16 DAWN APUNA, ESQ.
17 Deputy Attorney General
18 AARON SETOGAWA, Department of Planning
19 State of Hawai'i, Office of Planning

20 ADAM ROVERSI, ESQ.
21 Deputy Corporation Counsel
22 KA'AINA S. HULL, Director
23 County of Kaua'i Planning Department

24 CURTIS TABATA, ESQ.
25 BENJAMIN MATSUBARA, ESQ.
For A17-803

INDEX

ACTION ITEM:

A17-803

EXAMINATION OF WITNESSES

FOR THE PETITIONER:

PAGE

SCOTT EZER

Direct Examination by Mr. Tabata	9
Cross-Examination by Commissioner Wong	23, 32
Cross-Examination by Commissioner Chang	25, 48
Cross-Examination by Commissioner Okuda	33

HALLETT HAMMATT

Direct Examination by Mr. Tabata	51
Cross-Examination by Commissioner Chang	53
Cross-Examination by Commissioner Ohigashi	76
Cross-Examination by Acting Chair Cabral	78

MATT NAKAMOTO

Direct Examination by Mr. Tabata	89
Cross-Examination by Commissioner Giovanni	99,
	106
Cross-Examination by Commissioner Wong	103

1	INDEX (Continued)	
2	EXAMINATION OF WITNESSES	
3	FOR THE PETITIONER:	PAGE
4		
5	WILLIAM EDDY	
6	Direct Examination by Mr. Tabata	109
7	Cross-Examination by Commissioner Chang	115
8	Cross-Examination by Commissioner Okuda	128
9		
10	TODD BEILER	
11	Direct Examination by Mr. Matsubara	130
12		
13	THOMAS HOLLIDAY	
14	Direct Examination by Mr. Matsubara	136
15	Cross-Examination by Acting Chair Cabral	141
16		
17	EXAMINATION OF WITNESSES	
18	FOR THE RESPONDENT COUNTY OF KAUA'I:	
19		
20	KA'AINA HULL	
21	Direct Testimony	83
22	Cross-Examination by Commissioner Okuda	84
23	Cross-Examination by Commissioner Giovanni	85
24	Cross-Examination by Commissioner Chang	86
25	Cross-Examination by Commissioner Wong	88

1 ACTING CHAIR CABRAL: Good morning. This
2 is the August 8th, 2019, continuation of the
3 July 25th, 2019, Land Use Commission meeting. At the
4 July 25th, 2019, meeting, the commission concluded
5 the public testimony portion of the meeting and began
6 hearing Petitioner Kealia Mauka's presentation before
7 recessing after the testimony of Michael Dahilig's --
8 Dahilig's -- Petitioner's subpoenaed witness.

9 We'd like to remind the audience that
10 this is a continuation of that July 25th, 2019,
11 meeting and not a new proceeding. Therefore, the
12 public testimony already gathered is part of the
13 record, and we are continuing forward with that July
14 25th agenda to complete our proceedings and
15 deliberations on whether or not to accept the final
16 environmental impact statement for this docket.

17 If the commission does not act on this
18 matter by today, the environmental impact statement
19 will automatically be approved after
20 August 12th, 2019, since we're not able to plan any
21 additional meetings between now and that date.

22 At this time, Mr. Matsubara, would you
23 like to resume your presentation?

24 MR. MATSUBARA: Thank you, Chair.

25 For purpose of the record --

1 Chair, members of the commission, Ben
2 Matsubara and Curtis Tabata on behalf of the
3 petitioner, Kealia Properties LLC. With me today are
4 the CFO for the petitioner, Paras Mehta and
5 Leilani -- and Moana Kinimaka.

6 I just wanted to provide a brief overview
7 of the project before we get into the details of the
8 EIS to sort of put the EIS into context of what it is
9 meant to address. The Kealia property we're
10 referring to today is located at Kealia, Kawaihau,
11 district of Kauai. We're proposing to develop a
12 residential subdivision there consisting of 53.4
13 acres to have 235 residential lots between 5,600
14 square feet and 7,300 square feet.

15 The purpose of the project is to provide
16 needed housing for Kauai residents. The projected
17 shortfall for housing on Kauai is approximately 2,000
18 for square -- for single-family dwellings by the year
19 2040.

20 In terms of historical background of the
21 subject property, the property was originally used
22 for sugar plantation cultivation from 1877 to 1997,
23 approximately 120 years, first with Makee Sugar
24 Company and then Lihu'e Plantation. After sugar
25 cultivation had ceased, the property was used

1 primarily for grazing, and most of the property still
2 to this day is used primarily for grazing.

3 The petitioner purchased 2,020 acres in
4 2010, which includes the 53.4 acres of the subject
5 petition. The prior owner was considering to develop
6 an agricultural subdivision consisting of 199 farm
7 lots over 2,020 acres. After the petitioner's
8 acquisition of the property and discussions with
9 community members and county officials, it was
10 determined that the 199 lot ag subdivision on the
11 subject proper -- on the property was not the right
12 fit. The petitioner allowed the subdivision permit
13 to lapse while allowing the property to rest for
14 approximately three years while they determined what
15 would be the most appropriate use to put the property
16 to. It was at that time that it was decided to
17 assist the county in addressing the needs for homes
18 for Kauai residents and working families, and it was
19 decided to build this residential subdivision.

20 The purpose and objective of this project
21 is to do the following: It's to target local Kauai
22 residents. Secondly, the project, if you notice, is
23 consistent with the typical densities in the islands
24 of existing single-family dwellings, especially those
25 in the immediate area. The subject project will be

1 located a reasonable distance from existing public
2 facilities and services. It will be also consistent
3 with the Kauai County General Plan, and it will be in
4 compliance with the housing policy for the County of
5 Kauai Ordinance 860, including the requirements for
6 workforce housing.

7 In terms of the development schedule, it
8 is anticipated that improvement for the sites on the
9 project will take approximately 24 months and consist
10 of six phases since only 10 acres of clearing will be
11 permitted at any one time based on county grading
12 ordinances. The on-site costs are anticipated to be
13 \$25.8 million. The off-site costs, \$10 million. The
14 funding will be financed 100 percent by the
15 petitioner, and no public funds will be requested.

16 At this time we will be calling Scott
17 Ezer of HHF Planners who will discuss the EIS for the
18 project and covering the anticipated impacts and the
19 proposed mitigation for the project.

20 I'll turn it over to Mr. Tabata to handle
21 the next witness.

22 MR. TABATA: Thank you. May I, Chair?

23 ACTING CHAIR CABRAL: Yes, Mr. Tabata,
24 proceed.

25 MR. TABATA: We call Scott Ezer for our

1 next witness.

2 ACTING CHAIR CABRAL: Okay. Mr. Ezer,
3 may I swear you in?

4 THE WITNESS: You may.

5 ACTING CHAIR CABRAL: Do you swear or
6 affirm that the testimony you're about to give is the
7 truth?

8 THE WITNESS: I do.

9 ACTING CHAIR CABRAL: Proceed.

10 MR. TABATA: Thank you.

11

12 SCOTT EZER,
13 having been called as a witness by Petitioner,
14 was duly sworn and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. TABATA:

17 Q Scott, could you please give us a
18 description of your professional background?

19 A I appeared for the commission a couple of
20 months ago on a different matter. Some of you were
21 not present at that hearing. So at the expense of
22 maybe boring some of the commissioners who already
23 heard this, I'll try to keep this brief.

24 For the record, my name is Scott Ezer.
25 I'm a principal in the firm of HHF Planners. My

1 business address is 733 Bishop Street, Suite 2590,
2 Honolulu, Hawaii 96813.

3 I moved to Hawaii in 1961 where I entered
4 fourth grade. We moved here when my dad took a
5 position with the University of Hawaii at Manoa.
6 After going to undergraduate school on the mainland,
7 I knew I wanted to continue to live in Hawaii and I
8 wanted to pursue planning as a profession. So I got
9 my master's in urban and regional planning from the
10 University of Hawaii at Manoa.

11 I worked in two different jobs for the
12 City and County of Honolulu for 20 years. I was a
13 lifeguard for Department of Parks and Recreation for
14 eight years working on -- working at some of the
15 roughest beaches on the south and east shores. Then
16 worked for the old planning department known as the
17 Department of Land Utilization for the city and
18 county for 12 years. During that time, I processed
19 every kind of permit you can, and I was also one of
20 three authors for the county's zoning code land use
21 ordinance.

22 Since 1989, I've worked at HHF Planners.
23 I've been a principal there for 19 years, and during
24 that time I've worked on a variety of different
25 projects for both public- and private-sector clients.

1 I've done a lot of work for county planning
2 departments throughout the state. I've worked on
3 general plans, community plans, policy planning, site
4 plans for beach parks actually here on Kauai up on
5 the north shore and that's -- in a nutshell, that's
6 my professional experience.

7 So I'm going to get into the EIS. I
8 believe much of this information is already on the
9 record. I think the chair already covered this in
10 her opening remarks, but I'd just like to go through
11 this so that everybody is aware of how the EIS came
12 to be at this final stage.

13 On November 8th, 2017, this commission
14 met and determined that they would be the accepting
15 authority for the environmental impact statement for
16 this project.

17 On November 13th, 2017, the order was
18 signed putting that into effect.

19 On November 23rd, 2017, the EIS prep
20 notice was published in the environmental notice
21 which kicked off a 30-day public comment period which
22 ended on December 26th, 2017.

23 On May 8th, 2018, the draft environmental
24 impact statement was published in the environmental
25 notice notifying the public of its availability,

1 which then kicked off a 45-day public comment period
2 which ended on June 22nd of 2018.

3 On July 11th of this year, we submitted
4 the final environmental impact statement to the Land
5 Use Commission.

6 On July 15th, of 2019, we mailed a letter
7 to all participants in the process that had followed
8 us through the prep notice phase and through the
9 draft EIS phase that the final EIS was now available
10 and would be published in the July 23rd edition of
11 the environmental notice.

12 On July 23rd, 2019, the availability of
13 the final EIS was published in the environmental
14 notice.

15 Now, the EIS itself is, as many of you --
16 if you tried to weigh it, is quite dense. It has a
17 lot of information in it. We hired 10 or 11
18 different subconsultants to help provide expert
19 studies that went into the environmental impact
20 statement. This included studies on civil
21 engineering, on traffic engineering, archaeology,
22 cultural impacts, noise, water resources and
23 market -- market assessment among others. And all of
24 that information is included and attached to the
25 draft -- excuse me -- the final environmental impact

1 statement as appendices.

2 In general, as Mr. Matsubara had
3 indicated, the property itself, the petition area,
4 was included as part of the Makee sugar plantation
5 dating back to 1877. Over the years, the entirety of
6 the plantation was built up significantly. It was a
7 full sugar plantation. It had a mill. It had
8 several camps. It had a post office, a theater.
9 There were hundreds of residential properties
10 associated with the plantation, including, within the
11 petition area, a portion of a camp known as a new
12 Kumukumu Camp.

13 The sugar plantation -- the Makee
14 plantation was absorbed by the Lihu'e Sugar
15 Plantation in 1934 and was part of their holdings
16 until the plantation shut down in 1997. Since that
17 time and previous, the new Kumukumu Camp has been
18 dismantled. There are -- there is some evidence of
19 remnant concrete slabs and some old concrete light
20 posts that are remnant from the Kumukumu Camp, but,
21 basically, it no longer exists. There's nothing on
22 the property.

23 Some of the more -- I guess the impacts
24 that will require mitigation involve archaeology
25 where we will have to do monitoring, full monitoring

1 during the entirety of the construction activities,
2 we do have -- we've received a letter from the State
3 Historic Preservation Division accepting the
4 archaeological inventory survey. We were fortunate
5 enough to -- it's not part of the final environmental
6 impact statement, but it was sent to the Land Use
7 Commission earlier this week directly from the State
8 Historic Preservation Division.

9 We also will need to -- as you're aware,
10 we will be getting water from an existing private
11 water company, the Kealia Water Company, which
12 already has wells that provide water for residents in
13 the vicinity. They are obligated to provide 300,000
14 gallons of water to the petitioners specifically for
15 residential purposes. We will be building or we will
16 be implementing several thousand -- about 7,000
17 linear feet of a wastewater line which will run along
18 the mauka side of Kuhio Highway and tie into the
19 county municipal system where there's a wastewater
20 treatment plan near Lydgate Park.

21 There will be mitigation measures for
22 traffic. Our traffic impact analysis assessment
23 report recommends that either a signalized
24 intersection be constructed at the intersection of
25 Kealia Road and Kuhio Highway or that a roundabout be

1 constructed to manage traffic at that intersection.
2 We have met and had several discussions both with the
3 county Department of Public Works and the state
4 Department of Transportation on whether a roundabout
5 or a traffic signal would be the best solution for
6 that intersection. The county would prefer a
7 roundabout, and at this point in time, the Department
8 of Transportation has not indicated a preference for
9 either.

10 There was a similar project proposed
11 about a mile to the east of the intersection of
12 Kealia and Kuhio Highway at the intersection of
13 Mailihuna Road and Kuhio Highway, and in addition to
14 improvements at that intersection, the bridge
15 spanning the Kapa'a Stream will also be improved, but
16 there will be a roundabout put at that intersection.
17 And, again, there were conversations between the
18 state and the county, and the state acquiesced to the
19 county's desire to have a roundabout there as their
20 preferred method of managing traffic.

21 There will be some noise impacts
22 associated with houses along the highway, and the
23 mitigation measure for that would be either or in
24 combination the construction of an earth berm
25 along -- affecting 22 lots along Kuhio Highway or the

1 construction of a solid CMU wall. It's possible that
2 both could be built. But in any event, the
3 implementation of those measures would reduce noise
4 inside of the houses so that it was within guidelines
5 established by the -- by the federal government.

6 There were some questions about whether
7 or not the post office at Kealia, which has been
8 there for generations, is capable of handling post
9 office and mail services for the new residents that
10 would be living up at Kealia Mauka. And the EIS
11 contains a mitigation measure where the petitioner is
12 committed to making whatever renovations are
13 necessary to the post office to put in as many post
14 office boxes are needed for the new residents.

15 I would add that the post office at
16 Kealia is not owned by the federal government, and it
17 is not manned by federal employees. It is contracted
18 out by the federal government to a third party that
19 provides mail service. And the building that the
20 mail offices is situated in is owned by the
21 petitioner. So it's fully within his capability to
22 be able to renovate that building as necessary.

23 You know, that's a broad overview of the
24 environmental impact statement. We have several
25 consultants here today should you need or want to ask

1 additional questions. But before we get into that,
2 I'd kind of like to go into some of the issues that
3 came up during testimony at our meeting on July 25th.

4 First of all, and I was sitting in the
5 audience, and I listened to all of the testimony.
6 You may have been left with the impression that there
7 are loi on this property. There are no loi on this
8 property. There never have been loi on this
9 property. The loi that are on the property that are
10 owned by the petitioner are on the adjacent 1,000 --
11 there are two parcels, the Kumukumu parcel, which is
12 the 1,000 acres that the 53 comes out of -- 54 comes
13 out of. The other thousand-acre parcel is referred
14 to as the Makee parcel, M-A-K-E-E, and that is where
15 the loi are located. And those -- they're not --
16 those loi are not loi that have been there for
17 generations. They are loi that are located on former
18 level cane land that were constructed recently after
19 the closure of the sugar plantation.

20 You also -- I think Commissioner Chang
21 asked one of the young folks that testified whether
22 he was contacted for the cultural impact statement,
23 and the answer that the young gentleman offered was,
24 no, he was not. I would like to point out that his
25 father was part of the cultural impact assessment,

1 and he participated as an informant in an interview
2 and was contacted many times during the process of
3 the cultural impact assessment.

4 I think you were also left with the
5 impression that the petitioner made little or no
6 effort to contact or communicate with the residents
7 of Kaao Road, which adjoin the proposed development
8 in the petition area. And I would just like to point
9 out that there were many opportunities and attempts
10 at outreach made to the Kaao residents.

11 On December 2nd of 2017, a letter was
12 sent to all of the property owners along Kaao Road,
13 and they received an update introducing the project
14 explaining what the project was going to be and also
15 let them know that there would be an environmental
16 impact statement preparation notice being proposed
17 for the project.

18 On December 5th of that year of 2017,
19 Moana Palama, who's the petitioner's representative
20 here on Kauai, met with the board of directors for
21 the Wailua-Kapa'a Neighborhood Association.

22 On May 4th of 2018, a letter was sent to
23 all property owners notifying them that a draft
24 environmental impact statement was coming out and
25 that there would be a community meeting on May 19th

1 of 2018, and they were invited to participate in a
2 community meeting. That community meeting did take
3 place on May 19, and, in fact, many of the attendees
4 that had signed -- that signed in on the sign-in
5 sheets were Kaao Road residents.

6 On July 11th of 2019, the final
7 environmental impact statement was submitted to the
8 Land Use Commission.

9 On July 15th of this year, letters were
10 sent to all property owners on Kaao Road whether they
11 participated at any level. And, again, at every step
12 along the way, whether they participated in meetings
13 or not, they were all sent these letters. So the
14 July 15th letter notified them that the final EIS was
15 available and instructed them on how to acquire or
16 get a copy of the final EIS.

17 At that time Ms. Palama had wanted to
18 meet with the Kaao residents, but did not want to
19 meet with them until the final EIS was available and
20 understanding that it would be the subject of this
21 hearing. So, you know, it may have seemed like it
22 was put together hastily, but there was a meeting
23 that was held five days prior to the July 25th
24 proceeding that we had here two weeks ago. That
25 meeting was held very close to the Kaao Road property

1 on the Makee property where the farmers' markets are
2 held. There was a healthy turnout at that meeting,
3 and there were, I believe, over -- about 30 people
4 signed in for that meeting.

5 You also had someone step forward who
6 suggested that we had not reached out to the Aha Moku
7 Advisory Committee. And, in fact, the Aha Moku
8 Advisory Committee was contacted during the
9 preparation of the CIA, and they were -- that's
10 cultural impact assessment -- and they were also sent
11 a copy of the cultural impact assessment and were
12 asked to review and comment on the cultural impact
13 assessment. We have not received any comment to this
14 point from Aha Moku Advisory Committee regarding the
15 cultural impact assessment.

16 I think that is -- I'll conclude at that
17 point in terms of an overview and allow you to pepper
18 me with questions.

19 Q Thank you, Scott. I just have a couple
20 wrap-up questions.

21 A Okay.

22 Q Does the proposed final environmental
23 impact statement satisfy the content requirements of
24 section 11-200-18 of the Hawaii Administrative Rules,
25 Chapter 343, of the Hawaii Revised Statutes?

1 A It does.

2 Q Thank you. And does the proposed final
3 environmental impact statement satisfy the criteria
4 and procedures governing the acceptance of an FEIS
5 under section 11-200-23 of the Hawaii Administrative
6 Rules?

7 A It does.

8 MR. TABATA: Thank you.

9 Mr. Ezer is available for questions.

10 ACTING CHAIR CABRAL: Thank you. Okay.

11 At this point, does the County of Hawaii
12 Office of Planning have any questions? Kauai.
13 Sorry.

14 MR. ROVERSI: No questions from the
15 county.

16 ACTING CHAIR CABRAL: No questions at
17 this time?

18 MS. APUNA: No questions.

19 ACTING CHAIR CABRAL: No questions from
20 the state planning.

21 Okay. Commissioners -- questions from
22 our commissioners? Commissioner Wong?

23 COMMISSIONER WONG: Just for the record,
24 can I know who else is in front of us from the county
25 and also the state?

1 ACTING CHAIR CABRAL: My apologies.
2 Since we continued the meeting, I didn't ask for
3 introductions. You have to sit in your same seat as
4 last time.

5 Okay. Would you go ahead and start
6 please, Attorney Matsubara?

7 MR. MATSUBARA: Thank you, Chair Cabral.
8 For the record, Ken Matsubara and Curtis Tabata on
9 behalf of Petitioner.

10 MR. ROVERSI: Good morning. Deputy
11 county attorney Adam Roversi on behalf of the county.
12 With me is Ka'aina Hull, planning director for the
13 County of Kauai.

14 MS. APUNA: Deputy attorney general Dawn
15 Apuna on behalf of the state Office of Planning.
16 Here with me is Aaron Setogawa.

17 ACTING CHAIR CABRAL: Okay. Thank you
18 very much. Any other questions, Commissioner Wong?

19 Okay. Commissioners, questions?
20 Commissioner Wong.

21 COMMISSIONER WONG: Mr. Tabata, just a
22 question about the witness. Do you consider him an
23 expert?

24 MR. TABATA: Yes, we do consider him an
25 expert, but since this is not the evidentiary

1 hearing, we hadn't gone through that procedure of
2 offering him as an expert. If the commissioner would
3 like to see if he can qualify as an expert, we can do
4 that.

5 COMMISSIONER WONG: No, not at this time.
6 I just wanted to know.

7 MR. TABATA: Yes. Thank you.

8 COMMISSIONER WONG: Then the other
9 question I had is during the -- for the witness --
10 sorry. For the witness.

11 CROSS-EXAMINATION

12 BY COMMISSIONER WONG:

13 Q During the time of -- you stated that
14 when you did the community meetings, you set it up
15 even though it appeared as though the community
16 meetings was, you know, rushed or in haste five days
17 before. So when was it the notifications went out to
18 the community that you are having these hearings?
19 Like, one day before? And how did it go out?

20 A Did you do it by mail?

21 UNIDENTIFIED FEMALE: Yes, by mail.

22 THE WITNESS: It was done by mail, and I
23 believe it was done at least a week in advance.

24 BY COMMISSIONER WONG:

25 Q Was there any social media that went out

1 or anything else or just by mail?

2 A Well, the letters were directed
3 specifically to the owners of the properties on Hopoe
4 Road and Kaao Road. The meetings were for those
5 residents. The larger meeting, which was held in May
6 of 2018, was hosted by the Wailua-Kapa'a Neighborhood
7 Association. So we were there at their request and
8 suggestion. And, you know, we certainly embraced the
9 opportunity to do that. They managed -- the
10 Wailua-Kapa'a Neighborhood Association managed all of
11 the outreach necessary to publicize the meeting --
12 that community meeting.

13 Q So the question I have is our last
14 meeting on July, you heard the public stated that, I
15 guess, the communication was lacking. I mean, you
16 did have the public meeting. And I guess they did
17 bring up their issues, such as traffic and other
18 issues. At this meeting, did you also explain what
19 would be done or possibly be done in the EIS?

20 A Yes.

21 COMMISSIONER WONG: That's it. Thank
22 you.

23 ACTING CHAIR CABRAL: Thank you.

24 Commissioners -- any other commissioners
25 with questions of our witness?

1 Commissioner Chang.

2 CROSS-EXAMINATION

3 BY COMMISSIONER CHANG:

4 Q Good morning, Scott. Thank you for being
5 here. I'm not too sure. Are you going to have some
6 of your other consultants come up in particular
7 talking about the archaeological inventory survey and
8 the cultural impact assessment?

9 A We have Dr. Hammatt available to do that.
10 I think the way we were going to proceed would be if
11 you had questions for Dr. Hammatt and you want to
12 proceed in that manner, I can step away and
13 Dr. Hammatt can come to be a witness, and then you
14 can ask him questions that I might not be able to
15 answer. I mean, you could conceivably ask me, and I
16 might be able to answer them.

17 Q I have a question --
18 Dr. Hammatt is probably the better person
19 to ask.

20 A Probably, yes.

21 Q But let me ask you another question. In
22 reading through -- and you tell me if you're the
23 right person to answer this. In reading through the
24 title report, it identifies an Old Government Road.
25 Can you show me on a map where is the Old Government

1 Road that crosses this property and if it is part of
2 this 53 acres?

3 A I'm not familiar with that title report.
4 I have looked -- we've looked at the property. The
5 Kealia Road, which runs adjacent to the property and
6 goes all the way to the back of the property, I'd
7 say, goes around and comes back down around and winds
8 up in Anahola, was the Government Road and it is
9 identified on old maps as the Old Government Road.
10 And I've looked at maps going back to the 1800s and
11 the 1900s, and I saw no other identification of a
12 Government Road on the property.

13 Q Who would be the best person to ask
14 about -- I have questions about this Old Government
15 Road. Who would be the right person to ask?

16 A Is it your question that you believe
17 there's an Old Government Road that runs through the
18 property?

19 Q I guess that's the question I'm asking
20 because under HRS 265-4, if there is the existence of
21 an Old Government Road -- I shouldn't say "the
22 existence." If at one point in time an Old
23 Government Road went through the property, even if it
24 no longer exists today, it may still be owned by the
25 State of Hawaii. So that's my question is where --

1 It is referenced also in the
2 archaeological inventory survey. It is shown -- it
3 is referenced in the title report. So I'm just
4 curious as to where is this Government Road in
5 location of the property and whether the Old
6 Government Road has been disposed of under HRS
7 Chapter 171. Because if not, it may still be owned
8 by the State of Hawaii.

9 A It is possible that Dr. Hammatt may have
10 some information on whether that road exists. I have
11 looked at the tax map that the county has available,
12 which dates back to 1936, and it shows what looks
13 like a dirt road that runs --

14 Q Yeah.

15 A -- near where the Kumukumu Camp used to
16 be. And I have looked at old aerial photos from the
17 sugarcane operation, and it aligns perfectly with
18 cane roads, and it's not identified on the tax map as
19 a government road.

20 Q Okay. Well, only because it's
21 actually -- and when you look at -- when I look at
22 one of your maps --

23 A From the EIS?

24 Q Yes.

25 A I have the EIS available.

1 Q It's your Exhibit 3, and I do see it says
2 "Government Road." But there appears to be trails.
3 There appears to be, you know, rights-of-ways. And
4 it's not real clear to me where the Old Government
5 Road originally was and if we had an old map. But
6 also reading through the title report --

7 A Yes.

8 Q -- the title report specifically
9 references the metes and bounds of an Old Government
10 Road. So --

11 MR. TABATA: Commissioner Chang --

12 COMMISSIONER CHANG: Yes?

13 MR. TABATA: If I may, Chair?

14 ACTING CHAIR CABRAL: Yes, please.

15 MR. TABATA: Exhibit 3 that you're
16 referencing, is that Exhibit 3 to our petition,
17 Commissioner?

18 THE WITNESS: Or is it in --

19 MR. TABATA: Because that's --

20 COMMISSIONER CHANG: I am looking at --
21 let me see.

22 THE WITNESS: Is that in the
23 archaeological inventory survey?

24 COMMISSIONER CHANG: No. This is in --

25 MR. TABATA: It's the TMK map, I believe,

1 and it does indicate Government Road running adjacent
2 to our petition area.

3 COMMISSIONER CHANG: That's one. So I'm
4 not real clear. And it looks like it may go around
5 one end -- at the bottom end, and it does appear that
6 it may be the Kealia Road. I'm not sure. But if you
7 look at, again, reading through the archaeological
8 report, reading through the title report, it says
9 "Old Government Road." I mean, the title report --
10 there's a substantial portion of the title report
11 that references an Old Government Road. And I do
12 know a little bit about old government roads. So
13 yeah. And, normally, where there is an old
14 government road, usually that's sent over to DLNR for
15 them to determine whether they are asserting any
16 ownership of that road, and I did not see anything in
17 the record to reflect that. And for all I know, the
18 Old Government Road may actually not be on this
19 parcel. So that's why I asked the question where is
20 the Old Government Road. And maybe I'll ask Hal --

21 THE WITNESS: Sure.

22 COMMISSIONER CHANG: -- because it is
23 referenced in his reports as well. So, hopefully,
24 he's got a map that shows that. I thought I saw one.
25 But that is -- because I think that that is a

1 potentially very important issue that if the State of
2 Hawaii owns property, it runs through here, have they
3 been -- you know, what is their position, and does
4 the road impact your current development? It's not
5 clear to me. So, yeah, that's why this is kind of an
6 important question for me. So shall we wait for
7 Dr. Hammatt?

8 MR. TABATA: We will put Dr. Hammatt on
9 the stand, and we also have our engineer present that
10 may be able to decipher --

11 I see the Old Government Road referenced
12 in the metes and bounds description. So perhaps our
13 engineer may be able to read these metes and bounds
14 and indicate whether or not it references it being in
15 our petition area or --

16 COMMISSIONER CHANG: Okay.

17 MR. TABATA: -- or perhaps outside of it.

18 COMMISSIONER CHANG: Okay. I just
19 couldn't find a map that showed the metes and bounds,
20 and the one map that I did see, it was very difficult
21 to determine where is it in relationship to this
22 particular subject property.

23 MR. TABATA: Absolutely. Perhaps when we
24 take a recess, I can consult with our engineer and
25 Dr. Hammatt.

1 COMMISSIONER CHANG: All right. Okay.

2 MR. TABATA: Thank you.

3 ACTING CHAIR CABRAL: Okay.

4 Commissioners -- Mr. Aczon, do you have questions?

5 COMMISSIONER ACZON: Chair, I want to
6 maybe ask the petitioner to tell us who are the
7 consultants that you're trying to -- you're going to
8 call later so we kind of know who to ask the
9 questions.

10 MR. TABATA: Yes, thank you. We will be
11 calling Dr. Hammatt to address questions by
12 Commissioner Chang. We also plan on calling our
13 traffic consultant, Matt Nakamoto, to discuss
14 traffic. Also present are some other consultants
15 including, Tom Holliday. He did our market and
16 economic impact study. Todd Beiler did noise. So as
17 Scott indicated, we were planning on putting on those
18 that perhaps had the most interest or will address
19 the more talked-about impacts. But I do believe
20 we're going to call at least two more witnesses.

21 COMMISSIONER ACZON: Thank you.

22 ACTING CHAIR CABRAL: Commissioners,
23 questions?

24 Commissioner Wong.

25 ///

1 FURTHER CROSS-EXAMINATION

2 BY COMMISSIONER WONG:

3 Q Okay. Sir, I have a question. So you
4 did talk about the loi issue with the witnesses from
5 last meeting you talked about?

6 A Yes.

7 Q The other question was we had public
8 witnesses that talked about pig hunting.

9 A Yes.

10 Q And I was wondering will the pig hunters
11 be affected in the area?

12 A I believe that there was a witness that
13 appeared at the meeting on the 25th, Bruce Laymon,
14 who has lived in the area for five generations who
15 already testified to that.

16 Q That?

17 A That their pig hunting would not be
18 affected by the proposed project.

19 Q That's because, if I remember correctly,
20 he said it's more up in the mountains and not --

21 A That was his testimony, yes.

22 Q Okay. I just wanted to reconfirm.

23 A Yes. And I believe he is here in the
24 audience today if you need to chat with him again.

25 Q Just wanted to make -- be reassured.

1 A Thank you.

2 Q Thank you. That's it.

3 ACTING CHAIR CABRAL: Okay.

4 Commissioners?

5 Commissioner Okuda.

6 COMMISSIONER OKUDA: Thank you, Madam
7 Chair.

8 CROSS-EXAMINATION

9 BY COMMISSIONER OKUDA:

10 Q Mr. Ezer, at this point in time, we're
11 deciding whether or not we should accept the final
12 environmental impact statement. This really is not a
13 decision whether or not this is a good project, bad
14 project, appropriate project or inappropriate
15 project. Do you agree with my statement?

16 A I do.

17 Q And the environmental impact statement is
18 to assist us in making that decision at whatever
19 later date that hearing or proceeding is scheduled.
20 Do you agree with that?

21 A I do.

22 Q Okay. And counsel had asked you whether
23 or not the statement complied with certain portions
24 of the law, but let me try to put it a little bit
25 more in plain English maybe looking at what our

1 Supreme Court has said just so that when I ask you a
2 couple questions, hopefully, we're kind of working
3 off the same standards that we're looking at because
4 for us to accept or not accept the environmental
5 impact statement, we're supposed to follow the
6 standards that the law sets forth. Is that a fair
7 statement, do you think?

8 A That is, yes.

9 Q Okay. And you agree that the
10 environmental impact statement need not be exhaustive
11 to the point of discussing all possible details? In
12 other words, an acceptable environmental impact
13 statement doesn't have to cover every little
14 itty-bitty, nitpicking point. Is that a fair
15 statement?

16 A It is. And if we did, the document would
17 be a lot longer.

18 Q Yeah. And, in fact, there are two things
19 that have to be acceptable for an environmental
20 impact statement to be sustained as a matter of law
21 by the appellate court if this thing goes on appeal.
22 No. 1, it has to be compiled in good faith. Do you
23 agree with that?

24 A I do.

25 Q And No. 2, it has to set forth sufficient

1 information to enable the decision-maker to consider
2 fully the environmental factors involved and to make
3 a reasoned decision after balancing the risks of harm
4 to the environment against the benefits to be derived
5 from the proposed action as well as to make a
6 reasoned choice between the alternatives. Is that a
7 fair and accurate statement as far as what we are
8 supposed to be looking at?

9 A It is.

10 Q Okay. So in other words, we don't have
11 to have an environmental impact statement that has
12 every itty-bitty thing on each side, but there has to
13 be sufficient information to basically look at the
14 pros and cons, the pluses and minuses, the advantages
15 and disadvantages, the good stuff and the bad stuff.
16 Fair statement?

17 A Fair statement.

18 Q Okay. Now, one of the things -- do you
19 believe or not believe that one of the things the
20 Land Use Commission has to look at down the road when
21 this decision ultimately has to be made is whether or
22 not this project complies or is consistent with the
23 Kauai General Plan?

24 A Yes.

25 Q Okay. Now, you were in the room when

1 Mr. Dahilig, D-A-H-I- --

2 A I-G.

3 Q -- I-G, [sic], yes. Sorry. I'm a bad
4 speller.

5 When Mr. Dahilig gave his testimony with
6 respect to the letter that he presented, which is
7 attached to the environmental impact statement, you
8 were in the room; right?

9 A I was. And, in fact, Mr. Dahilig
10 submitted two letters --

11 Q Right.

12 A -- clarifying the county's position on
13 the general plan.

14 Q And would you agree that he gave his
15 opinion, but he also said that reasonable people in
16 reviewing the provisions of the Kauai General Plan
17 could have come to a different conclusion, whether or
18 not this project would be consistent with the general
19 plan?

20 A I don't necessarily remember whether he
21 said "reasonable people." I think he said others
22 might come to a different conclusion. I also
23 remember that Mr. Dahilig was acting, when he made
24 the decisions, in his capacity as the authority
25 within the county who was authorized to interpret

1 whether something was or was not consistent with the
2 general plan.

3 Q And even though Mr. Dahilig was acting
4 within his authority as the planning director of the
5 County of Kauai, his opinion doesn't necessarily bind
6 the Land Use Commission. You do agree with that;
7 correct?

8 A I'm not going to offer an opinion on
9 that.

10 Q Do you know of any legal authority that
11 says if the county planning director gives an
12 interpretation, it's binding on the Land Use
13 Commission?

14 A I'm not an attorney. So I don't know
15 whether such an opinion exists or not.

16 Q Okay. Do you think it would be
17 reasonable for the Land Use Commission to consider
18 the provisions of the Kauai General Plan in
19 ultimately making a decision whether or not this
20 petition should be approved or not approved?

21 A I think that's part of your
22 responsibility. I also think that Mr. Dahilig's
23 opinion carries a significant amount of weight.

24 Q Correct. But to determine what weight
25 should be given to Mr. Dahilig's opinion, we have to

1 look at all the evidence with respect to the Kauai
2 General Plan; correct?

3 A It's your responsibility to look at the
4 petition in that context. This hearing, I
5 understand, is not to make that decision. It's to
6 suggest whether the EIS has been prepared
7 appropriately.

8 Q Yes. And that's where my question is
9 going. So in other words, the EIS has to be the
10 document or should be the document which gives us
11 sufficient information about the content and
12 substance of the Kauai General Plan so that we can
13 evaluate whether the proposed development is
14 consistent with the plan or not consistent with the
15 plan; correct?

16 A That is accurate.

17 Q Okay. In other words, the EIS is not
18 supposed to be a one-sided presentation with respect
19 to consistency or inconsistency with respect to the
20 general plan?

21 A Well, understand, the general plan is a
22 very complex document, and the general plan has
23 dozens and dozens of objectives, policies, guidelines
24 and many different subject areas, and the EIS looked
25 at the general plan to determine whether the proposed

1 project overall was consistent with the general plan.

2 Q Well -- and the reason why I'm asking
3 these questions is because you're correct that the
4 general plan is a complex document. It has many
5 provisions in there. Do you agree that these items
6 in the general plan need to be presented to the Land
7 Use Commission so the Land Use Commission can weigh
8 what portions of this project is consistent or are
9 consistent with the general plan and what portions
10 are not consistent with the general plan?

11 MR. TABATA: Commissioner Okuda --

12 COMMISSIONER OKUDA: Yeah.

13 MR. TABATA: -- if I may, there is a
14 county ordinance that governs this issue with the
15 general plan interpretation, and that is at county
16 code section 7-1.7 entitled "Interpretation," and it
17 says "The Planning Director shall interpret the
18 General Plan and the consistency of a County action
19 or a proposed development with the General Plan
20 subject to the review of the Planning Commission."

21 So as far as the EIS preparation, what
22 was done was it was presented with the most
23 definitive information that we could find, basically.
24 And being bound by law, we provided the director's
25 interpretation, and that's why it was presented in

1 that format.

2 COMMISSIONER OKUDA: Yeah, and I
3 appreciate that and I understand that, and I read the
4 ordinance, but the reason for my questions is because
5 the fact that Mr. Dahilig gave his testimony about
6 the fact that, you know, there can be other
7 interpretations.

8 Q (By Commissioner Okuda) Let me just ask
9 this question: Mr. Ezer, can you point to where in
10 the environmental impact statement there is a
11 discussion with specificity, not a conclusionary
12 statement, but a discussion of specificity of what
13 portions of the general plan this proposed project
14 would not be consistent with the general plan?

15 A Can I ask for a five-minute recess?

16 Q I'll leave it up to the chair. I have no
17 problem if -- you know, for me personally, whatever
18 it takes to have an accurate answer is fine.

19 ACTING CHAIR CABRAL: At this point,
20 actually, I was about to take a ten-minute recess.
21 So we would like to go ahead and take a ten-minute
22 recess. And I do want everyone to know that
23 periodically, the chair and our commission will take
24 a recess in order to allow our commission and our
25 recording secretary to take a bit of a break. And at

1 midday, we will take a lunch break and continue
2 thereafter, if necessary. Thank you very much. Ten
3 minutes will take us to 10:00 -- 10:50. Okay.
4 That's more than ten. Thank you. Thank you.

5 (Whereupon, a recess was taken from
6 10:35 a.m. until 10:48 a.m.)

7 ACTING CHAIR CABRAL: Okay. I'd like to
8 bring it back together. Okay. We'd like to go ahead
9 and reconvene at this time. To begin with, I'd like
10 to apologize to those folks that are here with us
11 that have been unable to hear. We don't have a
12 really big, formal PA system here. So we're going to
13 all promise to try to talk directly into our
14 microphones, make sure that our system is turned all
15 the way up, and then I'm pretty loud. So I'll try
16 not to break your eardrums.

17 Okay. Go ahead, if you can as our
18 witness, proceed.

19 THE WITNESS: It would be helpful if you
20 could restate the question -- the previous question.

21 CROSS-EXAMINATION (Continued)

22 BY COMMISSIONER OKUDA:

23 Q Yes. My question dealt with can you
24 point to where in the environmental impact statement
25 there is a discussion of where this project might not

1 be consistent with the Kauai General Plan?

2 A In answering that question, I'd like to
3 go back a little bit to the history that led to the
4 preparation of the environmental impact statement in
5 the first place --

6 Q Sure.

7 A -- if that's allowable.

8 ACTING CHAIR CABRAL: Can you see and
9 make sure that's turned up all the way?

10 THE WITNESS: It is, I believe. Would
11 you like me to speak louder?

12 ACTING CHAIR CABRAL: If you can because
13 you have a very nice, soft voice.

14 THE WITNESS: I hope I don't put you to
15 sleep.

16 Before we even began any kind of work on
17 this project, you know, I've been in the planning
18 profession in Hawaii for over 40 years. I've worked
19 with the state -- I mean, with the county. I've
20 worked in private sector. I've done all levels of
21 planning work from the most manini kind of zoning
22 permit you can imagine up to Land Use Commission
23 hearings, and you never want your client to go down a
24 road that's a dead end. You just don't do that.
25 There's too much at stake. So before we even said,

1 "Okay, this is going to be a real project," we met
2 with the planning director and we discussed the
3 project and it was at that time that we believed that
4 it was appropriate based on the recommendation of the
5 planning director to ask for a formal determination
6 from the department. And the department is the
7 county-authorized -- I'm sorry -- the planning
8 director is the county-authorized individual to
9 interpret the general plan. Is what we are planning
10 to do consistent with the general plan? We were
11 told, "You've gotta write me a letter and ask -- ask
12 me that question," which we did, and there is an
13 official manner to go through that process and ask
14 the planning director for a determination.

15 Now, I believe Mr. Dahilig, who was here
16 two weeks ago, quite eloquently explained why he felt
17 that this project was consistent with the general
18 plan. And we relied on Mr. Dahilig's advice and
19 counsel to make a determination that we were okay to
20 move forward with this project.

21 Now, I think it's really important to
22 understand that Mr. Dahilig felt that the general
23 plan needs to be considered in -- in a broader
24 context rather than just looking at individual
25 statements, and part of his reliance on the

1 opinion -- on his opinion, on his determination that
2 we were consistent with the general plan is reliant
3 on the manner in which the general plan maps are
4 prepared. In that context, we are consistent with
5 the general plan. And in that context, that is the
6 manner in which the environmental impact statement
7 was prepared.

8 BY COMMISSIONER OKUDA:

9 Q Yes. And, Mr. Ezer, I have nothing but
10 respect for you and your firm. You know, I think at
11 earlier hearings, I, in fact, disclosed the fact that
12 one of your partners, Mr. Fee, F-E-E, worked with my
13 late father many, many years up in Palolo Valley to
14 develop an agricultural water system and things like
15 that. Everyone knows the reputation of your firm,
16 and that's not my intent of my question. The reason
17 why I asked that question about the portions or
18 whether or not the environmental impact statement has
19 information or discussion about in what way this
20 project is not consistent with the general plan is
21 because given Mr. Dahilig's testimony, which I
22 interpreted or understood to mean that someone could
23 come to a different conclusion whether or not the
24 project is consistent with the general plan, that
25 based on that and the standards that I read, we need

1 that or should have that information in the
2 environmental impact statement so the Land Use
3 Commission, as a state agency, can make that
4 determination in weighing the pros and cons, the
5 positives and the negatives of this project. In
6 other words, my question is not intended to come to
7 the ultimate -- to ask you, "Well, what's the
8 planning department's ultimate conclusion?" It's
9 really going to the standard which the Hawaii Supreme
10 Court seems to have required us to follow in making
11 these decisions about sufficiency of the
12 environmental impact statement. In other words, does
13 it have enough information in there so that people
14 like me, who I'm not a professional planner and don't
15 purport to be anywhere near a professional planner,
16 whether somebody like me, who's basically a layperson
17 when it comes to planning, can weigh the factors in
18 making the decision?

19 MR. TABATA: Excuse me.

20 COMMISSIONER OKUDA: Yeah?

21 MR. TABATA: Chair, I've never done this
22 before in front of the commission, but I have to make
23 an objection to the question based on facts not in
24 evidence.

25 COMMISSIONER OKUDA: Well, yeah --

1 MR. TABATA: There is prior testimony
2 that Mr. Dahilig indicated that people can have
3 different opinions, but there was never any facts
4 established that would describe our project as being
5 inconsistent with the general plan. So the question
6 assumes that there is facts in existence which would
7 tend to prove that our project is not consistent with
8 the general plan. Our position is there are no facts
9 to support that position. Our project is consistent
10 with the general plan. And until there are facts
11 that would tend to prove that our project is not
12 consistent with the general plan, we object to that
13 question because it assumes facts that are not in
14 evidence and that the witness is incapable of
15 answering the question as it's stated. Thank you.

16 COMMISSIONER OKUDA: Well, Chair, if I
17 can --

18 ACTING CHAIR CABRAL: Okay. Thank you
19 for your input. I think the intention here is that
20 we're just trying to make clarification, and
21 Commissioner Okuda is trying to obtain the
22 information he feels necessary. But I do appreciate
23 the fact that, yes, an opinion is an opinion, not a
24 fact, and I think all of us are aware of that.

25 So, Mr. Commissioner Okuda, could you --

1 better conclude your questions at this point.

2 COMMISSIONER OKUDA: Yeah, so -- sure.

3 Q (By Commissioner Okuda) So the
4 bottom-line question is, is there anything -- or can
5 you point to where in the final environmental impact
6 statement there is any discussion of where this
7 project is not consistent with the general plan?

8 COMMISSIONER WONG: Chair?

9 ACTING CHAIR CABRAL: Okay. Commissioner
10 Wong.

11 COMMISSIONER WONG: Sorry. I wanted to
12 interrupt. Because there's an objection on the
13 floor, can we have a five-minute recess, please?

14 COMMISSIONER OKUDA: Well, I'll say
15 what -- to move things along, you know, since my
16 question wasn't answered, I'll just take the record
17 as is to be the record, and I'll withdraw any further
18 questions.

19 ACTING CHAIR CABRAL: Okay. Commissioner
20 Wong, does that satisfy your need for a recess?

21 COMMISSIONER WONG: Yes, it does. Thank
22 you.

23 ACTING CHAIR CABRAL: Okay.

24 COMMISSIONER WONG: He withdrew the
25 question.

1 ACTING CHAIR CABRAL: Yeah, he withdrew
2 the question.

3 Commissioner Chang.

4 COMMISSIONER CHANG: Thank you.

5 FURTHER CROSS-EXAMINATION

6 BY COMMISSIONER CHANG:

7 Q Scott, I just wanted to follow up talking
8 about the general plan process. I know that the
9 County of Kauai, they went through a very long
10 general planning process. Help me understand the
11 timing upon which this development was being proposed
12 and the disclosure to the community during the
13 general planning process because it --

14 I think I asked that question to
15 Mr. Dahilig that, in the interest of transparency, do
16 you believe that the community would have raised the
17 concern in regard to this proposed project had it
18 been disclosed during the general plan community
19 updates?

20 A That calls for speculation that I would
21 not be in a position to answer.

22 Q Sure.

23 A I do know that the county was well into
24 the -- past the midpoint of working on the general
25 plan when we even went to discuss the matter with

1 Director Dahilig, and that was, you know, one of the
2 reasons we actually went to talk to him was to find
3 out whether we needed to become part of the general
4 plan update process.

5 Q And did you -- and it appears that you
6 guys had a lot of real good outreach. Did you do any
7 outreach during --

8 ACTING CHAIR CABRAL: Commissioner Chang,
9 can you speak clearly into your microphone?

10 BY COMMISSIONER CHANG:

11 Q Sorry, sorry, sorry. Did you do any
12 outreach concurrently with the general planning
13 process about this proposed project?

14 A We did not.

15 Q Okay. All right. Thank you.

16 ACTING CHAIR CABRAL: Commissioners, any
17 more questions of our current witness?

18 Okay. Should I ask county Office of
19 Planning, do you have any questions?

20 MR. ROVERSI: No questions, Madam Chair.

21 ACTING CHAIR CABRAL: Okay. State Office
22 of Planning, do you have any questions?

23 MS. APUNA: No questions.

24 ACTING CHAIR CABRAL: Okay. Mr. Tabata,
25 do you have any questions at this time of your own

1 witness?

2 MR. TABATA: No, no more questions.

3 ACTING CHAIR CABRAL: Okay. And then you
4 are going to proceed to have another witness come up?

5 MR. TABATA: Yes. Our next witness will
6 be Hallett Hammatt.

7 ACTING CHAIR CABRAL: Okay. Thank you
8 very much.

9 (Brief pause in the proceedings.)

10 ACTING CHAIR CABRAL: Thank you, sir.

11 May I swear you in?

12 THE WITNESS: Yes.

13 ACTING CHAIR CABRAL: Do you swear or
14 affirm that the testimony you are about to give is
15 the truth?

16 THE WITNESS: Yes, I do.

17 ACTING CHAIR CABRAL: Okay. Can you now
18 proceed to give us your full name and your address?

19 THE WITNESS: My name is Hallett Hammatt,
20 and I live at 49 South Kalaheo Avenue, Kailua, Hawaii
21 96734.

22 ACTING CHAIR CABRAL: Okay. Go ahead and
23 proceed.

24 MR. TABATA: Thank you.

25 ///

1 HALLETT HAMMATT,
2 having been called as a witness by Petitioner,
3 was duly sworn and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. TABATA:

6 Q Dr. Hammatt, would you please for the
7 commission give us a description of your professional
8 background?

9 A Yes. I have a BA in anthropology from
10 University of Pennsylvania. I have an MA in
11 archaeology from the University of Edinburgh,
12 Scotland, and I have a Ph.D. in anthropology from
13 Washington State University in Pullman, Washington.
14 I have been active in archaeology since 1965, and I
15 have been active in Hawaiian archaeology since 1975
16 having -- yeah, having worked on many, many different
17 projects on all of the islands, including the island
18 of Kaho'olawe, from 1998 to 2004.

19 ACTING CHAIR CABRAL: Thank you.

20 BY MR. TABATA:

21 Q Thank you, Doctor.

22 A Thank you.

23 Q Could you please describe for us your
24 involvement with this project?

25 A Yes. We prepared both an archaeological

1 inventory survey as well as a cultural impact
2 assessment for this project.

3 Q Thank you. Can you please summarize for
4 us your archaeological inventory survey?

5 A Yes. We -- most of the work was focused
6 on the documentation of Kumukumu Camp, which is in
7 the mauka portion of the project area, various
8 features there, and including a -- the remnants of
9 the camp, some concrete foundations, some water
10 control features --

11 Oh, thank you.

12 -- and also a road, which was a former
13 plantation railroad which goes mauka makai to a
14 portion of the project area. That was the major
15 focus of our inventory survey.

16 The cultural impact assessment involved
17 interviews with nine -- eight -- seven different
18 people and involved outreach to many, many parties,
19 68 to be exact, some of which responded, some of
20 which didn't. We did some extensive interviews
21 focused on -- two interviews particularly focused on
22 Kumukumu Camp and the life there. Very insightful
23 interviews about what camp life was like back in
24 those days on the sugar plantation, and also
25 interviews with various people who live in Kealia and

1 Kapa'a.

2 Q Thank you, Hal. I believe Commissioner
3 Chang may have some questions for you along with some
4 of the other commissioners.

5 A Sure.

6 ACTING CHAIR CABRAL: Commissioners, go
7 ahead. Do you have questions? Oh, that's right.
8 I'm sorry. Protocol.

9 Okay. Kauai Planning Department, do you
10 have questions?

11 MR. ROVERSI: No questions, Madam Chair.

12 ACTING CHAIR CABRAL: Okay. State Office
13 of Planning, questions?

14 MS. APUNA: No questions.

15 ACTING CHAIR CABRAL: Okay. Now,
16 commissioners, do you have questions?

17 COMMISSIONER CHANG: I'm going to give
18 other commissioners a chance. Okay. I'm going to
19 ask questions.

20 Good morning, Hal.

21 THE WITNESS: Good morning, Dawn.

22 ACTING CHAIR CABRAL: Commissioner Chang.

23 CROSS-EXAMINATION

24 BY COMMISSIONER CHANG:

25 Q Thank you so much. I will disclose that

1 I have known Hal for a very long time. I consider
2 you to be one of the best archaeologists in the
3 state.

4 A Thank you.

5 Q And I've always appreciated your work.

6 A I appreciate that very much, and I have
7 the same compliment for you as a lawyer and a planner
8 and person who has worn many, many hats over the
9 years.

10 Q Thank you very much. So okay. Hal, with
11 that being said, there are several lines of questions
12 that I want to ask you about. One is the government
13 road that I'll talk about the archaeological
14 inventory survey, and then we'll going into the
15 cultural impact assessment.

16 And you heard I had asked Scott about
17 this Old Government Road?

18 A Yes.

19 Q So can you identify for me where this
20 road -- where the Old Government Road, whether it
21 transects this property or -- can you show me any
22 maps? Because I see reference to it in your report.
23 You talk about an Old Government Road. So do you
24 have a map? I've seen maps that you've had, but do
25 you have a map that you can show me?

1 A Well, I left my report back in the desk.
2 But I don't remember the figure number, but there is
3 one road --

4 (Brief interruption.)

5 MR. EZER: I've got your CIA and the
6 inventory survey. You can show them that if you want
7 to do that.

8 THE WITNESS: So the only road that I'm
9 aware of is a -- it's a former railroad of Makee
10 Sugar Company, which became Haul Cane Road [sic], and
11 it runs pretty much mauka makai through the project
12 area right adjacent to Kumukumu Camp.

13 BY COMMISSIONER CHANG:

14 Q Okay. But you don't -- you don't have
15 any personal knowledge? I mean, again, you
16 referenced the Old Government Road, and I'm
17 thinking -- I'm trying to look at -- I thought I saw
18 it on page -- this is such a large document. I think
19 it was on page 39.

20 A Okay.

21 Q But you reference -- and you reference --
22 and I think it references a report "Spalding 1882
23 letter." But that does -- that doesn't jog anything?

24 A No. No. I'm sorry.

25 Q Okay. So you're not aware other than the

1 road that you described?

2 A No.

3 Q Okay. All right. Let me move on to my
4 questions related to the archaeological inventory
5 survey. Now, it's my understanding reading through
6 the exhibits that you initially prepared an
7 archaeological literature review and field
8 inspection --

9 A Field inspection, yes.

10 Q -- report?

11 And you submitted some correspondence to
12 SHPD?

13 A Yes.

14 Q And as a result, they came back and said,
15 "You need to do an archaeological inventory survey"?

16 A Yes.

17 Q I'm going to need you -- I'm going to ask
18 you to help me understand some of what transpired
19 because I went through and I read through the letter
20 of May 29th, 2018, and this is from State Historic
21 Preservation Division and it goes back -- and it is
22 to the LUC director, Dan Orodénker, but it says "This
23 letter provides SHPD's comments on the petition for
24 the boundary and confirmation." And you submitted,
25 at that time, what was an archaeological literature

1 review report. And the conclusion is "SHPD's request
2 for a new AIS is based on the results of the Kamai
3 and Hammatt 2017 field inspection which indicates
4 that prior AIS studies did not adequately document
5 all surface historic properties. Subsurface testing
6 was not conducted within the footprint of the
7 proposed residential development. Additionally, it
8 remains unclear whether all historic roads have been
9 adequately identified in inventory." And that --
10 that was from Alan Downer --

11 A Yes.

12 Q -- May 29, 2018.

13 A 2018.

14 Q So they're saying you've got to do an
15 AIS. So I'm going to ask you that based upon your
16 literature review, you looked at all of the previous
17 archaeology in the area?

18 A Yes.

19 Q And, again, based upon this letter, you
20 must have concluded that while there was a lot of
21 archaeology in the Kealia area, there was no
22 archaeological inventory survey conducted for this 53
23 acres which included subsurface excavation?

24 A That is correct.

25 Q Okay.

1 A And just let me add that these previous
2 surveys, if my memory serves me correctly, were much
3 larger areas in Kealia. Some of them many hundreds
4 and hundreds of acres, including areas way beyond
5 this project -- particular project area.

6 Q But it was your conclusion that there was
7 no archaeological survey, in particular, subsurface
8 excavation for this subject property --

9 A Yes.

10 Q -- of 53 acres?

11 A Yes.

12 Q So the next correspondence I see is a
13 letter of October 3rd, 2018. Again, it's from Alan
14 Downer, signed by Susan Lebo, and it is to the Land
15 Use Commission. And this one is on -- this is in
16 regards to the Chapter 6E historic preservation
17 review. And in this letter, they conclude "SHPD has
18 agreed to the supplemental AIS strategy provided by
19 the project proponents and contracted archaeological
20 firm and to their proposed initiation of the AIS on
21 September 2014. This includes the understanding that
22 no subsurface testing will be required based on
23 documentation provided in the Kamai and Hammatt
24 literature review and field inspection. In addition,
25 SHPD has agreed an archaeological monitoring plan

1 shall be created and approved prior to the start of
2 project work by the project proponent."

3 So I guess, Hal, I was confused. The
4 first letter says, "Based upon the previous work, we
5 are recommending that there should be an AIS." And
6 then in this letter -- so something must have
7 happened between May and October for SHPD to conclude
8 you don't need to do any subsurface testing. And so
9 I -- please explain to me what was the changed
10 circumstances which -- and I'm assuming it was CSH
11 that went to SHPD with the recommendation, "There's
12 no need for subsurface testing"?

13 A Well, actually, I would alter that a
14 little bit. We went to SHPD with the literature
15 review/field inspection in hand to provide them with
16 information on the project area, indicating that this
17 was former cane land for many, many years, over a
18 hundred years, and that the only potential
19 significant archaeological sites would be related to
20 Kumukumu Camp. And the purpose of that literature
21 review/field inspection was to consult with them
22 about what the scope of work would be. Well, the
23 result of that consultation was that Susan Lebo, in
24 particular, SHPD did not require a subsurface
25 testing.

1 And, Dawn, if I can just add something
2 here. We have done many, many projects in cane
3 fields in which we -- well, I don't want to say
4 "many." We have done several, probably five or six,
5 projects in cane fields in which we have done
6 testing, and in every single case, the testing has
7 yielded no results. The purpose of that is -- or the
8 reason for that is because repeated plowing to 4- or
9 5-foot depths, sometimes even deeper, and all
10 remnants of whatever is there would have been taken.

11 Q And I guess I've had a little bit
12 different experience that at times -- and maybe it
13 depends, but on Maui in particular, you can go -- you
14 can have cane fields, and burials have still been
15 discovered in the cane fields; right?

16 A Yes. And I would say that in those
17 cases, there is some indication in the historic
18 record, in their land commission awards, that there
19 was something there previously before there was cane.

20 Q Okay.

21 A And I would vehemently say that testing
22 should be done in any area where there's a former
23 land commission award or kuleana or any indication of
24 previous habitation. I would very strongly advocate
25 for testing.

1 Q And I know that you have in the past.

2 A Yeah.

3 Q So can you confirm for me that under this
4 AIS, no subsurface excavation was done in your AIS?

5 A That is correct.

6 Q Okay. And you continue to feel that that
7 was not necessary or appropriate based upon your
8 literature review?

9 A Well, also based on our inventory survey,
10 yes.

11 Q Okay.

12 A And because it was a camp, because we
13 thought -- we interviewed a number of families who
14 had lived in that camp and experienced their families
15 there for a few generations, and we specifically
16 asked the question, "Are there burials there?" And,
17 you know, we know the major issue, of course, is
18 burials.

19 Q Right.

20 A And the response was there was no
21 knowledge of that. So our conclusion was that
22 testing was not necessary. Some people thought that
23 there were different opinions in the people we
24 consulted with for the CIA. Some people thought we
25 should do testing. Some people thought it wasn't

1 necessary, but the conclusion was -- or the end
2 result was not to test.

3 Q So I want to walk through -- I guess this
4 would be Table 6 of the Archaeological Historic
5 Property Integrity Significance and Mitigation
6 Recommendations. That was included in the AIS?

7 A Yes.

8 Q And if I'm reading this wrong, you tell
9 me because I want to know where on the property were
10 these sites found. SIHP [sic] No. 503008884, site
11 type, a burial; 884, a cultural layer, a habitation;
12 2161, human skeletal remains, secondary disposition
13 of human bone fragments; 2162, burial site and
14 cultural midden; 2163, fire pit habitation; 2165,
15 cultural deposit habitation.

16 So help me understand where were these
17 found and was it -- so first let me ask, so where
18 were these found in the property?

19 A Okay. So we have -- let me make a
20 distinction here, Dawn. We have the petition area --

21 Q Yes.

22 A -- which is the former cane field, the 53
23 acres. And then we have an extension of the project
24 area, which is not the petition area --

25 Q Okay.

1 A -- which goes down to the highway. And
2 that's where these major findings were made. And
3 they included -- you're absolutely right, they do
4 include burials, multiple burial finds, multiple
5 finds of cultural layers.

6 Q So -- but is this considered part of the
7 project area where you did this AIS and where you
8 found these?

9 A That is considered part of the project
10 area, but not part of the petition area for the LUC
11 is my understanding.

12 Q And so did your archaeological -- but
13 your AIS, nonetheless, included this -- these
14 finds --

15 A Yes.

16 Q -- in this area?

17 A Yes. And the description of these finds
18 from multiple previous archaeological studies
19 along -- going down to the highway and along the
20 highway on the mauka side of the highway.

21 Q So I'm really trying to understand here,
22 you have found burials, habitation, and you just
23 testified that wherever there's habitation, that's an
24 indication that there's potential burials. But in
25 this case, these things were actually found and there

1 was no subsurface testing.

2 Okay. And you would agree human burial
3 remains -- because at this point in time, mitigation
4 is to do an archaeological monitoring plan?

5 A Right.

6 Q And so you would agree that under an
7 archaeological monitoring plan, any burials that are
8 discovered are the jurisdiction of SHPD --

9 A Yes.

10 Q -- with respect to disposition?

11 A Yes, yes.

12 Q As opposed to any burials that are found
13 during an archaeological inventory survey would be
14 considered previously identified under the
15 jurisdiction?

16 A Yes.

17 Q And in this case, the Kauai-Lanai Island
18 Burial Council?

19 A Yes. And, Dawn, if I can just add
20 something here. I think we're talking about a
21 trade-off. We could have tested there. We could
22 have recommended testing there and tested there and
23 found burials there. But the trade-off or the
24 dilemma here is we're potentially finding burials
25 that are not going to be disturbed for the project

1 because we can't --

2 When we're looking at a sewer line, we
3 can't predict exactly where that sewer line is going
4 to go because we don't have the design for the sewer
5 line. So we could test where we think the sewer line
6 is going to go. If we confront burials, we don't
7 know whether those burials would have been disturbed
8 by that sewer line or not.

9 Q But -- no. And I appreciate the
10 distinction, but I think you would agree with me that
11 many in the Hawaiian community, and I say including
12 the island of Kauai, the jurisdictional distinction
13 between whether it's previously identified under the
14 kuleana of the burial council versus whether it's
15 inadvertent under the jurisdiction of SHPD is a -- is
16 a concern. And maybe you don't have to answer that.
17 I mean --

18 A Well, yeah. Dawn, I just want to say, if
19 I can add something here, there are communities --
20 certain communities in Hawaii I'm very familiar with,
21 one of them in which the descendants are very adamant
22 that these burials do not go to the burial council
23 because they have -- they take this kuleana. I don't
24 know what the Kailua -- what the Kealia community
25 would feel about that. So I can't make that

1 presentation, but I do know that it's not a strict
2 rule that --

3 Q And I totally agree with you. Hawaiians
4 from different areas have different -- have different
5 burial practices. You know, if LaFrance Kapaka was
6 still here, we know what LaFrance would want.

7 A Yes.

8 Q So you're right. Very different burial
9 practices. But from a legal standpoint, there is a
10 distinction between who makes the decision --

11 A Yes.

12 Q -- on disposition?

13 A Absolutely.

14 Q Burial council, SHPD?

15 A Absolutely.

16 Q All right. Okay. And you have
17 received -- I think Mr. Matsubara did indicate that
18 you did receive a letter from SHPD this week
19 accepting the AIS report?

20 A August 5th, yes.

21 Q Okay. Okay. I didn't see that. August.

22 A Yes.

23 Q Okay. Let me move on to --

24 A Sure.

25 Q -- the cultural impact assessment. So

1 the cultural impact assessment was conducted, and you
2 did the Ka Pa'akai analysis?

3 A Right.

4 Q You made a conclusion in that. Let me
5 see if I can read that. So in there -- and you still
6 stand by your conclusion. I'm trying to bring up
7 that specific cultural impact assessment. And the
8 conclusion is -- the conclusion in the cultural
9 impact assessment is that -- and I want to make sure
10 that I don't misspeak. I'm trying to get it. This
11 is such a large document. But it says -- sorry,
12 sorry, sorry.

13 Okay. Under Ka Pa'akai, page -- I guess
14 this would be page 232. So you conclude "The CIA
15 found there are no known traditional, customary
16 Native Hawaiian rights exercised in the petition
17 area. Under the Ka Pa'akai case, the required
18 analysis, therefore, ends after the determination
19 that there are no known traditional, customary Native
20 Hawaiian rights exercised in the 53.4-acre petition."

21 Do you still -- and you stand by that
22 conclusion?

23 A Yes, I do.

24 Q Okay. Okay. All right. Let me ask you
25 some questions following up. So you seem to be

1 familiar, you know, with Ka Pa'akai --

2 A Yes.

3 Q -- that Land Use Commission under the
4 Supreme Court, we have an affirmative obligation to
5 preserve and protect traditional, customary practices
6 subject to reasonable regulation, Article 12.

7 So I went through reading through your
8 report, and you guys always do a very comprehensive
9 report. A lot of -- you did interviews. You sent
10 out letters. As I read through the report,
11 Ka Pa'akai, the first test -- the first question is
12 "Identify the scope of the valued cultural,
13 historical and natural resources in the petition
14 area, the extent to which traditional, customary
15 Native Hawaiian rights are exercised in the
16 petitioned area." And your conclusion was there are
17 none.

18 So reading through the CIA, these are
19 some of the ones that I -- "Mr. Rees and others
20 identified kalo growing and concerns other projects
21 on the impacts to the spring. He also mentioned
22 subsurface iwi kupuna, culturally significant pohaku.
23 OHA's Beverly Muraoka noted night marchers.
24 Mr. Ponce talked about feather gathering, wahi pana
25 (phonetic) or cultural sites within or close

1 proximity to the current project area. Kupuna Ako
2 (phonetic) talked about iwi kupuna, access to gather
3 resources such as inamona, pa'akai, kukui. Richard
4 Kauai talked about the abundance of Kealia growing
5 kalo, hula, gathering of purple lilikoi. Your own
6 report notes there are several heiau in the Kealia
7 ahupua'a. There's a farming of kalo, noni and pig
8 farming.

9 Your Ka Pa'akai doesn't identify any of
10 those. You make a bald conclusion that there are
11 none. And then so you don't even go to the next step
12 which is if there are resources, please identify
13 how the resources will be impacted. And I just -- so
14 I'm -- help me understand how did you come to that
15 conclusion given your own report? I'm not even
16 talking about the testimony that we heard, but your
17 own report identifies -- and Ka Pa'akai doesn't
18 require that they have to be existing now. You
19 can -- you can never abandon traditional, customary
20 practice. So help me understand because, like I
21 said, you are one of the best. Help me understand
22 how do you draw a conclusion that there are no valued
23 cultural resources when I've got this testimony out
24 of your own report?

25 A Okay. Dawn, I think -- and, you know, I

1 listened to the public testimony very closely, and we
2 have interviewed a number of people. There have been
3 discussion of taro farming. I was a taro farmer for
4 eight years, and I know that this area is not
5 conducive to taro farming. The taro farming that
6 took place traditionally both in Kapa'a and Kealia
7 was in the valleys where there's water -- where
8 there's running water. There's no natural source of
9 water in this project area. It's in the uplands. It
10 was in cane for over a hundred years.

11 As far as hunting, whatever hunting took
12 place in the cane fields, I can't speak to that. I
13 don't think the pigs hang out there, and I think we
14 heard testimony at the public hearing to that effect.
15 They hang out more mauka. So I'm kind of at a loss
16 to explain the --

17 The conditions of this land for the last
18 hundred years, if you -- and, you know, we've dealt
19 with cultural practices in cane fields, that issue,
20 for a long, long time. Some people do things there,
21 but I find it very difficult to define them as
22 traditional cultural practices.

23 Q But wouldn't you agree that having the
24 cane fields there, and I would suspect that the cane
25 field operators, the sugar plantation, whatever

1 practices may have existed, they were displaced. But
2 under the law, that doesn't diminish the fact that
3 there might still be the rights to those practices.
4 If this area had trails that ran mauka makai, and
5 there appears to be evidence that a trail once
6 existed, that those rights, while they may no
7 longer -- those rights or those practices, while they
8 may no longer be in existence because of this use of
9 cane fields, that the court still permits us to
10 consider that. And so I guess -- and this is --

11 Please understand this line of
12 questioning is with the utmost respect for you
13 because I know of the --

14 I just had a very difficult time drawing
15 the same conclusion under Ka Pa'akai given the
16 testimony that was provided by your own interviewees.

17 A Well, Dawn, if we stated that there were
18 never any traditional cultural practices in our CIA,
19 I think that's probably a misrepresentation because
20 we can't really say that. And that's different from
21 saying there are no ongoing, current cultural
22 practices in the project area. I agree with that
23 distinction.

24 Q Okay. Well, the conclusion says "The CIA
25 found there are no known traditional, customary

1 Native Hawaiian rights exercised in the petition
2 area." So okay. Thank you. I think that that's --

3 A I think that applies to the present,
4 yeah.

5 Q But you continue to stand by your
6 conclusion?

7 A In the present, yes.

8 Q All right. Okay. All right. Thank you
9 so very much.

10 ACTING CHAIR CABRAL: Commissioners, any
11 more questions?

12 Okay. Commissioner Okuda.

13 COMMISSIONER OKUDA: Thank you,
14 Ms. Chair. And counsel can chime in if counsel's
15 assistance might help. Following up on Commissioner
16 Chang's questions, given the responses to the
17 questions, do the responses indicate that this
18 environmental impact statement is sufficient or not
19 sufficient? And if the answer is the --
20 notwithstanding the answers, the impact statement is
21 still sufficient, can you tell me why? And maybe
22 this is more appropriate for counsel as a follow-up
23 to Commissioner Chang's questions.

24 MR. TABATA: I'll try to answer
25 Commissioner Okuda's question. So your question is

1 in follow-up to Commissioner Chang's question
2 regarding the Ka Pa'akai analysis; correct?

3 COMMISSIONER OKUDA: Yes. In other
4 words, there may be an issue here now of whether or
5 not there's potentially -- and I'm not making a
6 judgment personally one way or the other, whether or
7 not there is 100 percent compliance with the Supreme
8 Court case Ka Pa'akai versus Land Use Commission
9 which we're duty bound to follow. Given the
10 responses of the witnesses to Commissioner Chang's
11 question, do these responses indicate that the
12 environmental impact statement should not be
13 accepted, and if your answer is no, it still can be
14 accepted, can you explain why?

15 MR. TABATA: Thank you. Yes, the
16 answer's no. The EIS is complete and sufficient.
17 With respect to public testimony that was provided
18 with comments of gathering rights, traditional
19 rights, as far as we could tell, all of those
20 activities occur outside of the petition area. Our
21 petition area is only 53.4 acres. The area that's
22 being discussed is over a thousand. It goes all the
23 way up to the mountains where they do their hunting,
24 and way outside of our 53 acres they're growing kalo
25 in the loi. So it's not in the 53 acres.

1 Our petition area, if we had done the
2 field trip which perhaps we should have, you would
3 have seen an open field, just open field of grass
4 basically. It's grazing land. There's no trees.
5 There's no valleys. There's no loi. So that is a
6 distinction, and that is the basis for Dr. Hammatt's
7 conclusion that there are no customary or traditional
8 practices taking place currently.

9 Now, legally, the Ka Pa'akai analysis
10 that's quoted in the cultural impact assessment talks
11 about traditional and customary Native Hawaiian
12 rights that are exercised in the petition area. So
13 based on this quote or this statement of the Ka
14 Pa'akai analysis, it appears to apply to the
15 currently existing traditional and customary rights
16 being exercised, not whether or not there's ever been
17 a historical practice in the area -- in the petition
18 area, and that is the basis for our EIS and I believe
19 the basis for Dr. Hammatt's cultural impact
20 assessment.

21 ACTING CHAIR CABRAL: Commissioner Okuda.

22 COMMISSIONER OKUDA: Yeah, Chair, one
23 fast follow-up question. If the Land Use Commission
24 were to accept this final environmental impact
25 statement, would that preclude the commission at a

1 subsequent hearing from determining that because of
2 certain factors or matters with respect to Ka Pa'akai
3 versus Land Use Commission, that the Land Use
4 Commission may decide to ultimately deny the boundary
5 amendment petition?

6 MR. TABATA: We're hoping for approval,
7 but you are not being bound by your decision today as
8 far as the district boundary amendment petition that
9 we filed. So these are two different processes.
10 This is Chapter 343, whether or not we have a good
11 faith, informational document. That's one thing.
12 The petition for a district boundary amendment under
13 Chapter 343 is something very different, and I
14 believe various witnesses pointed that out,
15 Commissioner Okuda.

16 COMMISSIONER OKUDA: Thank you. No
17 further questions.

18 ACTING CHAIR CABRAL: Okay. Commissioner
19 Wong -- oh, Commissioner Ohigashi.

20 COMMISSIONER OHIGASHI: I know someone
21 mistook me for Commissioner Wong.

22 ACTING CHAIR CABRAL: I do know the
23 difference, but you're sharing a microphone, and I
24 saw Commissioner Wong with the microphone a minute
25 ago.

CROSS-EXAMINATION

BY COMMISSIONER OHIGASHI:

Q So, Dr. Hammatt, I'm kind of curious, did you or your group or your investigators find any evidence that there was any past traditional, customary practices within the petition area? Was there any evidence that you guys found?

A Very difficult to go backwards like that. And I would say that given the history of Hawaii, prehistory of Hawaii for traditional practices in Hawaii, at one point precontact --

Q Dr. Hammatt, I'm not asking your supposition about it. I'm just asking did you find any physical evidence or any kind of documentary evidence or any kind of other evidence that shows that there are traditional, customary practices? Because you answered the question that you couldn't rule out it because this is Hawaii, and we don't know what happened. So I'm just asking is there any kind of physical evidence or any kind of actual evidence, you know, like bones on the ground or --

A No.

Q -- things like that?

A No. No. I'm just making a distinction between the past and the present.

1 Q Right. Was there any testimony given to
2 you that you can identify -- that identified a
3 traditional, customary practice within the petition
4 area?

5 A Well, the people we interviewed, much of
6 the focus was on the life in Kumukumu Camp and the
7 plantation life. There was a person who identified
8 cockfighting as a traditional cultural practice. I'm
9 sure that took place in the camp. But I don't know.
10 As far as hunting and gathering in cane fields, I
11 don't see that as a common practice.

12 Q I'm just asking if there was any
13 testimony or any statements given to you that, within
14 the petition area, there was a customary traditional
15 practice? The petition area, not necessarily -- I'm
16 not talking about the entire area.

17 A The ahupua'a.

18 Q Yes.

19 A The people we interviewed, as I said,
20 mostly focused on the plantation camp, and whenever
21 there's a mention of kalo, it was somewhere else.

22 Q Outside the petition area?

23 A Yes.

24 COMMISSIONER OHIGASHI: I don't have any
25 other questions.

1 ACTING CHAIR CABRAL: Commissioners, any
2 other questions from our commissioners? Okay. While
3 we still have this witness, does the Office of Kauai
4 Planning Department have any more questions?

5 MR. ROVERSI: No questions, Madam Chair.

6 ACTING CHAIR CABRAL: State Office of
7 Planning, any questions?

8 MS. APUNA: No questions.

9 CROSS-EXAMINATION

10 BY ACTING CHAIR CABRAL:

11 Q Okay. I have a question. Okay.

12 A Thank you.

13 Q While I do not have a long history of
14 understanding environmental impact statements, I did
15 review it, but I have a lot more history about
16 understanding sewer lines. I do a lot of property
17 management. I deal with sewer lines a lot.

18 So you referenced the fact that the
19 petition area is clear of any type of cultural
20 activity or evidence of burial sites, et cetera, but
21 that the area between the petition area and the
22 roadway does, in fact, have evidence of burial sites,
23 et cetera, and you referenced the possibility of a
24 sewer line. So I do not recall or did not understand
25 it, but was there that when you -- is it going to be

1 that when this development -- if this development
2 were to take place, that they would, in fact, be
3 needing to bring their sewer lines down through that
4 area, and if that area that has -- by way of your
5 testimony, already known to have burial sites in it,
6 if they're going to ask to go through that area,
7 would you be then doing some type of an environmental
8 impact statement or an update as well as the
9 subtesting of the soils in that area before any type
10 of disturbance were to take place in those areas?

11 A Well, I believe the letter from SHPD is
12 clear that the mitigation for this project would be
13 archaeological monitoring, which includes both the
14 petition area and the sewer line which is outside the
15 petition area, but also in the project area.

16 Q Okay. And that's, I guess, my question.
17 Archaeological monitoring would include the fact that
18 you would have to go into an area -- if they were to
19 identify that the sewer line is going to go down 2
20 degrees to the right and down 100 feet to the left,
21 that you would then go and do a testing of those
22 areas before that sewer line would be --

23 A No. I think --

24 Q -- before the objects would show up?

25 A -- the concept of monitoring is -- and

1 it's a tricky thing, but you monitor -- we would --
2 the concept is you monitor the excavation of the
3 sewer line, which means basically an archaeologist, I
4 don't want to say, supervises, but the archaeologist
5 watches very closely any ground disturbance, and if
6 there's any sign of any finding, the archaeologist
7 has the authority to halt the project and investigate
8 that find. And that is the -- that is the strategy
9 and mitigation proposed by SHPD.

10 ACTING CHAIR CABRAL: Okay. That's what
11 I was looking for. Thank you very much then.

12 Okay. Any other questions at this time?
13 Okay. Our commission is supposed to have lunch
14 brought to us soon. So -- and since it's been
15 approximately one hour since we last took our last
16 break, we will take a break now for one hour and
17 reconvene at 12:45. Okay. So thank you very much.

18 And to let you know too, depending on the
19 length of time for us to be able to hear the rest of
20 the petitioner's presentation and their witnesses,
21 depending on that time frame, our time frame that is
22 allowed, we might be willing to take additional
23 testimony from folks here, particularly if it has new
24 information, if it was testimony that was not given
25 before and/or that it is clearly in relationship to

1 the issue at hand which is the environmental impact
2 statement. So I just want to let you know we're not
3 opposed to taking testimony. It will be very keenly
4 a timing issue.

5 Okay. Thank you very much. We'll see
6 you in one hour.

7 (Whereupon, a luncheon recess was
8 taken from 11:46 a.m. until 12:48 p.m.)

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LIHU'E, HAWAII;

THURSDAY, AUGUST 8, 2019

12:48 p.m.

-o0o-

ACTING CHAIR CABRAL: Okay. All right.
We'd like to call our hearing back together at this
time, and at this point, we are still continuing with
the petitioner.

So, Attorney Matsubara and Takaba [sic],
do you have more witnesses you'd like to present at
this time?

MR. TABATA: We do have more witnesses,
but our understanding is that the county has time
constraints. So we are willing to have them go out
of order at this time.

ACTING CHAIR CABRAL: Do I hear any
objection to that? Okay. Go ahead. We can go ahead
and hear from the County of Kauai.

MR. ROVERSI: Planning Director Ka'aina
Hull would like to make a statement.

ACTING CHAIR CABRAL: Director Ka'aina,
can you go ahead and make your statement?

And do I need to swear him in? Yes, may
I swear you in? Okay. Do you swear or affirm that
the testimony you are about to give is the truth?

1 THE WITNESS: I do.

2

3 KA'AINA HULL,

4 having been called as a witness by the County of
5 Kauai, was duly sworn and testified as follows:

6 ACTING CHAIR CABRAL: Go ahead and give
7 us your name and address and proceed.

8 THE WITNESS: Ka'aina Hull, director of
9 planning, and my business address is 4444 Rice
10 Street, Lihu'e, Kauai 96756 -- 66. As a real brief
11 statement, the Department of Planning is in support
12 of the EIS being adopted, and we do find that the
13 proposal is as discussed previously and, as
14 represented in the EIS, is in keeping with -- is in
15 alignment with the general plan.

16 ACTING CHAIR CABRAL: Okay. That's the
17 conclusion of your statement?

18 THE WITNESS: Correct.

19 ACTING CHAIR CABRAL: Thank you. Okay.
20 Let me -- any questions? Yes. Office of Planning,
21 do you have any questions on that?

22 MS. APUNA: No questions.

23 ACTING CHAIR CABRAL: Okay. Petitioner,
24 do you have questions of him on that statement?

25 MR. TABATA: No questions.

1 ACTING CHAIR CABRAL: Okay.

2 Commissioners, do you have questions of the county's
3 statement?

4 Okay. Commissioner Okuda.

5 CROSS-EXAMINATION

6 BY COMMISSIONER OKUDA:

7 Q Mr. Hull, thank you very much for coming
8 here and giving testimony. Is there any way that the
9 general plan could be interpreted to indicate that
10 this proposed development is not consistent with the
11 general plan?

12 A Individuals can interpret it to their own
13 abilities and capacities. I can just say that in my
14 interpretation of it and as the individual assigned
15 under our code to interpret it for the county, I do
16 find that it is in alignment with the general plan,
17 but I cannot contest the fact that others may have
18 another interpretation.

19 Q Did you yourself review the environmental
20 impact statement?

21 A I haven't read every single page, but I
22 have reviewed it.

23 Q Did you see anything in the EIS which
24 discussed about how the project may not be in
25 compliance with or inconsistent with the general

1 plan?

2 A I believe so. I did.

3 Q Do you have a recollection of where in
4 the EIS it said that or it had a discussion about the
5 project not being consistent with the general plan?

6 A I believe in Mr. Dahilig's 2018 letter,
7 he alluded to the fact that there were some
8 disagreements which he laid out a case as to why he
9 did not agree with those disagreements.

10 Q Okay. Thank you very much.

11 ACTING CHAIR CABRAL: Okay.
12 Commissioners, any other questions?

13 COMMISSIONER GIOVANNI: Yes.

14 ACTING CHAIR CABRAL: Okay. Commissioner
15 Giovanni.

16 CROSS-EXAMINATION

17 BY COMMISSIONER GIOVANNI:

18 Q Good afternoon, Ka'aina.

19 A Good afternoon, Commissioner.

20 Q In the overview presented and by
21 testimony of Izer -- Izner [sic], he alluded that the
22 county supported a roundabout as a means for
23 mitigating or addressing the impact of traffic. Did
24 he accurately represent the position of the county in
25 his overview?

1 A I believe he did.

2 Q Thank you.

3 ACTING CHAIR CABRAL: Okay. Commissioner
4 Chang.

5 CROSS-EXAMINATION

6 BY COMMISSIONER CHANG:

7 Q Aloha. Thank you for being here and
8 providing us with testimony. I just wanted to -- to
9 understand the limits of your statement. So is your
10 testimony that the project is -- the proposal is in
11 alignment with the general plan, is that limited to
12 just the proposal for the 53 acres?

13 A I would agree with that statement.

14 Q So if they came in with a new proposal or
15 another 53 acres, your opinion may change depending
16 upon the facts?

17 A Depending on what they propose, I don't
18 think that the -- at least with the spatial guidance
19 that is established within the general plan, that it
20 would afford for an opportunity to expand the
21 residential community aspect for an expansion of
22 acres that's beyond the 53 acres.

23 Q And your opinion, does it take into
24 consideration whether there's existing
25 infrastructure, water, traffic, wastewater, is

1 adequate to -- as described in the EIS, is that
2 adequate for this development?

3 A I would say that it's adequate as far as
4 the comments that are provided for the various
5 agencies that the EIS responds to. However, should
6 this body determine that it is appropriate to amend
7 the land use district at a future date, it ultimately
8 has to go before county bodies to secure the zoning
9 and then ultimately on with entitlements. As you go
10 through each of those processes, it gets further and
11 further refined in which additional infrastructure
12 may be required. But as far as what the agencies
13 provided to the EIS and what the EIS responds to, I
14 do feel, is adequate.

15 Q So your testimony is really limited only
16 to your kuleana under DPP? You're not here
17 testifying with respect to fire or water or sewer,
18 but it is only with respect to the county general
19 plan and its alignment?

20 A Correct.

21 Q Okay.

22 ACTING CHAIR CABRAL: Any further
23 questions from commissioners?

24 Now Commissioner Wong.

25 COMMISSIONER WONG: Yeah. I'm better

1 looking too than the other commissioner. I had to
2 put that in.

3 CROSS-EXAMINATION

4 BY COMMISSIONER WONG:

5 Q I have a question. So following up on
6 Commissioner Chang's statement, do you know of any
7 other county agencies that are against this plan?

8 A I'm not aware of any.

9 Q All right. Anyone for it that you know
10 of?

11 A I am not aware of any agency that has
12 come out with a petition or a memorandum in full
13 support, but like I said, I didn't read every single
14 page in here. I went over those areas and functions
15 that were definitely pertinent to the zoning aspect
16 of it, but I'm not aware of, like, say the fire
17 agency has come out with an official support letter.

18 COMMISSIONER WONG: Okay. Thank you. No
19 other questions.

20 ACTING CHAIR CABRAL: Okay.

21 Commissioners, any other questions from commissioners
22 at this time?

23 Okay. Thank you, Director, for your
24 input.

25 Mr. Takaba and Matsubara, you may

1 continue.

2 MR. TABATA: Thank you. Our next witness
3 is Matt Nakamoto.

4 ACTING CHAIR CABRAL: May I swear you in?

5 THE WITNESS: Yes.

6 ACTING CHAIR CABRAL: Okay. Do you swear
7 or affirm that the testimony you are about to give is
8 the truth?

9 THE WITNESS: I do.

10 ACTING CHAIR CABRAL: Okay. Can you go
11 ahead and proceed and give us your name and your
12 address and then proceed?

13 THE WITNESS: Okay. My name is Matt
14 Nakamoto. My work address is 501 Sumner Street,
15 Suite 521, Honolulu, Hawaii 96817.

16 ACTING CHAIR CABRAL: Okay. Thank you.
17 Go ahead and proceed with your testimony.

18
19 MATT NAKAMOTO,
20 having been called as a witness by Petitioner,
21 was duly sworn and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. TABATA:

24 Q Matt, would you please describe for us
25 your professional background?

1 A Yes. So I'm the chief transportation
2 engineer and principal at the firm Austin Tsutsumi &
3 Associates. I've been doing traffic engineering for
4 nearly 18 years at the end of this month. I've been
5 managing the section for -- since 2013, which has 11
6 people. I've done numerous traffic studies, both
7 large and small. An example of a large one would be,
8 like, Ho'opili. And we've also done, like,
9 construction management plans, parking studies,
10 roundabout layouts, which I've even done some for
11 this island. Traffic signal optimization plans. And
12 so I received a bachelors of science in civil
13 engineering in 1999 and a masters in 2002,
14 specializing in transportation engineering from the
15 University of Hawaii at Manoa. I've been licensed to
16 practice since 2005, and that's it for my experience.

17 Q Thank you. And what is your involvement
18 with this project?

19 A In this project, I was the principal in
20 charge and project manager for the traffic study.

21 Q And could you please summarize your
22 traffic study for us?

23 A Sure. Okay. So we conducted our field
24 observations on April 18 and 19, 2017, and that was
25 before all of the -- you know, the recent events that

1 have happened, including, like, the historic April
2 2018 floods and associated road closures, and before
3 the 2019 Ha'ena State Park visitor restrictions went
4 into effect, which might have had a reduction in
5 traffic associated with it.

6 Q Excuse me, Matt. Could you please slow
7 down your testimony a little bit --

8 A Okay.

9 Q -- for the court reporter?

10 A Okay. Sorry.

11 Okay. So during the field observations,
12 we were able to observe some of the congestion that
13 occurs in Kapa'a as everybody is aware of. So during
14 the a.m. peak hour, we observed some congestion along
15 Kuhio Highway through Kapa'a town. We measured the
16 average driving speeds ranging between 11 and 18
17 miles per hour, and, of course, that's including the
18 slow and the faster parts. So some parts might be
19 slower.

20 During the p.m. peak hour is where we saw
21 heavier congestion. In particular, like in the area
22 by, I guess, really emanating from Halalio [sic]
23 Street for a length of queue that was about one and a
24 quarter mile and went all the way to Koloa Road. And
25 in that segment of road, the average driving speeds

1 were measured to be about 7 to 8 miles per hour,
2 which is an average, again, of the fast and the slow
3 periods. And, you know, I think our assessment of
4 that really is that there's no contraflow in effect
5 during the p.m. peak hour, and the Kapa'a bypass
6 traffic is being funneled back to merge with the
7 Kuhio traffic there. And because those cars that are
8 going southbound towards town are going in, quote
9 unquote, the wrong direction, you know, against the
10 regular traffic -- commuter traffic, they experience
11 quite a bit of congestion there. And I know that's a
12 source of a lot of frustration or has been.

13 And, also, there's some queuing that is
14 separate that's within Kapa'a town itself, and that's
15 primarily due to, like, turning movements and the
16 fact that there's businesses along the road and
17 everything. So that's our assessment of the existing
18 condition.

19 Our future projections are for the year
20 2027, which is, you know, based upon when we think
21 it's possible that the homes could be built out by.
22 And so in those future growth projections, we were
23 very conservative. We included traffic growth rates
24 of between 1 and 2 percent annually based upon the
25 Kauai regional transportation demand model. And, you

1 know, so that model from our assessment does include
2 Pi'ilani Mai Ke Kai, Kulana Subdivision and Hokua
3 Place.

4 And, you know, just to preface this, the
5 long-range forecasting model, I'm listing projects
6 that are in the vicinity, but the long-reach
7 forecasting model is actually based off of an
8 islandwide future growth basis, you know, that will
9 project traffic based on everything that is supposed
10 to happen on the island in the future. So, you know,
11 when I say that we're growing traffic by 1 to 2
12 percent, that is really -- you know, it's consistent
13 with what former Director Dahilig had mentioned, that
14 the islandwide growth in population would be about 1
15 percent based upon the demand.

16 In addition to that, we also overlaid
17 Coconut Plantation, Coconut Beach Resort and Coco
18 Palms, and we conservatively even assumed that their
19 traffic -- all the northbound traffic would continue
20 all the way through Kealia Road itself when, in
21 actuality, when they're going northbound, you lose 10
22 to 15 percent at every shopping mall along the way to
23 which the traffic gets way lighter by the time you
24 get to -- by Kealia. So I'm just saying that, you
25 know, our projections are conservative based upon all

1 those factors.

2 We also did analyze our future scenarios
3 with one with and one without the extension of the
4 Kapa'a Bypass Road. The Kapa'a Bypass Road is --
5 right now in the northbound direction, it terminates
6 at the roundabout at Olohena Road. This improvement
7 that we were considering is also -- is based off of
8 what was inside the Kapa'a transportation solution's
9 report and is one of numerous recommendations that
10 came out of there. So, anyway, I'm just saying that
11 we analyzed it both ways.

12 Okay. So maybe now I can talk about the
13 project a little bit. The Kealia Mauka project has
14 235 single-family dwelling units. And to put this in
15 context, I looked at the Hawaii State data book, and
16 we can see all of the different communities that are
17 served by Kuhio Highway heading into the most
18 congested southbound corridor which is near Coco
19 Palms area to the south. The total of those units,
20 which also include Ha'ena State Park all the way down
21 through Wailua and Waipouli, is 9,157 homes with
22 26,708 residents. So, you know, if we look at that
23 as a percentage, we're increasing the traffic that's
24 served by the congested part of the highway by 2.56
25 percent. So that's just to put it in context. The

1 traffic that we're anticipating that the project will
2 generate is 43 entering and 129 exiting trips during
3 the a.m. peak hour of traffic, and during the
4 p.m. peak hour would be 146 entering and 85 exiting
5 trips. So, you know, just to put that in context,
6 this is per hour. So, you know, it's between one and
7 two and a half vehicles per minute in either
8 direction on the highway at the point where the
9 traffic comes down to the road. And as the cars
10 start going to drop off their kids at school or going
11 to the mall, then that will diminish as you get
12 further south.

13 I should also note that we did count the
14 Kaaoo intersection with Kealia Road, and the traffic
15 that they generate is actually lighter than the rate
16 that we used to generate our traffic. In particular,
17 in the p.m. peak hour, it's about 71 percent of what
18 the rate that we originally had. During the a.m.,
19 it's actually a little heavier, about 114 percent,
20 but the a.m. traffic generation is a lot lighter.

21 So the primary recommendation that came
22 out of our report was to install either a traffic
23 signal or a roundabout at the Kealia Road
24 intersection with Kuhio Highway. And as Scott had
25 mentioned earlier and the county had expressed a

1 desire to make it a roundabout, which would be
2 consistent with what is going on right down the
3 street at Mailihuna Road which services the school.
4 So, anyway, so our recommendation is that we can go
5 either way. We did provide even mock-up concepts of
6 what they would look like, and we did identify what
7 the pros and cons of either solution were, and we're
8 awaiting whatever decision the DOT makes on which way
9 they want to go with it. We're willing to work with
10 them on that solution. And, you know, so with
11 that -- that being addressed, then the DOT doesn't
12 have any concerns as far as I'm aware of from their
13 most recent letter.

14 I have heard some comments and testimony
15 that, you know, a single access point for a
16 development of this size is inappropriate or
17 inadequate. What I can say to that is there is a lot
18 of precedent for developments having a single access
19 point. Most notably on Oahu, Mililani Mauka has
20 7,000 homes with a single access road. So I think
21 what's really germane to that discussion is how do we
22 anticipate that the intersection will operate? And
23 with our proposed mitigations, we're showing that the
24 operations will be acceptable at the intersection by
25 the year 2027.

1 I guess I would also note that I know a
2 lot of the comments have really been about regional
3 traffic concerns, and, you know, the concerns about
4 the traffic which I've already identified and the
5 congestion. So, you know, the regional analysis and
6 recommendations have already been dealt with in the
7 Kapa'a Transportation Solutions report, which I know
8 there's complaint also that not all of these
9 improvements have been done. And that's a valid
10 concern. But, actually, I did some research
11 recently, and I also did consult with the DOT about
12 the status of some of these improvements. So I'd
13 like to go over these possible improvements to the
14 traffic that they're working on.

15 So one of the improvements that are
16 recommended in the Kapa'a Transportation Solutions
17 report is to widen Kuhio Highway from the Kapa'a
18 Bypass Road to the Kuamoo Road intersection. So this
19 is the area by Coco Palms. This is that area that I
20 was really talking about as the major bottleneck
21 during the peak hour of traffic. So my understanding
22 is that this project is actually slated to be
23 advertised. So it's really moving. And I can see
24 monies for it inside the Statewide Transportation
25 Improvement Program or the STIP. I think right now

1 16 million is allocated for that improvement. I
2 think that that would have a major impact on traffic
3 in the major congestion that we observed.

4 There's also another project to widen
5 Kuhio Highway from Kuamoo Road all the way down to
6 Kapule Highway. So you have that length of the
7 highway that's currently three lanes and turn it into
8 four lanes. And that project has monies allocated
9 towards the preliminary design phase, but they still
10 have to clear some of the environmental and
11 rights-of-way issues that are associated with that.

12 After the initial widening occurs, also,
13 there's plans to optimize traffic signals at Kuhio
14 Highway. And, you know, that would also take
15 advantage of the fact that the highway's in a
16 different state and the traffic signal times can be
17 modified to improve the flow of traffic through
18 Kapa'a.

19 And then finally, this is a separate
20 thing, but we talked about the Mailihuna roundabout
21 and that project is -- to my knowledge, it's going to
22 be occurring soon. And that should provide relief to
23 some of the residents that are coming out of
24 Mailihuna Road. And I've sat in that queue of
25 traffic, you know, going on to the highway before

1 myself. So that's another improvement.

2 So in combination, I think all of these
3 improvements would be beneficial and would really
4 increase the capacity of the highway significantly,
5 and that's all I have for my testimony.

6 MR. TABATA: Thank you. Mr. Nakamoto is
7 available for questions.

8 ACTING CHAIR CABRAL: County, do you have
9 questions?

10 MR. ROVERSI: No questions. Thank you.

11 ACTING CHAIR CABRAL: Okay. Office of
12 Planning, questions of our testifier?

13 MS. APUNA: No questions.

14 ACTING CHAIR CABRAL: Okay.
15 Commissioners, questions of our testifier?

16 Okay. Commissioner Giovanni.

17 CROSS-EXAMINATION

18 BY COMMISSIONER GIOVANNI:

19 Q So as we've heard in the public
20 testimony, traffic is a major local concern --

21 A Yes.

22 Q -- in this area and for this project.
23 We've heard testimony that the EIS currently
24 identifies the traffic impact as a major area of
25 concern --

1 A Yes.

2 Q -- and has identified a couple of -- two
3 options, the traffic signal and the roundabout at
4 this intersection that you spoke to, as viable
5 alternatives. Would you consider both of these to be
6 viable alternatives, and does the current
7 environmental impact statement adequately address the
8 impact mitigation of these two for consideration at
9 this time?

10 A Well, I can say that they both are viable
11 from the standpoint of doing traffic analysis. You
12 know --

13 Q They are or are not?

14 A They are, yes. And, in fact, like, there
15 aren't too many other options to mitigate traffic. I
16 know that if we don't put in a signal or we don't put
17 in a roundabout, we could have some issues with
18 congestion, and that's shown inside our analysis.
19 So, you know, besides an unsignalized intersection, a
20 roundabout or a signal are the only real alternatives
21 that we could have recommended.

22 I should also note that the DOT -- I
23 think it's their comments to the EISPN -- stated that
24 we can't have another access point to the project.

25 Q Okay. In your testimony, you -- you said

1 the words that "the impacts would be acceptable."
2 You were talking about the 1 to 2 percent increases.

3 A Okay.

4 Q That the impacts would be acceptable with
5 these mitigations. Are there known or specified
6 criteria for what's acceptable and not acceptable
7 when you do these types of studies?

8 A Okay. So I'm talking about what our
9 mitigation is at the main intersection. In terms of
10 what is acceptable or not acceptable, I mean, there
11 are a lot of projects that occur in congested areas.
12 To deem something acceptable or not acceptable, if we
13 have right now -- in some cases, we do have level
14 service F. You know, the desired operational level
15 would be level service D. But in some cases, you can
16 have level service F when you don't even have any
17 congestion just because the light is red for more
18 than, say, you know, 80 seconds.

19 So, yeah, I would say that it's -- there
20 is a threshold. At the same time in many cases in
21 practical experience, they are exceeded for a variety
22 of reasons.

23 Q So when it's exceeded and you say it's
24 still acceptable, is that your qualified opinion?

25 A What I'm saying is that the

1 recommendations that we have for the project itself
2 are -- I think that they're, in terms of proportion
3 to 235 units is -- you know, proportional. There are
4 regional concerns to which regional solutions are
5 identified to which a 235-unit project cannot
6 mitigate all by itself, and kind of balance that, you
7 know, the need for the housing, with the fact that,
8 you know, the more affordable housing is, the more
9 traffic it generates. A vacant house doesn't
10 generate traffic. Even like a hotel generates less
11 traffic than a house. So working people, because
12 they're commuting during the work hours, generates
13 traffic.

14 So I would say that -- I believe that
15 what we're saying is that it's proportional what our
16 recommendation is to improve and mitigate that
17 project's impacts.

18 Q So for purposes of the EIS and whether or
19 not it's adequate and final, you believe that the
20 solutions that have been identified to mitigate the
21 traffic impacts are sufficient and adequate?

22 A Correct.

23 Q Thank you.

24 ACTING CHAIR CABRAL: Other --
25 commissioners, questions?

1 Commissioner Wong.

2 CROSS-EXAMINATION

3 BY COMMISSIONER WONG:

4 Q Okay. So this is just a question. You
5 did a TIAR?

6 A Correct.

7 Q Is there something called a volume study
8 instead, a traffic study --

9 A I've never done anything called a volume
10 study, but the volume that we have in the report is a
11 projection. So we are studying the existing and the
12 future volumes. But what also is tacked on to this,
13 the traffic study, is the analysis of the result and
14 also putting on some subjective qualifiers as a level
15 of service like I mentioned previously.

16 Q So the question I have is you said maybe
17 1 percent, 2 percent growth with this project?

18 A Correct.

19 Q Now --

20 A Actually, I'd like to clarify. 1 to 2
21 percent as in the background development's growth
22 annually. So not over, like, the span of 10 years,
23 but, like, every year growing 1 percent. And to
24 clarify also, that's roughly consistent with
25 historical population growth on the island.

1 Q So -- and right now the roadway is what?
2 A three-lane or four-lane highway?

3 A It's actually -- well, it depends where
4 you have it. I mean, I call it a two-lane road, and
5 in some cases, there would be a turn lane in there
6 which would be three lanes.

7 Q So the question I have is let's say
8 there's a car that got stalled or, you know, like
9 driving my junk, it would stall half of the time.

10 A Yeah.

11 Q So if that happens, it's going to close
12 pretty much one lane for a portion of time. Wouldn't
13 that back up the traffic even more or cause more of a
14 traffic jam?

15 A Are you talking about Kuhio Highway or
16 Kealia Road?

17 Q Kuhio Highway right by Kealia Road.

18 A Oh, I see. Yeah, I mean, I guess in
19 those kind of cases, the car can pull off to the
20 shoulder. It is the case in many places where you
21 have a two-lane road. Now, at the project access by
22 Kealia Road, there are turn lanes to get in and out.
23 And so if we were actually -- if we put in a traffic
24 signal, we even recommend putting in another turn
25 lane which would be like a right-turn lane.

1 Q And I'm just thinking like if we're in
2 Honolulu which is really bad --

3 COMMISSIONER GIOVANNI: This is really
4 bad.

5 BY COMMISSIONER WONG:

6 Q Heaven forbid there's a major accident,
7 you know, three cars, four cars, someone gets hurt.
8 You have to get ambulance, fire engine. How would
9 that affect the traffic in your view?

10 A I think it would affect the traffic much
11 in the same way that it would now. You know, in
12 terms of like our project's impact, like I was
13 saying, we're adding about 2 and a half percent
14 population to the area, you know, and I even know
15 that there is conflict between wanting to have more
16 lanes versus less lanes. We have Complete Streets
17 legislation trying to take away lanes which can add
18 to congestion, and that's going against adding
19 capacity to the roadway. So I think there's -- you
20 know, it's something that we're just dealing with in
21 general that we have to work around, and nothing is
22 going to be 100 percent ideal.

23 COMMISSIONER WONG: Okay. Thank you. No
24 other questions.

25 ACTING CHAIR CABRAL: Commissioner

1 Giovanni.

2 CROSS-EXAMINATION

3 BY COMMISSIONER GIOVANNI:

4 Q Just to clarify, I heard you reference
5 two different 1 percents. One was the annual growth
6 of the community?

7 A Correct.

8 (Telephone ringing.)

9 Q Sorry about that. The annual growth is,
10 like, 1 to 2 percent, but then you also referred that
11 this project in and of itself in the peak commuting
12 hours would add 1 to 2 percent incremental to that?

13 A Correct. So the 1 to 2 percent I'm
14 talking about is actually annual. So, you know, in
15 10 years, then that's 1 times 10. Yeah. And when I
16 say 1 to 2 percent, I mean it varies. It depends on
17 which road we're adding the traffic to.

18 Q But you were also talking about the
19 project itself adding 1 to 2 percent to that volume
20 that was in that peak time, or did I misinterpret
21 that?

22 A No, I'm not actually saying that. I'm
23 saying that in context, the project adds about 2 and
24 a half percent to the population that the most
25 congested area of the highway is serving. So, you

1 know, there's the existing 9,200 homes roughly that
2 is served, and we're going to add another 235. So by
3 percentage, yeah, it's about 2.56 percent.

4 Q And then there's this natural growth also
5 that's occurring?

6 A Correct. And, you know, so the traffic
7 percentage of growth will vary depending on where you
8 are. That's why I don't really want to use that.
9 Closer to the development also where I would note
10 that the traffic is lighter, you know, right at
11 Kealia Road, it would be a higher percentage. But as
12 you get all the way down to the really congested
13 area, like, Coco Palms, it would be a much smaller
14 percentage.

15 Q Okay. Thank you.

16 ACTING CHAIR CABRAL: Other
17 commissioners? Questions from the other
18 commissioners?

19 Do I have any further questions from the
20 county or from state planning?

21 MR. ROVERSI: Nothing from the county.

22 ACTING CHAIR CABRAL: Okay.

23 MS. APUNA: No questions.

24 ACTING CHAIR CABRAL: Okay. Thank you.

25 Mr. Tabata.

1 MR. TABATA: No more questions for this
2 witness.

3 ACTING CHAIR CABRAL: Okay. Thank you.
4 And I apologize for mispronouncing everyone's names.
5 I'd be all first names if I had my way.

6 Thank you very much for your testimony.

7 Okay. Mr. Tabata, do you have another
8 witness?

9 MR. TABATA: Yes. Our next witness is
10 Bill Eddy.

11 ACTING CHAIR CABRAL: Okay. Mr. Eddie,
12 may I swear you in?

13 THE WITNESS: Yes.

14 ACTING CHAIR CABRAL: Do you swear or
15 affirm that the testimony you are about to give is
16 the truth?

17 THE WITNESS: Yes.

18 ACTING CHAIR CABRAL: Can you go ahead
19 and give us your full name and your address?

20 THE WITNESS: William Eddy, and our
21 business address is 3126 Akahi Street, Lihu'e,
22 Hawaii.

23 ACTING CHAIR CABRAL: Okay. Go ahead and
24 proceed.

25 MR. TABATA: Thank you.

1 WILLIAM EDDY,
2 having been called as a witness by Petitioner,
3 was duly sworn and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. TABATA:

6 Q Bill, could you describe for us your
7 professional background?

8 A Yes. I'm a licensed civil engineer, and
9 I'm a civil engineer by education and by work
10 experience. I've been licensed in the State of
11 Hawaii for about 25 years. I currently work for
12 Kodani & Associates Engineers in Lihu'e.

13 Q Thank you. Bill, were you present here
14 today when questions came up regarding the Old
15 Government Road?

16 A Yes.

17 Q And during the break today, did you have
18 a chance to review documents that describes the Old
19 Government Road?

20 A Yes, I did.

21 Q And what are those documents?

22 A I have a document that you presented to
23 me, and the title is "Petition For Land Use District
24 Boundary Amendment Verification Exhibits 1 Through 5,
25 Affidavit of Service of Petition For Land Use

1 District Boundary Amendment, Affidavit of Sending of
2 Notification of Petition Filing and Certificate of
3 Service."

4 Q Thank you. And within that document, is
5 there a metes and bounds description for this
6 property?

7 A There is. There's a metes and bounds
8 description of the petition area, and there's also a
9 metes and bounds description of the overall Kumukumu
10 parcel.

11 Q Okay. And is the Old Government Road
12 mentioned in that larger metes and bounds
13 description?

14 A Yes, it is.

15 Q Okay. And the other document -- I'm just
16 looking at the table in front of you. There's a map;
17 correct?

18 A Correct.

19 Q What kind of map is that?

20 A It's what's commonly known as an ALTA
21 map. It's a survey map. ALTA stands for American
22 Land -- Land Title Association, ALTA.

23 Q Thank you. Can you place that map on the
24 wall behind you so that we can take a look at it,
25 please?

1 A I don't think it's going to clip. It's
2 not thick enough.

3 MR. TABATA: Thank you, gentlemen. We're
4 improvising here.

5 Q (By Mr. Tabata) Mr. Eddy, Bill --

6 ACTING CHAIR CABRAL: Actually, can I
7 interrupt for a minute here? Is this map similar to
8 one that's already been provided in the information
9 that we have, and if so, what exhibit might that be?
10 Or is it a new piece of evidence?

11 MR. TABATA: This map has not been
12 previously provided.

13 ACTING CHAIR CABRAL: Okay. At some
14 point in time, we may need to have that added to our
15 information.

16 MR. TABATA: Yes, we will if we are
17 permitted to proceed.

18 ACTING CHAIR CABRAL: Okay. You're
19 introducing it as a new exhibit then?

20 MR. TABATA: Yes, we will introduce this
21 as a new exhibit.

22 ACTING CHAIR CABRAL: Okay. Thank you
23 very much. Proceed.

24 MR. TABATA: Thank you.

25 Q (By Mr. Tabata) Bill, when you look at

1 this map and you look at the metes and bounds
2 description, are you able to identify the location of
3 the Old Government Road?

4 A Yes.

5 Q If you could please point out on the map
6 where that road is exists.

7 A Would you mind if I just walk you through
8 the map for a second --

9 Q Yes, please. Thank you.

10 A -- if that's okay?

11 ACTING CHAIR CABRAL: Talk loud.

12 THE WITNESS: We're going to start at
13 Kuhio Highway. We have Kuhio Highway. This would be
14 the northerly direction towards North Shore. Kealia
15 Road is along the bottom portion of the map. Old
16 Government Road is along this quadrant of the map.

17 MR. TABATA: For the record, Mr. Eddy is
18 pointing towards the left side of the map, the left
19 end of the map.

20 Q (By Mr. Tabata) Mr. Eddy, could you point
21 out where the 53-acre petition area is, please?

22 A Yes. The petitioner area is generally in
23 this location down here.

24 Q For the record, Mr. Eddy is pointing out
25 the petition area which is located in the lower

1 right-hand corner of the map.

2 Mr. Eddy, could you just generally
3 describe the distance, if you can, between the
4 petition area and the Old Government Road? If you
5 can. I'm not -- if you could just generally --

6 A Yeah, I don't know offhand. This 1 inch
7 equals 300 feet. So it's more than 1,000 feet.

8 Q Thank you.

9 A You can say that.

10 Q Thank you very much. I have no more
11 questions.

12 ACTING CHAIR CABRAL: I want to thank you
13 very much for clarifying that question and providing
14 that information.

15 MR. TABATA: I'm sorry. If I could ask
16 one more question.

17 ACTING CHAIR CABRAL: Absolutely. It's
18 your floor.

19 BY MR. TABATA:

20 Q Now, the Old Government Road, does that
21 occur anywhere within our petition area?

22 A No.

23 Q Okay. Thank you. Now I'm done. Thank
24 you very much.

25 ACTING CHAIR CABRAL: Mr. Eddy, do you

1 have any other statements you're going to make?

2 THE WITNESS: No, I don't.

3 ACTING CHAIR CABRAL: Okay. And so,
4 Mr. Tabata, do you have more questions of him at this
5 time?

6 MR. TABATA: I have no more questions for
7 Mr. Eddy at this time. Thank you.

8 ACTING CHAIR CABRAL: Okay. County, any
9 questions?

10 MR. ROVERSI: No questions.

11 ACTING CHAIR CABRAL: State Planning?

12 MS. APUNA: No questions.

13 ACTING CHAIR CABRAL: Okay.

14 Commissioners, questions of Mr. Eddy? Commissioner
15 Ohigashi.

16 COMMISSIONER OHIGASHI: I don't have any
17 questions, but has the map been introduced as part of
18 the record?

19 MR. TABATA: The map has been referred to
20 as an ALTA map, and we have represented that we will
21 provide a copy as an additional exhibit.

22 COMMISSIONER OHIGASHI: So is it required
23 that the chair recognizes this or the chair accepts
24 the map as an exhibit?

25 ACTING CHAIR CABRAL: I tried to do that

1 earlier. Shall we give it a name? Okay. What
2 exhibit would you want to give it?

3 MR. TABATA: It would be our next exhibit
4 in order for our petition which would be number --
5 No. 6.

6 ACTING CHAIR CABRAL: No. 6. Okay.
7 Thank you. We'll consider the map that was just
8 given to be a new exhibit, and it will be No. 6.
9 Okay. Any questions? Commissioner Ohigashi, do you
10 have any other questions?

11 COMMISSIONER OHIGASHI: No.

12 ACTING CHAIR CABRAL: Commissioner Chang,
13 do you have questions?

14 CROSS-EXAMINATION

15 BY COMMISSIONER CHANG:

16 Q Bill, thank you so much for being here.
17 What was the date on that map, do you remember?

18 A Commissioner, the map has several dates
19 on it.

20 Q Okay.

21 A And the last date on there, it says
22 "Updated 2007."

23 Q Do you know what the original date on
24 that map was?

25 A Not offhand. It's on -- printed on

1 there.

2 COMMISSIONER CHANG: Can someone just
3 confirm the original date on that map?

4 MR. TABATA: Yes. We'll review the map.

5 THE WITNESS: The original date is August
6 4th, 2005.

7 BY COMMISSIONER CHANG:

8 Q Oh, okay. And is it -- Bill, is that the
9 only Old Government Road that you found on this
10 property?

11 A There's no Old Government Road on the
12 property. The metes and bounds description refers to
13 Old Government Road, and it uses the words "along Old
14 Government Road." And in terms of metes and bounds
15 descriptions, that means that there's a common
16 boundary between the subject parcel and whatever it's
17 along. So the large parcel, the Kumukumu parcel, has
18 a common boundary with Old Government Road. But as
19 far as we can tell, there's no Old Government Road
20 within the parcel.

21 Q I'm going to ask you to look at Exhibit 3
22 of the petition, and it may be the same map that you
23 showed me or it may be a different map. And I want
24 to make sure you're looking at the same map that I
25 am. Can you --

1 A Yes. I'm looking at the tax map key.

2 Q Okay. Okay. I'm looking -- and my sight
3 is not really good, but I'm looking at what would be
4 at the bottom by plat 3. Do you see that?

5 A Yes.

6 Q I see along there, it says "Government
7 Road"?

8 A Correct.

9 Q Is that the same government road you were
10 talking about?

11 A They both are labeled "Government Road."

12 Q Okay.

13 A This map -- if you look, you know, on the
14 edge of the map there, it gives the date of November
15 1936. And so tax map keys are very interesting. You
16 know, they contain a wealth of information. So, now,
17 the basis of this map was drawn in territorial days,
18 and before there was the County of Kauai as we know
19 it now. And now what's labeled on this map as
20 Government Road, that's near the word "plat 03" is
21 now known as Kealia Road and is a county road. And
22 so it's officially a county road. It's on the county
23 road's list, and they accept that as a county road.
24 And now what's shown as Government Road along the
25 left side of this map is plat 02. As far as we can

1 tell, it has not been given a name, and it's my
2 understanding that it hasn't been accepted by the
3 county and might be a road in limbo, a so-called road
4 in limbo that originally was, you know, property of
5 the Territory of Hawaii that went to the State of
6 Hawaii, and at some point the state tried to give it
7 to the county, but the county maybe never accepted
8 it.

9 So to answer your question is it the same
10 government road? I'm going to say that, no, it's not
11 the same government road.

12 Q Because it looked like the road that you
13 showed us in the previous map was much more makai,
14 the one that you put up on the board.

15 A Correct. Yeah.

16 Q And maybe it's because this map, Exhibit
17 3, maybe it wasn't drawn as correctly, but it appears
18 as if a portion of that government road goes through
19 the property, through what's red. Do you see it?

20 A Oh, I see it. Yes. Yeah.

21 Q So is that just the pen went wrong, or is
22 it possible that the government road still goes
23 through the property?

24 A No. The government road does not go
25 through the property, and it can be explained by the

1 red ink line is an accurately drawn map with
2 computers and drawn to scale with, you know, very
3 precise metes and bounds; whereas, the old TMK map
4 was a hand-drawn map with less accuracy, and it's
5 been copied over several times. And, you know, when
6 you copy a paper map, it distorts scales. So the
7 petition area does not actually cross into this
8 government road. It follows the boundary of what
9 this map shows as government road, and in other
10 places, we call it Kealia Road.

11 Q Okay. Let me ask another question. Have
12 you had an opportunity to review the archaeological
13 inventory survey?

14 A No.

15 Q And in that archaeological inventory
16 survey -- actually, the inventory survey report, it
17 specifically references an Old Government Road. So I
18 am looking for some confirmation that that Old
19 Government Road that is in reference in the report,
20 because it appears to reference prior to 1892, looked
21 like it might have come from a letter or map of 1878.
22 So I'm looking for some document that confirms
23 whether that road -- and it doesn't have to be in
24 existence anymore. Under the Highways Act of 1892,
25 so long as a road existed or the right-of-way existed

1 prior to 1892, it could have been totally abandoned
2 and no longer exists, but it is still owned by the
3 State of Hawaii unless they have disposed of it under
4 Chapter 171. But so you don't know whether that's
5 the same government road that you showed me on that
6 other map?

7 A No, I don't know what -- but there's more
8 information within this document here that kind of
9 answers your question, if I may.

10 Q Okay. Go ahead. Explain to me.

11 A Okay. Do you have this same document?
12 Is this the one that you're also working off of, the
13 Petition For Land Use District Boundary?

14 Q I'm looking at Appendix D-1, and it's
15 called the "Revised Draft Archaeological Literature
16 Review." And I'm looking at page 39, I believe.

17 MR. TABATA: That Appendix D-1 is in the
18 EIS, and Mr. Eddy is looking at the Petition For
19 District Boundary Amendment.

20 COMMISSIONER CHANG: So Mr. Eddy said he
21 didn't review the AIS either. So it's -- you're
22 probably not the right person to answer that.

23 MR. TABATA: But there's answers --

24 THE WITNESS: Yeah, there's answers in
25 the metes and bounds, the legal description.

1 BY COMMISSIONER CHANG:

2 Q But it doesn't tell me whether the road
3 has been exposed, whether it was in existence. Does
4 it give me a title report on the road?

5 A If there were a road, it would -- it
6 would list it at the end of the metes and bounds
7 description. It would be something of an encumbrance
8 on the parcel. And it doesn't -- you know, it lists
9 several easements and such, but it makes no reference
10 to a government road.

11 Q No. I understand that. And it's just
12 that there has been numerous litigation, Haleakala
13 case recently, where there's a dispute between the
14 landowner and the State of Hawaii who asserts there
15 was a previous Old Government Road, and the courts
16 have subsequently said those are owned by the state.
17 So you're probably not the right one, Bill. I mean,
18 I appreciate it, but I think I just need --

19 Because the AIS references an Old
20 Government Road. I do not see anything in the
21 record --

22 And maybe this is more directed to
23 Mr. Tabata.

24 -- anything in the record where the
25 reports were submitted to the Department of Land and

1 Natural Resources for determination whether the DLNR
2 continues to exert an ownership over that Old
3 Government Road, whether it exists or not, under the
4 Highways Act of 1892 until it is disposed. Now,
5 maybe it wasn't, but there's nothing in the record to
6 say that the State of Hawaii has disposed of that.
7 Your record indicates there's an Old Government Road,
8 but it does not tell me where it is and whether the
9 state has disposed of it under Chapter 171.

10 MR. TABATA: We did provide as exhibits
11 to our petition the title report which contains the
12 metes and bounds description for the entire parcel.
13 And we also included a separate metes and bounds
14 description for the 53 acres. In the larger metes
15 and bounds description, the Old Government Road is
16 specifically listed.

17 COMMISSIONER CHANG: But your title
18 report also includes an exception to trails and
19 rights of way?

20 MR. TABATA: Correct.

21 COMMISSIONER CHANG: So this could be a
22 trail; it could be a right-of-way that is separate
23 and apart from the disclosure of the road?

24 MR. TABATA: It could be. It could be.

25 COMMISSIONER CHANG: Right. And there is

1 nothing in the record that is addressed that has
2 given, in my mind, the Department of Land and Natural
3 Resources who has jurisdiction over that, an
4 opportunity to determine whether they are exerting
5 ownership over that Old Government Road. Maybe it
6 doesn't exist. I don't know. But it's raised.

7 MR. TABATA: As an encumbrance.

8 COMMISSIONER CHANG: No, not as an
9 encumbrance. As an ownership. As they own it.

10 MR. TABATA: As an ownership issue.

11 COMMISSIONER CHANG: As an ownership
12 issue, yes.

13 MR. TABATA: With respect to title, we
14 relied upon the title report that we obtained.

15 COMMISSIONER CHANG: And you may have a
16 cause of action against the title report.

17 MR. TABATA: That may be the case. But
18 as a catchall, what we did was include our title
19 information in our petition and filed that with the
20 Land Use Commission with copies to the parties,
21 including the state Office of Planning who then
22 circulated our petition with the various state
23 agencies, including the DLNR. And they were given an
24 opportunity to comment, and they will still have an
25 opportunity to comment with respect to any claims of

1 ownership to properties within our petition area.

2 COMMISSIONER CHANG: But you would agree
3 with me, Mr. Tabata, that the State of Hawaii,
4 notwithstanding the fact that they may not have
5 responded, that the State of Hawaii, you cannot
6 adversely possess government land. So if that
7 land -- if it isn't -- if it is owned by the State of
8 Hawaii, that is critical to determination of whether
9 the EIS is adequate or not.

10 MR. TABATA: Whether or not the state may
11 own an Old Government Road in the property, I don't
12 believe that goes to the Chapter 343 issues with
13 respect to our project impacts -- mitigation or those
14 impacts. If there's any question as to title
15 ownership, then I believe that would be within the
16 jurisdiction of the circuit courts of the State of
17 Hawaii for I -- I believe it's a quiet title action.
18 And be it to that venue, if such issues could be
19 resolved. And if there are title issues relevant to
20 what we're bringing for this project, if they can be
21 resolved before this body and this body is the proper
22 adjudicator, then I believe that will take place at
23 the hearing on petition for district boundary
24 amendment which would be an evidentiary hearing,
25 contested case hearing.

1 COMMISSIONER CHANG: But wouldn't you --
2 isn't it necessary to determine ownership and to
3 assess impacts of that -- of that potential ownership
4 or the existence of that property on -- with respect
5 to the adequacy of the EIS?

6 MR. TABATA: And that's what we did. We
7 provided a title report, a copy of our deed to
8 establish ownership of the entire property subject to
9 encumbrances, and we have no stated, specifically
10 disclosed encumbrance in our title report. That is
11 the evidence that we've submitted, and that's what
12 we're relying on.

13 COMMISSIONER CHANG: But you would admit
14 that your title report does include exceptions. So
15 your disclosure is as good as those exceptions, and
16 if the Old Government Road would fall under one of
17 those exceptions, that even the title report would
18 not -- is not -- does not provide a full disclosure
19 because it specifically says under the exceptions,
20 No. 4, "Any and all existing roadways, trails,
21 easements, rights of way, plumes and irrigation
22 ditches." That's an exception to the title report.

23 MR. TABATA: I would describe that as a
24 catchall. If there's any unrecorded features, then
25 that's what title companies put into their title

1 reports as a catchall provision in order to --
2 they're basically protecting themselves for matters
3 that are unrecorded. If it was recorded, then it
4 would have been specifically reported and disclosed
5 as an exception -- a specific exception to the title
6 report. But what they did do was provide the metes
7 and bounds description which specifically references
8 an Old Government Road which Mr. Eddy has testified
9 does not occur within the petition area.

10 COMMISSIONER CHANG: But what I did not
11 receive testimony on is a confirmation that the Old
12 Government Road that Mr. Eddy is referring to and
13 that may be in the title report is the same Old
14 Government Road referenced in the archaeological
15 documents which may have a date going back to 1878.
16 If it did, then the exception is relevant for
17 purposes of establishing ownership which is -- which
18 is separate and apart from the -- in my view, from
19 the title report. It goes to, in my view, whether
20 there's a question about the adequacy of providing
21 all landowners the opportunity to comment and make an
22 assessment and to provide opportunities for the
23 community to provide input on that.

24 And I know we may have a disagreement.
25 And for all I know, I may be totally wrong. This may

1 have been disposed of. It may not even exist within
2 this, but I do not have any evidence in the record
3 where there has been a disposition of that.

4 MR. TABATA: I don't believe the
5 archaeological inventory survey could constitute
6 competent evidence to establish ownership or title.

7 COMMISSIONER CHANG: I agree with you.
8 That's exactly my point. It doesn't. But it raises
9 the fact that at one time, there was an Old
10 Government Road which should have indicated that
11 there should have been a discussion with DLNR as to
12 whether they own that Old Government Road. That's
13 all I'm saying.

14 COMMISSIONER OHIGASHI: Madam Chair.

15 ACTING CHAIR CABRAL: Yes.

16 COMMISSIONER OHIGASHI: I think that
17 maybe this would be better handled during discussion
18 on a motion -- as an argument -- I think it's turning
19 into an argument between the two of them, I think.

20 ACTING CHAIR CABRAL: Well, I think we
21 don't have the evidence or the information necessary
22 to satisfy Commissioner Chang on her questions. And
23 I understand those because I'm in real estate, and we
24 have a lot of those comments and there's old
25 government roads everywhere.

1 If Commissioner Chang is okay, then we
2 should probably look to proceed beyond this point
3 because we still have more witnesses for Mr. Tabata
4 to introduce at this time.

5 I think, Mr. Eddy, are you complete with
6 your testimony?

7 THE WITNESS: Yes.

8 ACTING CHAIR CABRAL: Okay. Thank you
9 very much. Oops. I'm sorry. One more.
10 Commissioner Okuda.

11 COMMISSIONER OKUDA: Chair, this is just
12 to clarify one point that Mr. Eddy talked about, the
13 difference between a tax map and an ALTA map.

14 CROSS-EXAMINATION

15 BY COMMISSIONER OKUDA:

16 Q ALTA map, like you said, is the acronym
17 for American Land Title Association; is that correct?

18 A Yes.

19 Q Was this map obtained as part of an ALTA
20 title policy?

21 A I can't tell you about that. It's a map
22 that we're provided, and I see it's stamped by a
23 licensed surveyor.

24 Q Are you familiar with American Land Title
25 Association policies?

1 A No.

2 Q Okay. Maybe I'll raise it for counsel
3 later on. But just a clarification question on what
4 you said. Sometimes a tax map may contain
5 information which may not be totally accurate because
6 sometimes the process by which a tax office -- a real
7 property tax office compiles information may not have
8 the same safeguards as, for example, the Bureau of
9 Conveyances or Land Court regarding recording and
10 documenting encumbrances or things like that. Is
11 that a fair statement?

12 A Yes, as far as I know.

13 Q Okay. Thank you. No further questions.

14 ACTING CHAIR CABRAL: Thank you,
15 Commissioner Okuda.

16 Okay. Mr. Tabata, please continue.

17 MR. TABATA: Mr. Matsubara will continue
18 with our witnesses.

19 ACTING CHAIR CABRAL: Thank you.

20 MR. MATSUBARA: Next witness is Todd
21 Beiler. Mr. Beiler is from CENSEO, and they did the
22 noise measurements, if there's interest in that area;
23 otherwise, I'll just basically summarize certain
24 things.

25 Get sworn in, please.

1 ACTING CHAIR CABRAL: Mr. Beiler, do you
2 swear or affirm that the testimony you are about to
3 give is the truth?

4 THE WITNESS: Yes, I do.

5 ACTING CHAIR CABRAL: Can you go ahead
6 and proceed with your name and address?

7 THE WITNESS: You bet. My name is Todd
8 Beiler. My work address is 155 Suite C, Hamakua
9 Drive, Kailua, Hawaii 96734.

10 ACTING CHAIR CABRAL: Proceed.

11

12 TODD BEILER,
13 having been called as a witness by Petitioner,
14 was duly sworn and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. MATSUBARA:

17 Q Todd, could you give a brief background
18 summary of your experience and qualifications in
19 acoustics?

20 A Sure. You bet. So I have a bachelor of
21 science in mechanical engineering from Purdue
22 University and a master of science in mechanical
23 engineering from UH Manoa, and I've been practicing
24 acoustical engineering for a little over 20 years.

25 Q Could you indicate to the commission your

1 role in regard to this particular project in regard
2 to the acoustics involved?

3 A Sure. So we were a subconsultant to HHF
4 Planners as the noise consultant to evaluate any
5 noise impacts from the project. So I guess big
6 picturewise, we look at potential noise impact of the
7 project on the surrounding community as well as
8 outside sources that may impact the project. So it's
9 kind of two ways that we look at the project.

10 For this project, what -- what we looked
11 at are traffic noise impacts on the project. So
12 noise mainly from Kuhio Road on the project as well
13 as the noise impacts that we looked at for the
14 surrounding community was construction noise. So
15 noise during construction of the new development on
16 the surrounding areas.

17 We did noise measurements on-site. Our
18 noise measurements included both short-term and
19 long-term measurements. The long-term measurements
20 give us an idea of how noise levels change throughout
21 the day and night for several days to see how that
22 changes. The short-term measurements, what we use
23 those for are simultaneously counting traffic as we
24 do the measurements. That's used as a calibration
25 for our noise prediction of the sort of traffic noise

1 model, predictions of traffic noise onto the project.

2 So we completed the noise measurement,
3 and then we worked on our analysis and assessed noise
4 prediction sites for the two different kinds of
5 noises. So along Kuhio Highway, it was, I think, at
6 10 locations along the Kuhio side of the property
7 predicted noise from the road to those sites, both
8 existing, future without the project and future with
9 the project. And then we assessed noise from
10 construction from sort of the worst-case scenarios of
11 equipment, earth-moving equipment that would be as
12 close to the very edge of the property as possible,
13 how much noise might impact the residents that are
14 existing residents in the area.

15 Q Thank you. Now, in regard to the
16 vehicular noise generation and the construction noise
17 generation, you proposed certain mitigation measures
18 for each noise source?

19 A That's correct.

20 Q Could you go through the respective
21 mitigation measures you discussed with each?

22 A Sure. So for traffic noise impacts,
23 without any mitigation, there was a few sites that
24 would have a noise impact from the road, and that's
25 defined by the Federal Highway Administration and

1 also adopted by the State Department of
2 Transportation of a noise level of 67 dBA. The state
3 department says if you approach 67 dBA, that may also
4 warrant mitigation. So we interpret that to be at a
5 level of 66 dBA. So that's sort of the threshold
6 that we use to assess traffic noise impacts.

7 Our recommendation included constructing
8 a 4-foot tall earth berm or barrier wall along the
9 highway separating Kuhio Highway from the new homes.
10 The 4-foot height is in relation to the elevation of
11 the existing road. So in some cases, the existing
12 topography may be more than 4 feet already. With
13 that mitigation, we would be with -- we would be less
14 than the 67 dBA criteria for traffic noise impact.
15 So that's the mitigation that we recommended for
16 traffic noise.

17 On the construction noise side, you know,
18 there's going to be some noisy activities that will
19 be close to some of the homes. So our recommendation
20 is to build a plywood fence, which is often used for
21 these kinds of projects. A plywood fence can also be
22 used to catch some dust, but it also helps mitigate
23 sound from the construction activities to the
24 adjacent homes.

25 Q Thank you. I have no further questions.

1 ACTING CHAIR CABRAL: Okay. Okay. Thank
2 you. County Planning Department?

3 MR. ROVERSI: No questions.

4 ACTING CHAIR CABRAL: State Office of
5 Planning?

6 MS. APUNA: No questions.

7 ACTING CHAIR CABRAL: Okay.
8 Commissioners, any questions? Okay. Thank you very
9 much.

10 THE WITNESS: Okay. Thank you.

11 ACTING CHAIR CABRAL: Mr. Matsubara, how
12 many more witnesses do you have at this time?

13 MR. MATSUBARA: Just one more witness.
14 That would be Tom Holliday. But as in anything else,
15 I recognize the commission's concern is that I'll
16 give a brief summary of his qualifications and point
17 to two areas where questions have arisen earlier in
18 regard to his work and leave it at that.

19 ACTING CHAIR CABRAL: My concern is it's
20 been over an hour since we've had a break. My
21 thought is maybe we do a five-minute break now, come
22 back and do your last witness, and then we should
23 hopefully have time for our deliberations.

24 MR. MATSUBARA: And the county and the
25 state perhaps.

1 ACTING CHAIR CABRAL: County and State.
2 Oh, yes, they might have -- actually, I asked them
3 earlier. They said they didn't have a lot to say.
4 So okay. Yes.

5 MR. MATSUBARA: It's fine if you want to
6 have a recess.

7 ACTING CHAIR CABRAL: Everyone's okay
8 with a five-minute, really quick break? Okay.
9 Five-minute break.

10 (Whereupon, a recess was taken from
11 1:58 p.m. until 2:05 p.m.)

12 ACTING CHAIR CABRAL: Our five-minute
13 break was nine [sic] minutes. Okay. Thank you very
14 much. I'd like to go ahead and resume, and that
15 would be with the petitioner and Mr. Matsubara. If
16 you'd like to continue with your witnesses.

17 MR. MATSUBARA: Final witness would be
18 Tom Holliday. He did the economic and marketing
19 analysis, and if I could, I shall question him
20 briefly.

21 ACTING CHAIR CABRAL: Okay. Let me swear
22 him in first.

23 Okay. Mr. Holliday, do you swear or
24 affirm that the testimony you're about to give is the
25 truth?

1 THE WITNESS: Yes, I do.

2 ACTING CHAIR CABRAL: Please give your
3 full name and address for the record.

4 THE WITNESS: My name is
5 Thomas W. Holliday. I'm a director with CBRE,
6 Incorporated. Our office address is Pauahi Tower,
7 Suite 1800, 1003 Bishop Street, Honolulu 96813.

8 ACTING CHAIR CABRAL: Okay.
9 Mr. Matsubara, proceed.

10
11 THOMAS HOLLIDAY,
12 having been called as a witness by Petitioner,
13 was duly sworn and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. MATSUBARA:

16 Q Okay. Tom, could you give us a brief
17 summary of your professional experience and
18 background?

19 A Sure. I was a founding member of the
20 Hallstrom Group in November 1980 and have been
21 practicing as a real estate economist and real estate
22 appraiser since that time. We were purchased by CBRE
23 in 2015. I've done dozens and dozens of market
24 studies, testified before this commission on
25 countless occasions, and performed a market study

1 showing there was demand for the project. And as
2 everybody knows, there's demand for housing on Kauai.
3 And also did the economic and fiscal analyses that
4 demonstrate the type of job creation and wealth and
5 wages that happen during construction of the project
6 and during its operational or sustained lifestyle
7 period and the impacts to the public purse in regards
8 to taxes raised and costs of servicing a new
9 subdivision.

10 Should I just go on? Should I just go on
11 about the one question?

12 Q Okay.

13 A The primary reason to bring me up here
14 is, again, it's not a question of whether there's
15 demand for the project. The demand is just
16 tremendous throughout Kauai for housing and all
17 areas, and it's not a question of whether or not
18 there's sufficient demand to absorb all the lots both
19 at affordable and some at market prices.

20 The concern was over a figure we used in
21 here about the number of nonresident ownership, guys
22 who don't live on the island full-time and who
23 purchase. Unfortunately, it's very difficult to lock
24 those people out of the chance to purchase or buy
25 units in a, you know, open market subdivision. And

1 throughout the state, we have analyzed data in all
2 the vacation communities regarding, you know, what's
3 the percentage of nonresident purchasers that end up
4 in projects, and you see extreme numbers like in
5 South Maui, the Kihei-Wailea area, where even the
6 residential subdivisions are having 30, 40, 50
7 percent nonresident purchasers.

8 If you analyze the data of our study
9 area, which was the east coast of Kauai from Lihu'e
10 to Molokai, and look at historically the ownership by
11 nonresident purchasers, it's about 18 to 20 percent
12 in the region. So we used that number because we
13 could point to this and much other data and say this
14 is the type that's historical happened here. But
15 we'd like to point out from market perspective that
16 this project was designed to not be desirable to
17 second homeowners; that the developer, the planners
18 and the county all worked together and said, "You
19 know, what are the type of things we can do so
20 residents would be more interested in buying here
21 instead of off-island people?" And so they made the
22 lots smaller. That way you couldn't put McMansions
23 on them. They didn't put any costly common elements
24 that would both attract those type of purchasers and
25 be expensive to upkeep. They didn't propose any

1 massive grading to create, you know, beachview sites.
2 It's pretty much a flat piece of land. So the things
3 that they could have done to maximize their value
4 they receive, the selling prices, and would maximize
5 the number of people, you know, off-islanders
6 purchasing, they did everything they can to limit
7 those. And so the next step would be, you know, what
8 you can both reasonably do and legally do to ensure
9 that they get into the hands of Kauai families.

10 So I know that when it comes to the
11 workforce or affordable units, there is a certain
12 certainty of being able to push those into, you know,
13 local families's hands. But as you move into the
14 market area, it becomes more difficult. So a goal,
15 as stated to me by the developers and planners, was
16 that, you know, we are going to do everything we can
17 to point these things to existing Kauai families. If
18 not, other households in Hawaii who wish to purchase
19 them and take whatever steps are legally meaningful
20 and useful to reduce the number of outside buyers.

21 Q Was another factor that was selected in
22 regard to favoring acquisition by local residents the
23 location of the project next to similar single-family
24 dwellings?

25 A Yeah. I mean, everything about this

1 project is, you know, this is like a typical suburban
2 subdivision you'd find in most places in the country.
3 And, again, it wasn't -- you know, very often a
4 developer will say, "Gee, I've got to spend a couple
5 million dollars on entitlements and impact
6 statements. Should I do it for my resort properties
7 where I'm selling for a few million, or should I do
8 it for, you know, this affordable residential?"
9 Well, unfortunately, capitalists move towards making
10 the most money. But everything about this project is
11 being designed to make it so it's not desirable.
12 It's not not going to be a nice place to live if
13 you're a resident, but it's to lower its demand and
14 desirability, and its location is certainly one of
15 them.

16 Q Thank you. I have no further questions.

17 ACTING CHAIR CABRAL: Thank you. The
18 County Department of Planning?

19 MR. ROVERSI: No questions from the
20 county.

21 ACTING CHAIR CABRAL: Okay. State Office
22 of Planning?

23 MS. APUNA: No questions.

24 ACTING CHAIR CABRAL: No questions.
25 Okay.

1 Commissioners, questions of Mr. Holliday?

2 CROSS-EXAMINATION

3 BY ACTING CHAIR CABRAL:

4 Q I have a question since I do this
5 business. So when the property's going to go -- do
6 you know, and you may not be the appropriate person
7 or time, but do you know what they're going to do in
8 line with that in terms of when they go to put the
9 properties -- when the properties can receive
10 reservations, how -- do you know what their plan is
11 to get their initial reservations?

12 A It hasn't been specifically discussed.
13 Typically, in this situation, you'll have -- you'll
14 put the properties on the market in tranches, okay,
15 if you're in this. So the first set of properties,
16 there are lots they're offering which will include so
17 many workforce affordable housing ones and so many
18 markets. Generally, they'll have a lottery. So
19 you'll have an information -- you'll have an
20 information gathering beforehand one weekend, and
21 everybody who's interested comes in, and you explain
22 to them how the process is going to work. We're
23 going to release them like this. We're going to have
24 lotteries for the workforce affordable housing
25 components, and we'll have reservations and waiting

1 lists for the market components. And so I would
2 assume that's just typically how they're marketed.
3 They're going to do the same thing.

4 I do know that the developer would like,
5 if possible, to put blocks of lots into local
6 contractors's hands, you know. And so instead of it
7 becoming every purchaser has to build their own
8 house, which can be problematic, it is that to
9 local-oriented contractors, sell them five or ten
10 lots or 20 lots. And that way they can build product
11 with the expertise and knowledge and capital, and
12 people come in and buy the finished homes. So I
13 assume that that is something they said they were
14 going to pursue.

15 ACTING CHAIR CABRAL: Okay. Thank you
16 very much.

17 Commissioners, any questions yet? Okay.

18 THE WITNESS: Thank you.

19 ACTING CHAIR CABRAL: Mr. Holliday, thank
20 you.

21 Okay. Mr. Matsubara and Mr. Takaba, do
22 you have anything else -- Tabata. I have a good
23 friend Takaba. So it keeps coming out, Mr. Tabata.
24 Curtis, thank you. Would you like to go ahead and
25 make your conclusion at this time, and then we'll

1 look to our county and state for any comments they
2 have?

3 MR. MATSUBARA: I could wait for my
4 closing statement until after they conclude their
5 case, and then I can make my closing statement.

6 ACTING CHAIR CABRAL: Okay. I think
7 that's a good idea.

8 Okay. Can I hear from the County of
9 Kauai?

10 MR. ROVERSI: Aloha. So real quickly. I
11 just wanted to reiterate that it's the county's
12 position that, as indicated by former Director
13 Dahilig's letters that are in evidence, that the
14 planning department concludes that the proposed
15 project --

16 ACTING CHAIR CABRAL: Can you make sure
17 it's turned up all the way? And, you know, folks in
18 the back, if you can't hear, we have just one small
19 speaker. If you want to come forward, there's lots
20 of seats. So we do want you to hear.

21 So go ahead and speak up.

22 MR. ROVERSI: As current Director Ka'aina
23 Hull testified, the county's conclusion is that the
24 proposal is consistent with the general plan. And
25 the county's also broadly satisfied with the comments

1 provided by the petitioner in response to Director
2 Dahilig's letters as well as comments by Lee
3 Steinmetz from Department of Transportation, the
4 planning department, Kauai Police Department,
5 Department of Public Works and the Department of
6 Water, and with that we'll conclude.

7 ACTING CHAIR CABRAL: Okay. Are there
8 any questions? Mr. Matsubara and Mr. Tabata, do you
9 have any questions of the county?

10 MR. MATSUBARA: No questions, Chair.
11 Thank you.

12 ACTING CHAIR CABRAL: Okay. Office of
13 Planning, do you have any questions?

14 MS. APUNA: No questions.

15 ACTING CHAIR CABRAL: Commissioners, do
16 you have any questions of the County of Kauai
17 presentation?

18 Okay. Thank you. Can I now hear from
19 State Office of Planning and their comments?

20 MS. APUNA: Thank you, Chair. The
21 purpose of this hearing is for this commission to
22 determine acceptance of the final EIS for the Kealia
23 Mauka housing project. OP reviewed the draft FEIS
24 for the subject project and had the following
25 comments that were subsequently addressed by

1 Petitioner to OP's satisfaction. Among OP's comments
2 or questions were whether an education contribution
3 agreement with the State Department of Education is
4 needed, the number of affordable units and the sales
5 prices for the lots, whether any accessory,
6 additional or ohana dwelling units would be allowed,
7 a noise study given the proximity of residences to
8 Kuhio Highway, whether the subject lands are part of
9 the recommended important ag lands in the county
10 mapping study, communications facilities for the
11 subdivision and availability as civil defense warning
12 systems in the area.

13 Acceptability of a final EIS is evaluated
14 on the basis of whether the final EIS represents an
15 informational instrument that fulfills the intent and
16 provisions of HRS Chapter 343 and adequately
17 discloses and describes all identifiable
18 environmental impacts and satisfactorily responds to
19 review comments.

20 Based on OP's review of the FEIS and the
21 petitioner's responses to comments, OP does not
22 object to the commission's acceptance of Petitioner's
23 final EIS.

24 And then, lastly, with regard to
25 Commissioner Chang's pointing out regarding the Old

1 Government Road, we appreciate that comment. Through
2 our review -- OP's review, we didn't come across
3 anything with regard to whether that road was under
4 the jurisdiction of DLNR, and as provided in the
5 FEIS, there weren't any comments by DLNR or other
6 agencies providing any evidence to that. So like
7 Commissioner Chang, we can't say whether or not that
8 road is under their jurisdiction. And I think that
9 if this matter proceeds further to the district
10 boundary amendment, that is something that we would
11 definitely take back to DLNR and have them look more
12 closely at. I think we would -- our position would
13 be that it's not necessarily something that needs to
14 be reconciled for this FEIS acceptance. Thank you.

15 ACTING CHAIR CABRAL: Thank you very
16 much.

17 Mr. Matsubara and Mr. Tabata, do you have
18 any questions?

19 MR. MATSUBARA: You can call Mr. Tabata
20 Curtis.

21 ACTING CHAIR CABRAL: Curtis.
22 Mr. Curtis.

23 MR. MATSUBARA: Thank you, Chair. I have
24 no questions of the Office of State Planning.

25 ACTING CHAIR CABRAL: Okay. Does the

1 County of Kauai have any questions of State Planning?

2 MR. ROVERSI: No. Thank you.

3 ACTING CHAIR CABRAL: Commissioners, any
4 comments or questions of Ms. Apuna of the State
5 Office of Planning?

6 Okay. So now -- okay. Thank you very
7 much for all of your comments. Mr. -- you have your
8 conclusion that you would like to make now?

9 MR. MATSUBARA: Yes. Thank you.

10 ACTING CHAIR CABRAL: Okay. Please
11 proceed.

12 MR. MATSUBARA: Chair, members of the
13 commission, I would like to request a favorable
14 consideration of the EIS we've submitted for
15 consideration based on our compliance with all the
16 requirements of Chapter 343, excuse me, and Title 11,
17 Chapter 200, section 7 of Hawaii Administrative
18 Rules. I believe all of the relevant environmental
19 concerns were identified and accompanied with
20 supporting data and studies, and we distributed the
21 data to the public and other agencies for input, and
22 we evaluated the alternatives and proposing measures
23 for reducing adverse input.

24 The purpose for providing notice to all
25 the agencies that 343 requires and Hawaii

1 Administrative Rules require is part of the
2 composition of the EIS not only involves us putting
3 together reports, facts and information relating to
4 the potential impacts, but we're required to provide
5 to stakeholders and interested parties, agencies and
6 so on all the information we have regarding the
7 property we're seeking to reclassify and that we did.
8 And we worked with the comments that come back. If
9 any of the stakeholders, members of the public or
10 agencies have concerns with the information we
11 provided or haven't provided, and that goes into
12 coming up with the final EIS which then is submitted
13 to you folks for consideration because we submit
14 responses to all the comments we receive from
15 agencies as well as individuals, and that's included
16 in the EIS.

17 And so I believe as far as the legal
18 standards in terms of determining the adequacy of the
19 EIS, it was compiled in good faith, and I believe it
20 sets forth sufficient information to enable you as a
21 decision-maker to consider the environmental factors
22 involved and to make a reasoned decision after
23 balancing the risk of harm of the environmental -- up
24 to the environment against the benefits to be derived
25 from the project, and to make a reasoned choice

1 between the alternative and, therefore, complies with
2 the rule or reason and establishes the legal
3 sufficiency of the EIS on Price versus Obayashi. So
4 I ask for your favorable consideration. Thank you.

5 ACTING CHAIR CABRAL: I'll ask for
6 questions. Any questions from County? Okay.

7 MR. ROVERSI: None.

8 ACTING CHAIR CABRAL: It's over with.

9 I think I'm still the co-chair. I'm in
10 training. They may dock my pay. Zero from zero.
11 Okay. Okay. I think we're done. We're set for
12 deliberations. Do you have any questions, I guess?
13 Oh, closing comments.

14 Okay. County, do you have any closing
15 comments?

16 MR. ROVERSI: Closing comment is simply
17 the county doesn't object to the sufficiency of the
18 EIS.

19 ACTING CHAIR CABRAL: Okay. Office of
20 planning, any closing comments?

21 MS. APUNA: No closing comments.

22 ACTING CHAIR CABRAL: I thought you did
23 them earlier.

24 All right. Commissioners, are we ready
25 for deliberations at this time?

1 UNIDENTIFIED FEMALE: I thought there was
2 going to be final testimony, oral testimony.

3 ACTING CHAIR CABRAL: And I did make that
4 comment that if we had time, but we will have to be
5 leaving for the airport in about half an hour. And
6 so we will not have time to be able to give people an
7 opportunity to have additional comments. That was an
8 extra -- I was trying to give consideration to
9 everybody if we had enough time, but we will not have
10 time because, as we indicated earlier, we have to
11 make a decision today. Otherwise, it will
12 automatically be made for us on Tuesday, Monday or
13 Tuesday -- Monday. Monday. So we are sort of under
14 the gun at this point. And so at this point, I do
15 need to go ahead and proceed to have the commission
16 go into deliberations and discussion and to,
17 hopefully, make a motion to accept -- either that it
18 accepts or does not accept the environmental impact
19 statement, and then that it would also then further
20 authorize the Land Use Commission executive officer
21 to notify the parties that the Land Use Commission
22 has accepted or not accepted the environmental impact
23 statement. And this motion, I ask the commissioners
24 to include -- state the reasons for acceptance or for
25 not acceptance of the environmental impact statement.

1 COMMISSIONER OKUDA: Chair, could I make
2 a fast comment about the public comments?

3 ACTING CHAIR CABRAL: Okay. Yes.

4 COMMISSIONER OKUDA: The intention is not
5 to stop any further public input. It's just that
6 this commission operates as a quasi-judicial body,
7 meaning we have to strictly follow a procedure. And
8 as you could see from the other original hearing, we
9 gave ample time, I believe, and spent a lot of time
10 listening to public testimony. And it's not to stop
11 public testimony. But the point of matter is the
12 procedure is set up -- and I believe all parties here
13 relied on the procedure and relied on the fact that
14 once public testimony was closed, that portion of the
15 procedure moves on to the next portion. And there
16 may be an argument later that if the procedure, which
17 was originally announced, is not followed, that that
18 creates a whole bunch of other issues. So mainly
19 because other people have -- I believe would
20 reasonably say, "Hey, you said that the public
21 testimony was closed. If it's reopened now without
22 advanced warning, we would have brought other
23 witnesses." So it's not intended to be disrespectful
24 of anyone in the community because we really value
25 input. It's just that we have to balance this with

1 the need to follow the legal process.

2 That's all I have to add, Chair.

3 ACTING CHAIR CABRAL: Thank you very
4 much. And also it's been restated several times,
5 both at our hearing two weeks ago and today, that
6 this is not giving approval for this subdivision.
7 This is accepting and receiving the environmental
8 impact statement, and that too has guidelines as to
9 our ability and its acceptability in terms of the
10 guidance of law. And so in some ways, we have to
11 follow what the law says we have to do one way or the
12 other and have reasons for that. So at this point in
13 time, I will assure you that we will all meet again.

14 So at this point then as indicated, can
15 I -- do I have any other commissioners who would like
16 to make a motion and a second of such a motion to
17 either receive or to not receive, accept or not
18 accept the environmental impact statement as it's
19 been presented to us both in writing --

20 Okay. Commissioner Giovanni.

21 COMMISSIONER GIOVANNI: Thank you,
22 Chair. I would like to move that the Land Use
23 Commission find the petitioner's final EIS complies
24 with the content requirements for a final EIS and is,
25 therefore, accepted pursuant to HRS Chapter 343 and

1 HAR Section 7, Chapter 11 through 200.

2 Further, that the Land Use Commission
3 authorizes the chair to sign the order once it is
4 finalized, and the executive officer to notify and
5 submit a record of this acceptance to the petitioner
6 and OEQC by August 12th, 2019, which is the deadline
7 for Land Use Commission action.

8 COMMISSIONER OHIGASHI: Second.

9 ACTING CHAIR CABRAL: Thank you,
10 Commissioner Giovanni. And did I hear a second from
11 Commissioner Oingashi? Sorry. Ohigashi. I'm in
12 overtime already.

13 COMMISSIONER OHIGASHI: This is not
14 Takaba.

15 ACTING CHAIR CABRAL: At least I didn't
16 call you Wong. We get rummy after a while. They
17 don't pay us enough here.

18 Okay. So I have a motion and a second to
19 accept the environmental impact statement as
20 presented. Do I have any discussion at this time?

21 COMMISSIONER CHANG: I had some really
22 hard questions today. This is really -- I will tell
23 you this is really hard. You have some of the best
24 consultants working for you. I appreciated hearing
25 from Mr. Holliday. The measures that this project is

1 taking to ensure that it's really trying to
2 accommodate the local -- the local community, I
3 really appreciate that.

4 My struggle is you've got this -- well,
5 the archaeological inventory survey, if anything is
6 found during the construction under the
7 archaeological monitoring plan, it's an inadvertent
8 discovery. That SHPD makes the decision, and not the
9 burial council, and that raises some concerns with
10 me.

11 The cultural impact assessment, I thought
12 that there was -- whether there is any existing
13 practices on the property or not, in my view, that is
14 not the legal standard. If there were, under the
15 Pele Defense Fund, you don't abandon those rights.
16 Once those sugar plantations came in, people left.
17 That doesn't mean they gave up their right. So I'm
18 struggling with the conclusion that there are no
19 traditional customary practices. That is
20 inconsistent with the testimony that I've heard.
21 That I heard as well as that I read.

22 And, lastly, I do have an issue about the
23 Old Government Road. I think that that is -- and
24 your counsel is right. This should get distributed,
25 probably did get distributed, and DLNR did not come

1 forward. But does that mean that the state has
2 abandoned that road? No. Does that mean that the
3 location of the roadway -- I don't know where that
4 is. Does that impact the project? I don't know.
5 And I may be totally wrong. There may not be a
6 roadway on that project.

7 So I am inclined at this point in time to
8 find that the EIS is not adequate based upon those
9 three primary reasons, but like I said, it is really
10 hard because -- and the vote hasn't been taken. I
11 don't know what more could have been done, and I
12 don't know whether these shortcomings in my mind make
13 the EIS fatal, but that is my inclination at this
14 time. Thank you.

15 ACTING CHAIR CABRAL: Thank you,
16 Commissioner Chang.

17 Commissioner -- okay. We'll go on this
18 side. I'm on my right. Don't confuse me.
19 Commissioner Okuda.

20 COMMISSIONER OKUDA: Okay. Thank you. I
21 do disagree with my colleague --

22 I'm not sure if I can call him my friend.

23 -- Mr. Tabata, about the issue of whether
24 or not this project complies with the Kauai General
25 Plan. But with all respect to Commissioner Chang, I

1 was initially inclined not to vote -- to accept this
2 environmental impact statement because I thought that
3 was a problem. And I still see that as an issue
4 going forward when you have, you know, a development
5 which seems contrary to the Kauai General Plan, which
6 I think is probably the best general plan in the
7 state. I believe that, you know, the Kauai planning
8 office has shown cutting-edge community engagement
9 involvement, and I personally know that based on my
10 involvement with mainland national conferences.
11 Kauai is ahead of a lot of places through the
12 mainland. So I -- nevertheless, I kind of
13 respectfully disagree with their view on the general
14 plan. However, that's not the test in determining
15 whether or not an environmental impact statement is
16 acceptable or not. It's not whether or not we agree
17 with the project or whether or not we might have
18 disagreements with specific points. The test -- and
19 that's not only the Price versus Obayashi case, but
20 that is also further cited by Unite, U-N-I-T-E, Here,
21 H-E-R-E, exclamation mark, Local 5, versus City and
22 County of Honolulu, which is better known as the
23 Turtle Bay case. It's really a question of when you
24 look at the EIS as a totality, does it give enough
25 information there -- might not be perfect, but enough

1 information so that we can have a reasoned
2 debate/discussion when the ultimate decision is being
3 made? And I believe the fact that we're able now to
4 look at things like is there an Old Government Road
5 really existing there or not? Has this been
6 abandoned or not abandoned, or are there sufficient
7 protections built into the development of this
8 project from an archaeological standpoint? Should
9 there be special conditions imposed if it turns out
10 that this project is approved? And the fact that
11 going forward, we can evaluate these issues and hear
12 further public testimony, I think, it, in fact,
13 demonstrates that this environmental impact statement
14 does, in fact, help educate the agency here in making
15 the decision. And so I'm inclined at this point to
16 vote in favor of the motion. Even if I personally,
17 with all due respect to Mr. Tabata and Mr. Matsubara
18 who, again, I have nothing but respect for, I might
19 disagree with certain points that they're making, but
20 I believe under the test that the Hawaii Supreme
21 Court has set forth in whether you accept or reject
22 an environmental impact statement, that this
23 environmental impact statement satisfies the test.

24 ACTING CHAIR CABRAL: Thank you,
25 Commissioner.

1 Commissioner Aczon.

2 COMMISSIONER ACZON: We are here today
3 to -- whether to accept or not to accept the EIS, and
4 I'm convinced that the petitioner responded
5 adequately to the questions by the county and state
6 agencies as well as the community.

7 Regarding the issue that Commissioner
8 Chang kind of brought up, if you don't accept this
9 EIS, then the issue becomes caput. And if you do
10 accept, then we leave and we save it for another day.
11 So I'm inclined to vote in favor of the acceptance of
12 the EIS.

13 ACTING CHAIR CABRAL: Thank you,
14 Commissioner. Do I hear from Commissioner Wong?

15 COMMISSIONER WONG: Yes. Thank you,
16 Chair.

17 I'm speaking in favor of this motion.
18 The reason is there's still a lot of public
19 testimonies out there, but it's not -- it's dealing
20 with the project and not the EIS itself to me.
21 There's going to be issues that at a later date,
22 we'll be discussing this. In terms of the EIS
23 itself, I believe that the petitioner has fulfilled
24 its obligation for the EIS. So I'll be supporting
25 this motion. Thank you.

1 ACTING CHAIR CABRAL: Thank you,
2 Commissioner. Do I hear any other comments from
3 Mr. Ohigashi?

4 COMMISSIONER WONG: Wong.

5 ACTING CHAIR CABRAL: Wong 2. I'm going
6 to mutilate everyone's name if we stay any longer.

7 COMMISSIONER OHIGASHI: Insult everyone.

8 ACTING CHAIR CABRAL: Equal insult from
9 this Chair, and I'll defend my insulting action.

10 I think this is my turn now to comment.
11 Okay. I'm going to support this motion because while
12 I'm not the learned scholar, obviously, I am very
13 involved with housing, and I see the need for every
14 level of our community to at some point or not be
15 able to make some sort of compromise in order to have
16 more housing for our community. I see it all over
17 where we talk about the homeless and we talk about,
18 well, this is terrible and that's terrible and this
19 is awful, and, yet, we have as a society created so
20 many huge roadblocks into the ability to have
21 housing. And I sit on this commission and I think,
22 "Oh, my God. It starts here," you know. And so I'm
23 going to vote in favor at this level, and I know that
24 there's going to be more information and more
25 decisions moving forward, but in order to move --

1 move this monster forward, I'm going to vote in favor
2 because I think we need to consider what we can do as
3 a community.

4 And I'd like to at this point too, you
5 know, we hear the things about traffic concerns, we
6 hear the things about community support and that, and
7 I really gotta say, you know, I think all of our
8 communities, you know, no politician wants to spend
9 money on something that they can't get another vote
10 for. And, yet, I think we're missing the boat
11 because our communities really need more road
12 attention and more things that are going to be in
13 favor of supporting our citizens. So I think
14 everybody needs to get ready for the population
15 increase that's already here. So I will vote in
16 favor.

17 And at this point in time then, I think
18 I'm ready to ask our executive director,
19 Mr. Orodénker, to please poll the commission.

20 EXECUTIVE OFFICER: Thank you, Madam
21 Chair. The motion is to find that the EIS is
22 accepted pursuant to Chapter 343 and authorizes the
23 chair and the executive officer to sign and submit
24 the notice of acceptance to OEQC.

25 Commissioner Giovanni?

1 COMMISSIONER GIOVANNI: Yes.

2 EXECUTIVE OFFICER: Commissioner
3 Ohigashi?

4 COMMISSIONER OHIGASHI: Yes.

5 EXECUTIVE OFFICER: Commissioner Scheuer
6 and Commissioner Mahi are absent.

7 Commissioner Aczon?

8 COMMISSIONER ACZON: Yes.

9 EXECUTIVE OFFICER: Commissioner Wong?

10 COMMISSIONER WONG: Yes.

11 EXECUTIVE OFFICER: Commissioner Chang?

12 COMMISSIONER CHANG: I'll vote yes.

13 EXECUTIVE OFFICER: Commissioner Okuda?

14 COMMISSIONER OKUDA: Yes.

15 EXECUTIVE OFFICER: Vice Chair Cabral?

16 ACTING CHAIR CABRAL: Yes.

17 EXECUTIVE OFFICER: Thank you, Madam
18 Chair. The motion passes unanimously.

19 COMMISSIONER CHANG: Madam Chair, can I
20 make a statement?

21 ACTING CHAIR CABRAL: Yes. You have five
22 minutes.

23 COMMISSIONER CHANG: I promise I'm not
24 going to take five minutes.

25 ACTING CHAIR CABRAL: Okay. One minute.

1 I'm overruled by my fellow commissioners.

2 COMMISSIONER CHANG: And they know me
3 better than that. This is hard, but I will tell you
4 I heard what Commissioner Okuda said. And, again, I
5 cannot think of a better set of consultants to have
6 brought onboard, but I will tell you, you are now on
7 notice. You know what my concerns are. So when you
8 come back for the project, I will expect those to
9 have been addressed. And don't wait for DLNR to
10 call. You go there.

11 But I do believe you have -- you tried
12 your best to answer the questions within the facts
13 you had. I feel that -- you know, so I am
14 comfortable. I am at peace with my decision. I
15 think it's good for the people of Kauai. So you are
16 on notice on what we expect the next time. Thank
17 you.

18 ACTING CHAIR CABRAL: Warning. Warning.

19 Okay. So at this point, I'd like to go
20 ahead and conclude the agenda matter before us, and
21 unless the commission has something else in order of
22 business to consider, I will consider to declare this
23 meeting --

24 COMMISSIONER GIOVANNI: Chair, I'd like
25 to have a minute.

1 ACTING CHAIR CABRAL: Okay. Commissioner
2 Giovanni, one minute.

3 COMMISSIONER GIOVANNI: I only need a
4 minute. I'd like to really express appreciation to
5 the public and the people of Kauai who really came
6 forward and articulated their concerns about this
7 project, and I want to reemphasize what everyone on
8 this commission has stated. This is not approval of
9 the project. But I think we've done a really good
10 job and the community has helped us to identify what
11 the issues are. And you heard a lot about it on the
12 25th, directly from the community and the public as
13 well as from the questioning that's come forth
14 through this commission. So I want to echo what
15 Commissioner Chang has just said is that the
16 petitioner and the owners are on notice that there
17 are issues remaining and we need to get these
18 resolved. And for me in particular is the traffic
19 issue. So thank you.

20 ACTING CHAIR CABRAL: Okay. Any other
21 commissioners? Okay. Adjourned. Thank you.

22 (Whereupon, the proceedings were
23 adjourned at 2:42 p.m.)

24
25

C E R T I F I C A T E

STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

I, LAURA SAVO, a Certified Shorthand Reporter in and for the State of Hawaii, do hereby certify:

That the foregoing proceedings were taken down by me in machine shorthand at the time and place herein stated, and was thereafter reduced to typewriting under my supervision;

That the foregoing is a full, true and correct transcript of said proceedings;

I further certify that I am not of counsel or attorney for any of the parties to this case, nor in any way interested in the outcome hereof, and that I am not related to any of the parties hereto.

Dated this 25th day of August 2019 in Honolulu, Hawaii.

/s/ Laura Savo
LAURA SAVO, RPR, CSR NO. 347