

LAND USE COMMISSION  
STATE OF HAWAII

Hearing held on December 17, 2019  
Commencing at 9:30 a.m.  
Sheraton Kauai Coconut Beach Resort  
Makai Room  
650 Aleka Loop, Kapa'a, HI 96746

AGENDA

I. Call to Order

II. Adoption of Minutes

III. Tentative Meeting Schedule

IV. ACTION

All-791 Kapa'a Highlands II (HG Kaua'i Joint  
Venture-HoKua Place) (Kaua'i

To Consider Acceptance of Final Environmental  
Impact Statement for the Petition To Amend the  
Land Use District Boundary of Certain Lands  
Situated at Kapa'a, Island of Kaua'i, State of  
Hawaii. Consisting of 97 Acres from the  
Agriculture and Rural District to the Urban  
District, Tax Map Key No. (4) 4-3-03:por.01

V. Adjournment

BEFORE: Jean Marie McManus, CSR #156

1 APPEARANCES:

2 JONATHAN SCHEUER, Chair  
3 NANCY CABRAL, Vice Chair  
4 EDMUND ACZON, Vice Chair  
5 GARY OKUDA  
6 DAN GIOVANNI  
7 ARNOLD WONG

8 STAFF:

9 LINDA CHOW, ESQ.  
10 Deputy Attorney General

11 DANIEL ORODENKER, Executive Officer  
12 RILEY K. HAKODA, Planner/Chief Clerk  
13 SCOTT DERRICKSON, AICP/Planner

14 ANDREW MICHAELS, ESQ.  
15 Deputy County Attorney  
16 JODI HIGUCHI SAYEGUSA, Deputy Planning Director  
17 ALEX WONG, Planner  
18 County of Kauai Planning Department

19 DAWN APUNA, Deputy Attorney General  
20 LORENE MAKI, Planner  
21 Hawai'i State Office of Planning

22 WILLIAM YUEN, ESQ.  
23 SCOTT SULLIVAN, Developer  
24 WENDELL BANDMANN, Project Manager  
25 Attorney for Petitioner

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1                   CHAIRPERSON SCHEUER: Aloha, mai kakou.  
2                   Good morning.

3                   This is the December 17, 2019 Land Use  
4                   Commission Meeting.

5                   Our first order of business is the adoption  
6                   of December 4th through 5th, 2019 minutes. Any  
7                   corrections or comments on the minutes? If not, is  
8                   there a Motion to Adopt?

9                   VICE CHAIR CABRAL: So moved.

10                  CHAIRPERSON SCHEUER: Moved by Commissioner  
11                  Cabral.

12                  COMMISSIONER WONG: Second.

13                  CHAIRPERSON SCHEUER: Seconded by  
14                  Commissioner Wong.

15                  Any discussion on the motion? Hearing  
16                  none, all in favor say "aye", any opposed? The  
17                  minutes are adopted unanimously.

18                  Our next agenda item is the tentative  
19                  meeting schedule. Mr. Orodenger.

20                  EXECUTIVE OFFICER: Thank you, Mr. Chair.

21                  Tomorrow we will be here if necessary for  
22                  this matter.

23                  On January 8th we will be on the Big Island  
24                  at NELHA for the University of Nations matter, and  
25                  HHFDC.

1           On January 9th we will be on Oahu at  
2           Honolulu International Airport for SP09-403 and  
3           A87-610 continuation.

4           And for now we have a tentative calendar  
5           after January.

6           CHAIRPERSON SCHEUER: Thank you, Dan. Any  
7           questions for our Executive Officer?

8           We move on then to our main agenda action  
9           meeting on Docket A11-791 HoKua Place LLC to consider  
10          the acceptance of HoKua Place LLC's Final  
11          Environmental Impact Statement.

12          Will the parties please identify themselves  
13          for the record?

14          MR. YUEN: Good morning, Mr. Chairman.

15          CHAIRPERSON SCHEUER: Mr. Yuen, is your  
16          microphone turned on? If you look at how close I am  
17          to the mic --

18          MR. YUEN: Good morning. My name is  
19          William Yuen, attorney for Petitioner HG Kaua'i Joint  
20          Venture LLC.

21          With me is project manager Wendell Bandmann  
22          and developer Scott Sullivan. Immediately behind me  
23          is planning consultant Ron Agor and Sarah Jehn, who  
24          prepared the Environmental Impact Statement.

25          CHAIRPERSON SCHEUER: Kauai County.

1           MR. MICHAELS: Deputy County Attorney for  
2 County of Kaua'i. I'm here with Jodi Higuchi  
3 Sayegusa, Deputy Director of Planning, and Alex Wong,  
4 a planner with the Planning Department.

5           CHAIRPERSON SCHEUER: Please speak directly  
6 into your microphone, and turn it all the way to the  
7 left.

8           MS. APUNA: Good morning, Chair, members of  
9 the Commission, Deputy Attorney General Dawn Apuna  
10 for the Office of Planning. Here with me today is  
11 Lorene Maki.

12           CHAIRPERSON SCHEUER: Thank you.

13           Let me now update the record in this  
14 docket.

15           On December 10th, this 2014, the Commission  
16 met and granted Petitioner's Motion to Substitute  
17 Petitioner and designate the Land Use Commission as  
18 the approving agency for the Environmental Impact  
19 Statement for the Petitioner's Petition to Amend the  
20 Land Use District Boundary of Certain Lands Situated  
21 at Kapa'a, Island of Kauai, State of Hawaii,  
22 consisting of approximately 97 acres from the  
23 Agricultural and Rural District to the Urban  
24 District, Portions of Tax Map Keys Nos. (4)4-3-02, a  
25 Portion of 1.

1           On December 11, 2014, the Commission mailed  
2           the order granting Petitioner's Motion to Substitute  
3           Petitioner and designate the LUC as approving agency  
4           for the Environmental Impact Statement.

5           From December 30th, 2014 through December,  
6           2019, the Commission received various emails, comment  
7           letters and correspondence on the EIS and the  
8           Petition. The comment letters and correspondence are  
9           on file with the Commission.

10          On December 11th of 2014, the LUC mailed a  
11          request for publication in the Environmental Notice  
12          to OEQC and received the Petitioner's EISPN.

13          On April 27, 2015, the Commissioner  
14          received Vols. I & II of the EIS and correspondence  
15          from Petitioner regarding the OEQC submittal.

16          On May 11th, 2015, the LUC received a copy  
17          of the response letter to Petitioner from OEQC.

18          On March 19, 2018, the Commission received  
19          the Petitioner's Draft FEIS on Exhibit 14.

20          On March 28, 2018, the Commission received  
21          notice of the withdrawal of Petitioner's Draft FEIS.

22          On October 25th, 2018, the Commission  
23          received Petitioner's second Draft Environmental  
24          Impact Statement.

25          On July 21st of this year, the Commission

1 mailed a letter to the Petitioner regarding Hearing  
2 Dates.

3 On November 3rd, the Commission mailed the  
4 Final Environmental Impact Statement materials to the  
5 OEQC with LUC instructions.

6 On November 18th, the Commission received  
7 OEQC verification of Petitioner's FEIS Distribution  
8 List.

9 On November 22nd, the Commission received  
10 the Petitioner's FEIS.

11 And on December 10th, the LUC mailed the  
12 December 17-18, 2019 agenda notice to the Parties, to  
13 the Statewide and Kaua'i County mailing lists and  
14 potential Intervenors Likoolani Martin, Sierra Club  
15 and the Wailua-Kapa'a Neighborhood Association.

16 Let me briefly describe now our procedures  
17 for today.

18 First, I will ask my fellow Commissioners  
19 if there is any disclosures to be made.

20 Second, I'll give opportunity for the  
21 Petitioner to comment on the Commission's policy  
22 regarding governing the reimbursement of hearing  
23 expenses.

24 I will then call on any individuals from  
25 the public wishing to testify. We have two

1 individuals who have signed in, but if you wish to  
2 testify, please do sign in now.

3 And for those who wish to testify, I remind  
4 you today's procedure is not the substance of whether  
5 or not this project should proceed, it's on whether  
6 or not the Environmental Impact Statement is legally  
7 adequate under the law.

8 After completion of public testimony,  
9 Petitioner will make their presentation on its  
10 Motion.

11 After the completion of Petitioner's  
12 presentation, we will receive any comments from the  
13 County of Kauai Planning Department and the State  
14 Office of Planning.

15 And then the Commission will conduct its  
16 deliberations.

17 From time to time, for the parties and the  
18 public, I note that we will take breaks, including to  
19 allow our court reporter to have a rest.

20 Are there any questions for the parties on  
21 our procedures today, Mr. Yuen?

22 MR. YUEN: No questions.

23 MR. MICHAELS: No questions.

24 MS. APUNA: No questions.

25 CHAIRPERSON SCHEUER: Thank you.

1           Mr. Yuen, have you reviewed HAR 15-15-45.1  
2 with regard to the reimbursement of hearing expenses?

3           MR. YUEN: Yes, we have, and we agree to  
4 the Commission's policy.

5           CHAIRPERSON SCHEUER: Thank you.

6           I have two members of the audience wishing  
7 to give -- disclosure, Commissioner Wong?

8           COMMISSIONER WONG: I know of the  
9 Petitioner's attorney, Mr. Yuen, he's a family  
10 friend, but he hasn't bought me lunch for a long time  
11 or dinner, and I don't think I have anything -- I'll  
12 be able to deal with it in a fair manner.

13          CHAIRPERSON SCHEUER: You have no material  
14 financial interest in this proceeding?

15          COMMISSIONER WONG: None at all.

16          CHAIRPERSON SCHEUER: And you believe you  
17 can be fair and impartial in these proceedings?

18          COMMISSIONER WONG: Yes, sir.

19          CHAIRPERSON SCHEUER: Any objection from  
20 the parties?

21          MR. YUEN: Nope.

22          MR. MICHAELS: No objection.

23          MS. APUNA: No objection.

24          CHAIRPERSON SCHEUER: Any other  
25 disclosures?

1           Only by noting that in like very full  
2 disclosure, I'm a member of the Sierra Club. I have  
3 no participation in their decision-making regarding  
4 this, and I wasn't aware until I read the script that  
5 they were thinking of intervening. But I am a member  
6 of the Sierra Club.

7           Are there any objections from Petitioner  
8 for my continued participation in the hearing?

9           MR. YUEN: No.

10          MR. MICHAELS: No objection.

11          MS. APUNA: No objection.

12          CHAIRPERSON SCHEUER: Any concerns from my  
13 fellow Commissioners?

14          Thank you very much. So we have two  
15 individuals desiring to give public testimony in this  
16 matter, Gabriela Taylor and Noreen Dorherty.

17          Will Ms. Taylor come up to the public  
18 witness seat. So here's how we do it at the LUC.

19          Do you have written testimony, ma'am?

20          THE WITNESS: Yes.

21          CHAIRPERSON SCHEUER: Okay, if we can get  
22 that.

23          Can you hear me okay?

24          THE WITNESS: Yes.

25          CHAIRPERSON SCHEUER: So I'm going to swear

1 you in, then ask you to state your name and address  
2 for the record, then proceed with your testimony.

3 Do you swear or affirm the testimony you're  
4 about to give is the truth?

5 THE WITNESS: Yes.

6 CHAIRPERSON SCHEUER: Thank you. Please  
7 proceed.

8 GABRIELA TAYLOR

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

12 DIRECT EXAMINATION

13 THE WITNESS: Good morning, Commissioners.

14 The burden of a 769-unit dwelling  
15 development in Kapa'a would only exacerbate the  
16 almost continuous state of traffic paralysis that  
17 extends day and evening, creating traffic jams from  
18 Hanamaulu to Kealia and compromises our quality of  
19 life as well.

20 Yes, we need affordable housing, but it's  
21 not convincing that is what HoKua Place will be  
22 delivering.

23 Looking -- and I'm referring to pages --  
24 I'm referring to the FEIS, page 12.

25 Looking at HoKua Place housing chart, you

1 can see 231 multiplex dwellings are affordable, as  
2 mandated by County law. The largest number of  
3 dwellings, 452, are multi-family dwellings, also  
4 called condos, priced from 250,000 to 350,000. This  
5 is where we have to look more closely.

6 I've confirmed that there will be monthly  
7 maintenance fees for these condos just as there are  
8 for all condos on Kaua'i. The lack of transparency  
9 regarding monthly maintenance fees is a serious  
10 omission in the FEIS, because monthly fees make the  
11 HoKua Place multi-family condos much more expensive  
12 than listed.

13 It is common for maintenance fees to go up  
14 over the years as buildings age. Going rates in  
15 condominiums on Kaua'i are \$700 to \$1,200 a month.  
16 That is a big chunk of money to overlook in the FEIS.

17 Conclusion: These multi-family condos are  
18 not affordable for local families.

19 Page 12. The housing chart describes  
20 potential pricing of the units in the development.  
21 Potential prices are noted in 2015 USD.

22 And page 13. Final pricing is subject to  
23 market conditions. So that's not even reliable from  
24 looking at the charts to see how much these are  
25 because they could be changed. They will be changed

undoubtedly.

When people look at the charts and see the listed prices, they need full disclosure to know that they can afford it. The above chart is inadequate and misleading. These prices will only attract mainlanders and foreign investors.

#### Transportation/Traffic.

Picture another 1300 vehicles pouring onto the Bypass and Kuhio Highway in downtown Kapa'a. Unbridled gridlock traffic may be the most worrisome impact for both residents and visitors. There's a good reason for that, given the prolific traffic jams now crawling along from North Kapa'a to the Wailua River and back.

Traffic madness can be anytime, not just during commuter hours.

Page 116. Access or egress to and from Phase 1 of HoKua Place will be via driveways along South Olohena Road. Access to and from Phase 2 will be provided by an intersection at Kapa'a Bypass Road. The two intersections will be connected by a roadway running through the property, referred to as Road A, which the developer speculates will mitigate the project's traffic at the roundabout.

Page 119. Outdated Traffic Analysis: The

1 State Department of Transportation did studies in  
2 2015 and March 13, 2017. The traffic has  
3 exponentially increased since these outdated studies  
4 were performed and the developer's foresight appears  
5 to be blinded to that reality as he comments on  
6 impacts of the development: "The HoKua Place access  
7 intersections at Olohena Road and the Bypass Road are  
8 expected to operate at satisfactory Levels of Service  
9 during the AM and PM peak hours of traffic."

10 Right now Olohena Road with two lanes is  
11 jammed with school buses and parents dropping off  
12 kids and will worsen with several driveways and Road  
13 A pouring onto it.

14 Page 121. "The existing traffic congestion  
15 on Kuhio Highway through Kapa'a Town can be mitigated  
16 by restricting on-street parking and re-striping the  
17 shoulder lanes to provide additional through lanes."

18 Page 8. Other such foolishness is  
19 expressed when they say it's a ten-minute walk to  
20 Kuhio Highway in Kapa'a Town along the Bypass Road.  
21 It's really dangerous without any sidewalks and is a  
22 30-minute walk.

23 The only planning DOT has to alleviate  
24 traffic in 2020 is to add a short lane by Kuhio  
25 Highway between the Bypass and Kuamoo Road which will

1 bring little improvement.

2 CHAIRPERSON SCHEUER: Thank you, Ms.  
3 Taylor.

4 Now there is opportunity for the parties  
5 and Commissioners to ask you questions.

6 Questions for the witness?

7 MR. YUEN: We have no questions.

8 MR. MICHAELS: No questions.

9 MS. APUNA: No questions.

10 CHAIRPERSON SCHEUER: Commissioners, any  
11 questions for Ms. Taylor? Thank you for your  
12 testimony.

13 Our next and final witness is Noreen  
14 Dougherty. Excuse me if I mispronounced your last  
15 name.

16 THE WITNESS: No, you did it well, thank  
17 you.

18 CHAIRPERSON SCHEUER: Are there other  
19 individuals attempting to give public testimony on  
20 this?

21 For the Commissioners, we normally, when we  
22 have a somewhat crowded hearing, we limit the  
23 testimony to three minutes, so no need to do so.

24 THE WITNESS: I appreciate that.

25 CHAIRPERSON SCHEUER: Do you swear or

1 affirm the testimony you're about to give is the  
2 truth?

3 THE WITNESS: Yes.

4 CHAIRPERSON SCHEUER: Please speak right  
5 into the microphone.

6 NOREEN DOUGHERTY

7 Was called by and on behalf of the Public, was sworn  
8 to tell the truth, was examined and testified as  
9 follows:

10 DIRECT EXAMINATION

11 THE WITNESS: May I ask a couple of  
12 questions before I begin?

13 CHAIRPERSON SCHEUER: If they are  
14 procedural in nature.

15 THE WITNESS: Yes. I'm curious as to if  
16 you were still meeting and at your meeting, and  
17 people came to testify, would you allow them to  
18 testify?

19 CHAIRPERSON SCHEUER: No.

20 THE WITNESS: Okay, so I'm the last one?

21 CHAIRPERSON SCHEUER: Yes.

22 THE WITNESS: So, okay, you're getting off  
23 easy today, guys.

24 Aloha. Mahalo for coming.

25 All page numbers are from the FEIS.

1 Traffic, page 119, states, "The access  
2 intersections of Olehena Road and the bypass are  
3 expected to operate at satisfactory levels of service  
4 at AM and PM peak hours of traffic."

5 And I'm wondering what that is based on  
6 that you can expect it to work well. That's pretty  
7 vague.

8 And I live in the neighborhood and I know  
9 the traffic coming down, so I would be happy to  
10 answer any questions you might have.

11 Every road is jammed in the morning and  
12 afternoon. Cars are taking alternate routes through  
13 neighborhoods, the Marketplace, and back roads.  
14 Concerned parents post signs, "Stay on the Highway".  
15 Cars are merging onto the road, the only road we have  
16 from both sides in multiple places. So there's a  
17 huge bunch of people trying to merge.

18 Page 121. "Restricting on-street parking  
19 and restriping the shoulder lanes to provide for  
20 additional through lanes".

21 This will seriously upset our local  
22 businesses and residents. It is totally not anything  
23 that would work. And it will be -- as simple as it  
24 sounds -- that's going to be one of the biggest  
25 things to ruin our community.

1           There is no alternative parking. I suggest  
2 you look behind the stores that are on the Kuhio  
3 Highway. There's potholes and puddles. If you  
4 couldn't stop at Pono Market and run in and get the  
5 lunch for your child on the way to school or  
6 something like that, you would have to park your car  
7 behind, leave your kids in the car, walk through  
8 puddles in the rain and the wind. And Pono Market is  
9 in the middle of the street, so you'd have to walk  
10 quite a distance. And there is a line there because  
11 everybody stops there and grabs their food and goes.

12           It seems simple, but it's our culture. And  
13 then you'd have to walk all the way back, and then  
14 try to merge to get back on. But anyway.

15           Maybe you could tour around town a little  
16 bit.

17           Water source, page 79. "HoKua Place has a  
18 proven well site." What makes me uncomfortable is --  
19 well, these are all on the same page 79. "HoKua  
20 Place is committed to working with the DOW on  
21 pertinent water issues during the design and  
22 development phase."

23           So my response is, and then what?

24           And then further on page 79 you say, the  
25 report says: "In the event the Department does not

1 approve Petitioner's Water Master Plan, then  
2 Petitioner will develop a private water system using  
3 the well that's on the property to furnish water to  
4 the Project."

5 Wow. Maybe you're somewhat aware of our  
6 water issues and rights and how the local people take  
7 this so extremely, you know, strongly.

8 Solid waste. The management policies --  
9 excuse me, page 102.

10 "The management policies will encourage  
11 residences to reduce waste and excessive  
12 consumption." Unquote.

13 And I add, and live a pono lifestyle as a,  
14 back in quotes, "respected trustee for present and  
15 future generations".

16 Other than me thinking that's a laugh, how  
17 will that affect the solid waste problem on Kaua'i?  
18 We are not prepared for the increase in population  
19 and can't manage what we have now.

20 And if you are not clear about that, I  
21 suggest you talk to the County Council about our  
22 solid waste situation of which construction is one of  
23 the biggest things. I mean, this is really serious.  
24 And, whoa, the funny thing is that it says we're  
25 going to recommend that they live a pono lifestyle

1 and they recycle. I can't get my roommates to  
2 cooperate with me. Seriously.

3 And, I mean, that's kind of rude to even  
4 include that. It's kind of a smack in the face to  
5 me. But anyway, thank you for being so patient with  
6 me. I'm almost finished.

7 So total resale market condos and homes  
8 chart. The chart is on page 104.

9 This is indicative of concerns that are not  
10 relevant to our community and how this project is for  
11 investors and outsiders to buy the multi-family units  
12 and prime house lots.

13 Our residents want and need affordable  
14 housing that honors their culture and lifestyle. I  
15 doubt if you know their culture and lifestyle. It's  
16 upsetting.

17 So schools, this is great since I've been a  
18 teacher over there for over 40 years.

19 On page 115, the Department of Education  
20 Heiki Meeker states: "There is sufficient capacity  
21 in the Kapa'a schools to accommodate the students who  
22 will reside in the Project."

23 As an educator I question this. It is not  
24 a matter of matching a chair to a child. The schools  
25 cannot accommodate the students that they have now.

1 And I know this. I've been in the Kapa'a community  
2 for 40 years or more, and I'm an elementary school  
3 teacher. I've been, you know, PTSA state level,  
4 everything, the high school. I was the vice  
5 president when Bernard Carvalho when he was the  
6 president of the PTSA and the high school. And my  
7 kids went to these schools and I know.

8 We don't have staff. We don't have  
9 adequate teachers. We can't get adequate teachers.  
10 We have classes that are joined together that are  
11 totally unrelated and these the kids are in special  
12 needs classes.

13 We have to, by law, pay. If we cannot  
14 meet the needs of the child, by law we have to pay to  
15 send them somewhere they can get their needs met.  
16 And sometimes we're paying for these kids to go to  
17 the mainland. It's insane.

18 So I don't know if any of you would like to  
19 move into HoKua Place and put your kids in school.  
20 Would you?

21 Okay, so anyway, thank you. I have a  
22 little something saying -- yeah. Surely the changes  
23 that would be necessary to create HoKua Place would  
24 cause great hardship on the citizens in Kaua'i.

25 Please do not change the Land Use District

1 to Urban, nor proceed with HoKua Place. It's time to  
2 honor the local people in their culture, the  
3 community, the aina, and this unique place on the  
4 planet that should have been nurtured and protected  
5 the last 25 years. It's never too late to start.

6 The Town of Kapa'a cannot expand. To the  
7 east we are right on the ocean and the waters are  
8 rising. On the west we have mountains the whole  
9 length of the town. So to get to town is along the  
10 Wailua River, or on the north end of the mountain  
11 where there are four schools, because we count St.  
12 Catherine's as well as the three Kapa'a schools.

13 There are buses that go to the college at  
14 the bottom by the roundabout. There's buses that go  
15 to other charter schools.

16 And, yeah, the traffic is huge. There's so  
17 many, so many connected reasons why it really doesn't  
18 work here. It could be a great idea somewhere else,  
19 but this is not for our community. And the sad thing  
20 is you guys are going to rest with the fact that you  
21 destroyed the community, you know. And I hope nobody  
22 comes into your community to destroy it.

23 Thank you very much. I appreciate you  
24 coming, and I hope you read all of the testimonies  
25 that come by email, and I think, you know -- may I

1 say just one other thing?

2 CHAIRPERSON SCHEUER: You can offer some  
3 concluding remarks. Please wrap it up.

4 THE WITNESS: This is all detail, detail,  
5 detail, detail, okay. It's all detail. It's all  
6 your great ideas and how you can make them happen and  
7 all this kind of stuff.

8 But on the other side of the brain that  
9 might be a little shutdown is the overall picture.  
10 And I ask you to please use both sides of your brain  
11 and give the whole overall picture.

12 Aloha, aloha, thank you.

13 CHAIRPERSON SCHEUER: Any questions from  
14 the Petitioner?

15 MR. YUEN: Nope.

16 MR. MICHAELS: No.

17 MS. APUNA: No.

18 CHAIRPERSON SCHEUER: Commissioners? If  
19 none of my fellow Commissioners, do you understand  
20 when I said this earlier that today's meeting is not  
21 for approval of the project, but rather acceptance of  
22 the FEIS?

23 THE WITNESS: Yes, but the developers are  
24 in the room too.

25 CHAIRPERSON SCHEUER: So it's your

1 testimony in its conclusion, asks us to recheck the  
2 EIS, but I wanted to make sure you understood that's  
3 not the decision in front of us today.

4 THE WITNESS: I understand your decision is  
5 whether or not to make it Urban or not.

6 CHAIRPERSON SCHEUER: No. Our ultimate  
7 decision is whether or not to make it Urban, but this  
8 hearing today is whether or not the FEIS is legally  
9 adequate.

10 And I'll just add, the way our EIS law is,  
11 it's possible to do -- if on the Island of Oahu the  
12 navy proposed expansion of Pearl Harbor using a  
13 nuclear device, it would be possible to write a  
14 legally adequate EIS for it. Yes, it will radiate  
15 three-quarters of the highway. (Indecipherable)

16 As long as they evaluate all the impacts,  
17 meet all the other legal criteria, you can have a  
18 legally adequate and acceptable EIS in front of this  
19 Commission if they had a DBA related to it, District  
20 Boundary Amendment.

21 That does not mean we would then say, yes,  
22 go ahead and put in a nuclear device in Pearl Harbor.

23 So it's two totally different kinds of  
24 decision-making.

25 THE WITNESS: Thank you for clarifying.

1 The vagueness in the reports that were so outdated  
2 and saying, you know, I think it's an extremely weak  
3 report.

4 CHAIRPERSON SCHEUER: Thank you. Anything  
5 further, Commissioners?

6 Are there any other individuals wishing to  
7 provide public testimony in this matter? If not,  
8 this will close public testimony on this matter.

9 If there are no further individuals from  
10 the public indicating their desire to give public  
11 testimony, Mr. Yuen, are you ready to proceed?

12 MR. YUEN: Yes, Mr. Chairman.

13 CHAIRPERSON SCHEUER: Can you give me a  
14 sense how long you want your presentation to go this  
15 morning?

16 MR. YUEN: Actually, I'm prepared to just  
17 make a brief statement. Mr. Ron Agor, who is the  
18 lead author of the EIS is here and prepared to answer  
19 any questions, but my intent is just to summarize the  
20 process that we went through in the EIS but not to  
21 present any testimony.

22 CHAIRPERSON SCHEUER: Okay, why don't you  
23 proceed.

24 MR. YUEN: Basically, as the Chair outlined  
25 in his chronology of the process, the Petitioner

1 produced two Draft EISs, first in 2015 and again,  
2 earlier this year. The second Draft EIS was produced  
3 due to the length of time between the first draft and  
4 the present.

5 Since the time of the first draft, we,  
6 Petitioner, has updated both the traffic study and  
7 the housing study; and also prepared an invertebrate  
8 summary describing the impacts of the project on the  
9 Petition Area.

10 We believe that the EIS, Final EIS, is  
11 legally sufficient to describe all of the impacts  
12 that the project will have on the Petition Area, the  
13 surrounding area, including the traffic, the flora  
14 and fauna, the water resources, the agricultural  
15 resources, and other impacts that Petition may have  
16 on the community in Kapa'a.

17 And we ask that the Commission approve the  
18 EIS as being adequate. Thank you.

19 CHAIRPERSON SCHEUER: Are there questions  
20 for the Petitioner from the County?

21 MR. MICHAELS: No questions.

22 MS. APUNA: No questions.

23 CHAIRPERSON SCHEUER: Commissioners, who  
24 wants to go first? Commissioner Okuda.

25 COMMISSIONER OKUDA: Thank you, Mr. Chair.

1           Mr. Yuen, what is the legal standard that  
2           the Commission is to apply in determining whether or  
3           not the Environmental Impact Statement can be  
4           accepted or should not be accepted?

5           MR. YUEN: I believe the legal standard is  
6           that the EIS should address all of the impacts on  
7           both the natural impacts on the -- natural conditions  
8           of the property, as well as the impacts on  
9           agriculture, on the educational system,  
10          transportation systems, sociological and housing  
11          markets.

12          I believe that the EIS has adequately  
13          addressed these areas.

14          COMMISSIONER OKUDA: If you don't mind, let  
15          me read something from a case, and the case is  
16          Kaleikini, K-A-L-E-I-K-I-N-I, versus Yoshioka,  
17          Y-O-S-H-I-O-K-A, which is found at 128 Hawai'i  
18          Reports 53 at page 57, Pacific 3d citation is 283  
19          Pacific 3d 60 at page 74, which is a 2012 Hawaii  
20          Supreme Court case which quotes from another case  
21          Price, P-R-I-C-E, versus Obayashi, O-B-A-Y-A-S-H-I,  
22          Hawai'i Corporation, which is found at 81 Hawai'i 171  
23          at page 182 Pacific 2d citation is 914 Pacific 2d  
24          1364 at page 1375, a 1996 Hawaii Supreme Court case.

25          And after I read this, if you can tell me

1 whether or not this is an accurate statement of the  
2 law or whether it's not an accurate statement of the  
3 law.

4           Quote, "D. Acceptability of an EIS. In  
5 reviewing a challenge to an accepted EIS, this  
6 court," quote, 'uses the', quote, 'Rules of Reason',  
7 close quote, "to determine whether an EIS is legally  
8 sufficient in adequately disclosing facts to enable a  
9 decisionmaking body to render an informed decision."

10           There's a citation to this case Citizens  
11 for Protection of North Kohala Coastline.

12           Continuing further. Under the, quote,  
13 "Rule of Reason", close quote, an EIS need not be  
14 exhaustive to the point of discussing all possible  
15 details bearing on the proposed action, but will be  
16 upheld as adequate if it has been compiled in good  
17 faith and sets forth sufficient information to enable  
18 the decisionmaker to consider fully the environmental  
19 factors involved, and to make a reasoned decision  
20 after balancing the risks of harm to the environment  
21 against the benefits to be derived from the proposed  
22 action, as well as to make a reasoned choice between  
23 alternatives.

24           And then there is a citation to Price  
25 versus Obayashi.

1           Based on what I read, is that an accurate  
2 statement of the law?

3           MR. YUEN: I believe that is an accurate  
4 statement of the law regarding the EIS.

5           COMMISSIONER OKUDA: And is that an  
6 accurate statement of what we as a Commission must  
7 follow and apply in this case?

8           MR. YUEN: I would hesitate to agree fully  
9 because the Commission's decision is not --  
10 Commission's decision on the Petition itself is not  
11 based solely on the EIS, but on the evidence adduced  
12 at the hearing on the Petition. So that if your  
13 decision were solely based on the EIS, you would  
14 probably have to take a stricter review of the  
15 evidence adduced in the EIS as opposed to conducting  
16 a full hearing on the merits of the Petition.

17           COMMISSIONER OKUDA: My question is simply  
18 about what standard the Commission must follow in  
19 determining whether or not the Environmental Impact  
20 Statement that you presented to us can or should be  
21 accepted or should not be accepted.

22           Is what I read --

23           MR. YUEN: I believe that's the correct  
24 statement.

25           COMMISSIONER OKUDA: Correct statement of

1 the standard we must follow, correct?

2 MR. YUEN: On the EIS.

3 COMMISSIONER OKUDA: Okay.

4 So if we broke down the elements, or we can  
5 call it a checklist that the Commission is supposed  
6 to follow in determining whether or not an  
7 Environmental Impact Statement, the Final EIS should  
8 be accepted or not, one of the things we have to  
9 determine is was the EIS compiled in good faith,  
10 correct?

11 MR. YUEN: Yep.

12 COMMISSIONER OKUDA: Then the second thing  
13 we have to look at is whether there's sufficient  
14 information to, and I quote, "consider fully the  
15 environmental factors involved, and to make a  
16 reasoned decision"; correct?

17 MR. YUEN: Yes.

18 COMMISSIONER OKUDA: And we do that, as far  
19 as determining whether there's sufficient information  
20 to consider fully environmental factors, we're to  
21 look at three things:

22 No. 1. And I quote, "balancing the risks  
23 of harm to the environment"; right?

24 No. 2. We balance that against the  
25 benefits to be derived from the proposed action.

1           And No. 3. We have to have sufficient  
2 facts to make a reasonable choice between the  
3 alternatives.

4           Is that a fair statement of what we're  
5 supposed to do?

6           MR. YUEN: Yes.

7           COMMISSIONER OKUDA: Now, looking at the  
8 Environmental Impact Statement that you presented to  
9 us, you have one section in there that discusses what  
10 you term as the "no-build alternative"; correct?

11          MR. YUEN: Yes.

12          COMMISSIONER OKUDA: And that no-build  
13 alternative is basically the alternative that  
14 discusses what would be the results or the  
15 anticipated results if the project was not built;  
16 correct?

17          MR. YUEN: The no-action alternative, yes.

18          COMMISSIONER OKUDA: And you're presenting  
19 the information in that section so that the Land Use  
20 Commission can make a reasoned decision after looking  
21 at that down the road, for example, at our Boundary  
22 Amendment Hearing to consider whether or not the  
23 project should be built or not be built; correct?

24          MR. YUEN: Yes.

25          COMMISSIONER OKUDA: Would you agree that

1 if your Environmental Impact Statement did not  
2 contain, at all, a section that dealt with a no-build  
3 alternative, that EIS would be non-sufficient to be  
4 accepted under the Obayashi and Kaleikini cases.

5 MR. YUEN: That would be a correct  
6 statement, yes.

7 COMMISSIONER OKUDA: Okay.

8 Now, let me ask you this. Do you believe  
9 that there are benefits of not building the project  
10 as described in the EIS, and what -- let me preface  
11 that question by saying --

12 I'm not saying that we would agree that the  
13 choice that a decisionmaking body or a policy body,  
14 whether it's the Land Use Commission, the County  
15 Council, even the community as a whole would agree  
16 that these are the choices that should be made.

17 I'm just asking, do you agree that there  
18 would be benefits that you could list from not  
19 building the development?

20 MR. YUEN: I'm not sure I would agree that  
21 there would be benefits from not building, but  
22 someone else might view that as a benefit to leaving  
23 the property in the status quo.

24 COMMISSIONER OKUDA: Right. In other  
25 words --

1 MR. YUEN: It's a subjective decision.

2 COMMISSIONER OKUDA: It's a subjective  
3 decision, but you do agree that the EIS is intended  
4 to help a decisionmaker look at alternatives to make  
5 a policy decision which sometimes frankly is somewhat  
6 subjective, correct?

7 MR. YUEN: Yes.

8 COMMISSIONER OKUDA: So if somebody had  
9 to -- or if somebody got an assignment or direction  
10 to make a list of benefits that would be derived or  
11 obtained from not building the development, it would  
12 be possible to make such a list; correct?

13 MR. YUEN: It would be possible, yes.

14 COMMISSIONER OKUDA: Is there anything in  
15 the EIS that has been presented to us in that section  
16 that dealt with the no-build alternative, that listed  
17 the benefits to the community of not building the  
18 development as stated or described in the EIS?

19 MR. YUEN: The no-action alternative  
20 basically says that there are no benefits to not  
21 building the project.

22 COMMISSIONER OKUDA: That wasn't my  
23 question.

24 My question: Is there anything in the  
25 no-action section, or frankly anywhere else in the

1 EIS which lists the benefits, even if you might not  
2 agree that these are the benefits that should be  
3 chosen, but is there any -- can you point to anywhere  
4 in the EIS that lists the potential benefits to the  
5 community by not building this development?

6 MR. YUEN: I don't believe we've listed any  
7 benefits to the community by not building the  
8 development, no.

9 COMMISSIONER OKUDA: By the way, I don't  
10 mean to be harsh about my questions or anything like  
11 that, I just hate to be reversed by the Hawaii  
12 Supreme Court down the road. Kind of bad for  
13 reputation.

14 Let me ask you this. Was there any  
15 discussion in the EIS of building the projected  
16 number of housing units at a different location?

17 MR. YUEN: No, because this happens to be  
18 the property that our clients own, so it's not as if  
19 we were at liberty to go and look for other property  
20 to develop.

21 COMMISSIONER OKUDA: Well, is there  
22 anything in the law -- well, there's the statute,  
23 administrative regulations, or the case law which  
24 restricts or prohibits or directs that an EIS not  
25 consider having the proposed development or number of

1 housing units built somewhere else?

2 MR. YUEN: I don't believe anything  
3 restricts a preparer of an EIS from looking  
4 elsewhere. In fact, EISs with things like school  
5 selection where alternatives sites are considered  
6 will look at different sites, but where we start with  
7 a particular property that Petitioner owns and would  
8 like to develop, the Petitioner, as a practical  
9 matter, is not about to say, okay, I own this  
10 property, but I still want to go look for other sites  
11 to develop.

12 COMMISSIONER OKUDA: I'm not asking for the  
13 Petitioner or the landowner to attempt to obtain  
14 property in a different location, but wouldn't you  
15 agree that the EIS is supposed to look at  
16 alternatives to a proposed development or proposed  
17 action whether or not the Applicant is the one who is  
18 going to actually pursue these other alternatives?

19 MR. YUEN: I don't think there's a  
20 requirement that the Petitioner look for other  
21 alternative sites for his project in the case where a  
22 Petitioner has a particular site, owns a particular  
23 site and wants to do something with that site. I  
24 think that the Environmental Impact Statement is  
25 required to consider alternatives to the proposed

1 development, and I believe that the no-action  
2 analysis is a brief one, but the EIS does consider  
3 development scenarios under existing zoning.

4 COMMISSIONER OKUDA: Is there anything in  
5 the no-action section or anywhere else in the EIS  
6 which discusses placing this type of development or  
7 these number of housing units closer to where the  
8 people who will be residing in the housing units are  
9 actually employed so that traffic or commute time  
10 could be reduced? Is there any discussion like that  
11 in the EIS?

12 MR. YUEN: No.

13 COMMISSIONER OKUDA: Let me ask you this  
14 question.

15 You know, the state at not -- you know, not  
16 cheap expense, has apparently made it a policy of  
17 sending us Commissioners to various national planning  
18 conferences, like the American Planning association  
19 Conference, to the Urban Land Institute Conferences,  
20 you know, to learn and study about planning.

21 It seems at these national conferences the  
22 standard of care or the standard of planning has been  
23 to place development near or at places of employment  
24 because there are documented health studies of  
25 negative things that happen when you have people

1 stuck in commute, or stuck in commuting time.

2 Would you agree that that seems to be the  
3 standard of practice among professional planners to  
4 attempt to focus development to reduce commute time,  
5 to encourage walkability and health results to  
6 basically get people out of their cars, and this  
7 seems to be the standard of practice among  
8 professional planners?

9 MR. YUEN: I think if you go back and look  
10 at planning trends over the last 50 years, the goal  
11 of spreading housing and jobs throughout a region  
12 versus concentrating them in the cities, it's like a  
13 scale and it goes from one extreme to another.

14 And I think in the last 15 years perhaps  
15 the trend of redeveloping cities and concentrating  
16 population growth in cities as centers of employment  
17 perhaps has been a trend as opposed to spreading jobs  
18 throughout a region and spreading jobs throughout  
19 different centers of population.

20 I think in particular with respect to this  
21 island, Kapa'a is one of the major centers both of  
22 population and of employment.

23 CHAIRPERSON SCHEUER: Commissioner Wong.

24 COMMISSIONER WONG: Can we take a brief  
25 recess?

1           CHAIRPERSON SCHEUER: We are about at a  
2 time for a ten-minute recess. I didn't want to  
3 interrupt the flow.

4           COMMISSIONER OKUDA: I'm sorry if I --

5           CHAIRPERSON SCHEUER: Not at all, this is  
6 why we are here.

7           Commissioner, how much more do you want?  
8 Can you take it up after a break?

9           COMMISSIONER OKUDA: Yeah, I can take it  
10 up.

11          CHAIRPERSON SCHEUER: It's 10:25. We will  
12 take a ten-minute recess, which means we will restart  
13 at 10:35.

14          (Recess taken.)

15          CHAIRPERSON SCHEUER: We're back on the  
16 record. And we were having questioning of the  
17 Petitioner by Commissioner Okuda.

18          I will take this opportunity to share with  
19 those members of the public who perhaps have never  
20 had the pleasure of being in front of the State Land  
21 Use Commission to share just a little bit about  
22 ourselves.

23          There are nine possible Commissioners. We  
24 have eight sitting Commissioners. Two are excused  
25 today. We are all volunteers, appointed by the

1 governor, confirmed by the state senate.

2 Some of us will be up to reconfirmation.  
3 If you dislike what we do, you have the opportunity  
4 to send in your testimony saying we shouldn't be  
5 reconfirmed.

6 In any case, all of us are subject to the  
7 confirmation process. We come from a wide variety of  
8 private and public sector backgrounds, and we do this  
9 work because we believe it's of good service to the  
10 State of Hawai'i and its people.

11 Commissioner Okuda, are you prepared to  
12 continue?

13 COMMISSIONER OKUDA: Yes, Mr. Chair, thank  
14 you.

15 Mr. Yuen, in the proposed Final EIS is  
16 there any discussion or narrative or evidence showing  
17 where the proposed or perspective residents of the  
18 proposed development, where they actually work?

19 MR. YUEN: Well, it's kind of hard to  
20 speculate, but there is a reference to three new  
21 hotel projects coming up in this area, renovation of  
22 Coco Palms and two other proposed projects, but it's  
23 difficult to speculate as to where people may work  
24 now or who is going to actually buy these houses.

25 COMMISSIONER OKUDA: Was there or is there

1 any discussion in the EIS identifying other parcels  
2 of properties, for example, adjacent to Lihue Town,  
3 which should in fact be developed at a higher  
4 priority or perhaps agricultural lands or former  
5 agricultural lands currently designated agriculture  
6 near or adjacent to Lihue Town, which might be more  
7 appropriate for development?

8 Was there any discussion of that in the  
9 no-action section of the EIS?

10 MR. YUEN: No. And I don't believe it's  
11 the Petitioner's responsibility to seek out other  
12 lands for development of similar kind.

13 COMMISSIONER OKUDA: Well, this is the  
14 reason why I'm asking the question, and I'm not  
15 trying to speak for my other Commissioners regarding  
16 the question, but one of the issues I see is whether  
17 or not, you know, development should take place at  
18 some other location, but to, instead of the proposed  
19 development in Kapa'a, or whether or not it's more  
20 appropriate to have development in some other  
21 location instead of Kapa'a, but to determine or  
22 answer that question, we would need to see, for  
23 example, the EIS availability of land somewhere else  
24 as compared to Kapa'a?

25 That's my thought process. I haven't

1 prejudged anything, just asking.

2 MR. YUEN: Just for your information,  
3 Commissioner, the County of Kaua'i underwent probably  
4 about a year-long General Plan Update process that  
5 was completed early in 2018 in which the County  
6 Planning Department and its consultants evaluated the  
7 need for housing and employment, et cetera,  
8 throughout the island.

9 And one of the sites that the -- let me  
10 preface by saying this site had been designated for  
11 residential development going back to the 1982 Kaua'i  
12 General Plan. And it was continued through General  
13 Plan Updates later on in the '90s.

14 And in the recent General Plan Update this,  
15 the designation of the property was -- the County  
16 changed the kinds of designation it made for Urban  
17 development.

18 This one was preserved for what the County  
19 now calls Neighborhood General as a town-center type  
20 of development. But the County has gone through that  
21 process in the fairly recent past, and it's something  
22 that we can cover at the hearing on the Petition  
23 itself.

24 COMMISSIONER OKUDA: And I understand that.  
25 And, again, as the Chair explained, the decision to

1 accept or not accept the EIS is not determinative of  
2 what might happen at a Petition for District Boundary  
3 Amendment, but it's really a tool that we need to  
4 look at all different alternatives.

5 So my questions are really intended to  
6 determine whether or not the EIS has sufficient  
7 information as required by the Price versus Obayashi  
8 case and the Kaleikini case so that we can see all  
9 the different alternatives to make our recent  
10 decision.

11 Last area of questions.

12 I read through the housing report which  
13 indicated potential sales to offshore buyers. The  
14 housing report did contain narrative or discussion  
15 about sales offshore buyers, correct?

16 MR. YUEN: Yes.

17 COMMISSIONER OKUDA: And sales to offshore  
18 buyers, of course, would reduce the amount of housing  
19 stock available to Kaua'i residents, correct?

20 MR. YUEN: Yes.

21 COMMISSIONER OKUDA: Was there any  
22 discussion in the EIS as far as alternatives to the  
23 development which would reduce the number or the --  
24 yeah, the number of offshore buyers or investors  
25 buying these units, thereby increasing potential

1 housing stock for Kaua'i residents?

2 MR. YUEN: We did not go into the marketing  
3 strategies, if you will. I think that the location  
4 of the project and the densities that we are  
5 projecting would not necessarily be attractive to  
6 offshore buyers who are looking for a higher end  
7 home, if you will.

8 But these are things that we can address  
9 during the hearing on the Petition itself.

10 COMMISSIONER OKUDA: I apologize, maybe my  
11 question should have been more specific.

12 So more specifically, we had a recent  
13 Petition on Maui where a developer changed the  
14 approach of a development to emphasize rental housing  
15 as compared to sales of owner types of properties.  
16 And the reason that was advocated for this change to  
17 rental housing is rental housing would basically be  
18 more helpful to working families, and would also ease  
19 demand on, you know, housing stock.

20 And with rental properties, as long as you  
21 have the restrictions against transient rentals, the  
22 airbnb types of rentals of units, the renters that  
23 would come in would probably be not offshore people  
24 but local residents.

25 Was there any discussion in the EIS as far

1 as a no-build alternative or any alternative of  
2 having an emphasis on rental housing as the  
3 alternative to the development as it was being  
4 presented?

5 And, again, I'm just looking for discussion  
6 in this EIS of alternatives to what is being  
7 presented. Was there any discussion in there about  
8 the alternative benefit to the community by providing  
9 rental housing?

10 MR. YUEN: I don't believe there was. I  
11 think that community support, if you will, that the  
12 Petitioner has received, has indicated that there is  
13 a shortage of housing for purchase by local  
14 residents, that local residents are looking for an  
15 opportunity to purchase an affordable home and get  
16 out of the renting cycle.

17 COMMISSIONER OKUDA: Yeah, but your housing  
18 study that I read, seemed -- not seemed -- it was  
19 very educational -- also has a discussion of  
20 shortages of rental properties, correct?

21 MR. YUEN: Yes.

22 COMMISSIONER OKUDA: And so there's no  
23 discussion in the EIS as far as a rental project as  
24 an alternative to the proposed development, correct?

25 MR. YUEN: Well, I think, again, the basic

1 function of the Land Use Commission is to decide  
2 whether a property belongs in the Urban District or  
3 should stay in the Agricultural District in this  
4 case, and the details of density and what gets built  
5 and whether it's for sale or for rent are more left  
6 to the County Planning Department and the economics  
7 of a project.

8 So that while the developer or anyone at  
9 this stage can say it's all going to be "for sale" or  
10 it's going to be 50 percent rental, a lot will change  
11 when you get into the economics of the specific  
12 development and the marketing of specific units.

13 COMMISSIONER OKUDA: You're correct about  
14 that. But that's not what we're here for today,  
15 correct? We're here today, and possibly tomorrow, to  
16 decide whether or not, under the law, whether or not  
17 this EIS is adequate; and to determine whether it's  
18 adequate, the law we have to follow is basically the  
19 standards that have been set forth, for example, by  
20 the Hawaii Supreme Court in the Price versus Obayashi  
21 case as reaffirmed in Kaleikini, correct?

22 MR. YUEN: Yes.

23 COMMISSIONER OKUDA: Thank you, Mr. Chair.  
24 I have no further questions.

25 CHAIRPERSON SCHEUER: Thank you,

1 Commissioner Okuda.

2 Commissioners?

3 Commissioner Giovanni.

4 COMMISSIONER GIOVANNI: Thank you, Chair.

5 So I have a few questions and my questions  
6 are primarily in the area of traffic.

7 So, Mr. Yuen, in your opening testimony  
8 today, you indicated that the Draft EIS was updated  
9 in part to reflect changes in an updated traffic  
10 analysis; is that correct?

11 MR. YUEN: Yes. The original traffic  
12 analysis was prepared in 2014 or '15. We had another  
13 one prepared in 2017. Depending on when this  
14 Petition is going to be scheduled, we may ask the  
15 traffic consultant to update his findings between now  
16 and the hearing on the Petition in chief.

17 COMMISSIONER GIOVANNI: I appreciate that.  
18 I think that might be welcomed in some regards.

19 So the updated traffic analysis that you  
20 refer to 2017, if I understood correctly from the  
21 record, that was based on a three-day analysis in  
22 March 15 to 17 of 2017 for morning commute and  
23 afternoon commute hours; is that correct?

24 MR. YUEN: I believe that's correct, yes.

25 COMMISSIONER GIOVANNI: Is it your client

1 and your position today that that study is adequate  
2 to support the final design of the project coming  
3 before this for a DBA?

4 MR. YUEN: When you say, is it adequate for  
5 the final design, I think it's the practice of the  
6 State Department of Transportation to require an  
7 additional traffic impact analysis report before it  
8 signs off on improvements, anything that is going to  
9 touch a state road.

10 I think, Commissioner, you have to  
11 understand that the Commission's decision is the  
12 first discretionary decision and the start of the  
13 process, and unfortunately, the process does take  
14 several years until you get from, in this case, the  
15 General Plan Update to the Commission's Decision.

16 And then if the Commission does decide to  
17 reclassify this to the Urban District, then we go to  
18 County Council for zoning.

19 And we're pretty far away from the final  
20 design of any traffic improvements.

21 I think conceptual designs of the traffic  
22 improvements, yes, but the actual final design of,  
23 you know, when you might have to start your widening  
24 and that sort of thing, we're not at that stage yet.

25 COMMISSIONER GIOVANNI: I appreciate all

1 the steps, and I appreciate also where we stand today  
2 in all of those steps before we have a commercial  
3 project, but thank you for clarifying that.

4 So the updated traffic impact analysis  
5 report that we have been talking about was issued I  
6 believe in May of -- it was from 2017, issued  
7 May 2017. And on September 1st of 2017 your traffic  
8 consultant received from the County of Kaua'i its  
9 comments and questions about that analysis.

10 Are you familiar with that letter?

11 MR. YUEN: Yes.

12 COMMISSIONER GIOVANNI: Is it your position  
13 today that the Final EIS has adequately addressed the  
14 questions raised by the County in review of that  
15 report?

16 MR. YUEN: I believe it does.

17 Again, bearing in mind that the County has  
18 not had its final say on the project, so I'm sure  
19 we're going to have further discussions with the  
20 County, but for purposes of the EIS I think it's  
21 adequate.

22 COMMISSIONER GIOVANNI: Similarly on, I  
23 believe, September 29th, the State Department of  
24 Transportation issued a similar letter to your  
25 traffic consultant with his review comments and

1 concerns.

2 Are you familiar with that letter?

3 MR. YUEN: Yes.

4 COMMISSIONER GIOVANNI: Is it also your  
5 position that the Final EIS adequately addresses the  
6 concerns that were raised in that letter by the State  
7 Department of Transportation?

8 MR. YUEN: We did respond to comments with  
9 a comment, with a response letter to the State which  
10 is included in the EIS, so we believe it adequately  
11 addresses the State's comments.

12 And, again, bearing in mind that the State  
13 will have additional comments before the hearing on  
14 the Petition.

15 COMMISSIONER GIOVANNI: I just want to  
16 reiterate three concerns that we have heard from the  
17 public about traffic, and we heard some of those  
18 comments again today.

19 One is that the traffic analysis, traffic  
20 impact analysis report was outdated and should be  
21 subject to update before the project is put before  
22 us.

23 There was concerns that it focused on only  
24 the traditional commute periods as opposed to the  
25 fact during the observations that traffic is of

1 concern for many hours of the day, including hours of  
2 the day that are outside the normal commute hours.

3 And that the mitigations that have been  
4 identified to address the impacts are somewhat vague,  
5 and there's still some questions about the County and  
6 State about resolution of those mitigations.

7 So with that, I just want to encourage you  
8 to continue to focus on these traffic issues because  
9 they are paramount to this community.

10 MR. YUEN: That's something we intend to  
11 do, yes.

12 COMMISSIONER GIOVANNI: Thank you.

13 CHAIRPERSON SCHEUER: Thank you,  
14 Commissioner Giovanni.

15 Commissioner Wong.

16 COMMISSIONER WONG: Thank you. In your  
17 opinion, the EIS states affordable house or housing.

18 What if you change midway, because this is  
19 a process, say we are going do rentals instead or a  
20 portion of it will be rentals.

21 How would it affect the EIS in your  
22 opinion?

23 MR. YUEN: I think the effect on the EIS  
24 would be minimal because the EIS discloses  
25 essentially you're going to construct housing units

1 on the property. The impact on the physical  
2 environment, there's no difference between a for  
3 sale -- I should say, there's very little difference  
4 on impact of the environment of for sale versus  
5 rental project.

6 And the impact, say, on traffic, if your  
7 rental units are occupied by similar-sized families  
8 as your for sale project, the impacts on the  
9 environment itself I think will be minimal versus for  
10 sale versus rental project.

11 COMMISSIONER WONG: So the other question I  
12 have is one of the public testifiers brought it up  
13 and I note DOE is not here.

14 As you know, you are going to have housing  
15 and families, people will have families there with  
16 kids. When you sent this EIS to the DOE, they said  
17 that they had no problem with this, correct?

18 MR. YUEN: Yes. I believe the process was  
19 we consulted several times with the DOE, and we  
20 basically gave them the unit mix and the projected  
21 population of the area, and they project, based on  
22 standards, how many school age kids are anticipated.

23 They look at the historic trends of  
24 enrollment in area schools, and on that basis they  
25 concluded that the impact on the area schools is

1 minimal in the sense that it would not require  
2 building of additional school facilities.

3 COMMISSIONER WONG: Thank you.

4 CHAIRPERSON SCHEUER: Commissioners?

5 I have a series of questions, but I don't  
6 want to go -- cut off.

7 Mr. Yuen, I have some questions about water  
8 resources. I have some questions about the adequacy  
9 of the analysis to fulfill our duties under Ka  
10 Pa'akai O Ka 'Aina.

11 I'm going to take up the water issues  
12 first.

13 In the FEIS there is a statement I believe  
14 around page 79 within the discussion that notes that  
15 these lands are makai of the UIC line, the  
16 underground injection control line, which is a  
17 concern because if you were developing water makai of  
18 this line, there can be contaminates from overline  
19 activities that then infiltrate into the drinking  
20 water source.

21 Are you familiar with the section of the  
22 EIS that I'm referring to?

23 MR. YUEN: Yes.

24 CHAIRPERSON SCHEUER: There is a statement  
25 in there that there is an impermeable anticlude

1 completely separating the drinking water source which  
2 is being developed from the land surface above.

3 Is there any evidentiary basis in the EIS  
4 or in its appendices describing this geological  
5 feature?

6 MR. YUEN: I'm not aware of the evidentiary  
7 basis. We had a water consultant who prepared a  
8 report, and the EIS includes his report. It's  
9 something that we can address at the hearing.

10 CHAIRPERSON SCHEUER: There is nothing in  
11 Mr. Nance's report that provides an evidentiary basis  
12 for his statement or anything that I saw of the  
13 extent of this area. But correct me if I am wrong,  
14 if there's something in the EIS.

15 MR. YUEN: I'm not familiar with any  
16 evidentiary basis. It's a conclusionary report.

17 CHAIRPERSON SCHEUER: And I didn't see  
18 anything in the geological section, it merely  
19 addressed soil, so there is nothing in the geological  
20 section of the report that supported this statement;  
21 correct?

22 MR. YUEN: I believe you're correct.

23 CHAIRPERSON SCHEUER: What would the  
24 consequences be for this development if, while there  
25 might be some impermeable layer between this surface

1 activities and the drinking water source, but if it  
2 didn't cover the extent of the property, or perhaps  
3 that there are fissures or other means by which  
4 contaminants can enter into the drinking water?

5 MR. YUEN: What would be the consequences?

6 CHAIRPERSON SCHEUER: Yes.

7 MR. YUEN: I believe the consequences would  
8 be either we would have to dilute the water that  
9 comes from that source in order to reduce the  
10 percentage of any contaminate, or if worse comes to  
11 worse, find another source.

12 CHAIRPERSON SCHEUER: And would those  
13 alternatives be addressed in the FEIS?

14 MR. YUEN: I don't believe they were.

15 CHAIRPERSON SCHEUER: Also on page 79 or  
16 thereabouts, I believe based on statements from Mr.  
17 Nance, there was discussion that there was a lower  
18 aquifer and an upper aquifer in this area; is that  
19 correct?

20 MR. YUEN: I believe you're correct.

21 CHAIRPERSON SCHEUER: Later on page 79  
22 there's a discussion of the sustainable yield that  
23 has been calculated by the State Commission on Water  
24 Resources Management for this area.

25 Was a sustainable yield calculated for the

1     aquifer which is proposed for the development of  
2     drinking water?

3             MR. YUEN:   I'm not sure it was.

4             CHAIRPERSON SCHEUER:   The statement on page  
5     79 relates to the sustainable yield for the overall  
6     aquifer of this area, concludes that there's adequate  
7     water available based on that, but immediately prior  
8     to that they say there's two distinct and  
9     hydrologically disconnected aquifers.

10            How are these two contradictory statements  
11     addressed in the FEIS?

12            MR. YUEN:   I don't believe it addresses  
13     that.

14            CHAIRPERSON SCHEUER:   Can you also help me  
15     understand if anything in the EIS addresses the  
16     assumption that the State Commission on Water  
17     Resource Management uses in calculating a sustainable  
18     yield?

19            MR. YUEN:   I don't believe the EIS goes  
20     into the methodology of the calculation of the  
21     sustainable yield.

22            CHAIRPERSON SCHEUER:   Are you or your  
23     consultant familiar with the methodology?

24            MR. YUEN:   I'm not familiar.   I believe Mr.  
25     Nance is familiar with that methodology.

1           CHAIRPERSON SCHEUER: But he is not here  
2 today.

3           MR. YUEN: He's not here, and it's  
4 something we can address at the hearing on the  
5 Petition.

6           CHAIRPERSON SCHEUER: But not here to  
7 address on the adequacy of this FEIS?

8           MR. YUEN: Not here on the EIS. Again,  
9 it's the kind of thing that we think that the EIS is  
10 adequate in the sense that it has addressed a water  
11 source that has an adequate supply to serve the  
12 Petition Area, but the detailed testing and sampling  
13 has not yet been conducted because we're at a  
14 preliminary stage.

15          CHAIRPERSON SCHEUER: But one of the  
16 statements in the FEIS has to do with full buildout  
17 demand for this area, correct?

18          MR. YUEN: Yes.

19          CHAIRPERSON SCHEUER: And so one of the  
20 necessary conclusions in an EIS in front of the Land  
21 Use Commission is to look at whether or not there's  
22 overall sufficient water available, correct?

23          MR. YUEN: That's correct. I believe  
24 though that the EIS identifies what is a likely  
25 source, but the full testing and development of the

1 well that would serve as the water source has not yet  
2 been completed, but would be at a later stage.

3 CHAIRPERSON SCHEUER: I guess my concern,  
4 Mr. Yuen, is this. The methodology by which the  
5 Commission on Water Resource Management sets  
6 sustainable yields, it assumes first of all that the  
7 precipitation in the area is uniform.

8 It also assumes that the underlying geology  
9 and hydrology is uniform.

10 And that all wells developed in an aquifer  
11 are equidistant and identical depth and pump at  
12 identical level of pumping.

13 And if all of those conditions are true,  
14 there is a maximum amount of water which can be  
15 withdrawn from an aquifer without harming those wells  
16 from being able to take up water that is free from an  
17 unacceptable level of chlorides.

18 So that, actually by the Commission's own  
19 admission, it first of all did not look at the impact  
20 of groundwater flow to the coast, which is one set of  
21 impacts, but it also assumes that there's, as I said,  
22 uniform geology and hydrology.

23 But your report itself actually says, hey,  
24 you know, we actually assert that the hydrology and  
25 geology are not uniform, two distinct layers that are

1 completely disconnected from each other.

2           So I'm not sure how we are to conclude,  
3 especially since the report says full pump test  
4 hasn't been done, but the assertion that there is  
5 sufficient water available for this project is true,  
6 when it's basing that statement on some contradictory  
7 statements. But if I'm wrong, I'd like to know how  
8 I'm wrong.

9           MR. YUEN: Well, I think the only way we  
10 can answer that is to have Mr. Nance testifying at  
11 the hearing on the Petition.

12           CHAIRPERSON SCHEUER: Let me move onto  
13 discussion of one very specific question.

14           The Cultural Impact Assessment Report  
15 prepared for this project noted there was contact  
16 with five individuals, none of them were native  
17 Hawaiian, who -- three of them provided letters, two  
18 of whom were interviewed.

19           And then in addition it says that inquiries  
20 were made to individuals identified by the Office of  
21 Hawaiian Affairs who have knowledge of this area.

22           Have I understood that portion of the  
23 document correctly?

24           MR. YUEN: I believe you have.

25           CHAIRPERSON SCHEUER: One of the statements

1 in this EIA, which I believe has been reproduced in  
2 the main body of the FEIS, stated that these  
3 informants, who were unnamed from the Office of  
4 Hawaiian Affairs, testified that there was no known  
5 cultural practices on the parcel of land involved in  
6 the Petition Area.

7 Were these individuals asked about possible  
8 impacts from this development that might not exist on  
9 the land parcel itself?

10 MR. YUEN: I don't know if they were asked  
11 about impacts on lands outside the Petition Area.

12 CHAIRPERSON SCHEUER: Is our duty as Land  
13 Use Commission under Ka Pa'akai O Ka 'Aina solely  
14 limited to impacts that might only occur on the land  
15 being reclassified?

16 MR. YUEN: I believe that's your primary  
17 duty. I think in this case the land being -- that's  
18 the subject of reclassification, is surrounded by  
19 other lands that are occupied and are not undeveloped  
20 lands, if you will. Then in this case I think the  
21 inquiry was sufficient.

22 This is not an edge of a forest or  
23 something of that sort that would lend itself to  
24 having to take the inquiry beyond the property  
25 itself.

1           CHAIRPERSON SCHEUER: Is the property near  
2 the coast?

3           MR. YUEN: No. Well, it's within about a  
4 mile and a half of the coast. But between the  
5 coastline and the property is the Town of Kapa'a.

6           CHAIRPERSON SCHEUER: Last question.

7           In the appendix, which contains the CIA and  
8 the Final EIS as it's been posted to the LUC website,  
9 the last page 287, number 287 says, appendix, which  
10 includes letters from informants, but those letters  
11 do not actually appear in what has been posted to the  
12 LUC's website.

13           In the final document that was filed with  
14 the Office of Environmental Quality Control, was the  
15 Appendix to Appendix M, I believe it was, included?

16           MR. YUEN: I believe it was.

17           CHAIRPERSON SCHEUER: Are you capable of  
18 offering some confirmation of that?

19           MR. YUEN: Excuse me.

20           We're not sure we have that.

21           CHAIRPERSON SCHEUER: Is it a part of the  
22 legal adequacy of a FEIS that full materials are  
23 included?

24           MR. YUEN: Yes, it is. I think that the  
25 totality of the information predicated that there are

1 no cultural impacts that were discovered or that may  
2 exist on the property.

3 CHAIRPERSON SCHEUER: I agree that's the  
4 assertion in the report, but the assertion is based  
5 in part from the letters of informants, and those  
6 letters from the informants appear not to be included  
7 even though it's indicated they were supposed to be.

8 MR. YUEN: I believe you're correct.

9 CHAIRPERSON SCHEUER: I have nothing  
10 further.

11 Commissioners, anything else? If not,  
12 County are you ready to go? How long do you  
13 anticipate having?

14 MR. MICHAELS: The County is not going to  
15 take a position on acceptability at this time.

16 CHAIRPERSON SCHEUER: The County is not  
17 going to take a position on acceptability at this  
18 time? That's the total of your presentation?

19 MR. MICHAELS: That is the total, correct.

20 CHAIRPERSON SCHEUER: Are there questions  
21 for the County from the Petitioner?

22 MR. YUEN: None.

23 CHAIRPERSON SCHEUER: OP?

24 MS. APUNA: No questions.

25 CHAIRPERSON SCHEUER: Commissioners?

1 Commissioner Cabral.

2 VICE CHAIR CABRAL: Clearly there's a lot  
3 of concern about traffic, and what this housing  
4 development could do for traffic to the community.

5 Can you tell me as the County, because I'm  
6 looking to government to hopefully provide some kind  
7 of solutions to citizens, in the preparation of this  
8 EIS was the County involved in providing information  
9 about traffic? And if so, do you have plans to try  
10 and help relieve what apparently is a traffic problem  
11 I think both in this area -- I've been here on other  
12 hearings where the problem with traffic keeps coming  
13 up. And I love that you've got those sweet old  
14 country roads. I live on one, but I'm the only one  
15 who lives there, so it's not a traffic problem.

16 How involved were you with this  
17 preparation? How involved -- are you normally  
18 involved within preparation of an Environmental  
19 Impact Statement in regards to traffic and County  
20 roads?

21 MR. MICHAELS: Thank you, Commissioner  
22 Cabral. I'll refer to our Deputy Director of  
23 Planning, Ms. Higuchi Sayegusa.

24 CHAIRPERSON SCHEUER: I'm going to swear  
25 you in before you respond.

1           Do you swear or affirm the testimony that  
2           the testimony that you're about to give is the truth?

3           THE WITNESS: I do.

4           JODI HIGUCHI SAYEGUSA

5           Was called as a witness by and on behalf of the  
6           County of Kaua'i, was sworn to tell the truth, was  
7           examined and testified as follows:

8           DIRECT EXAMINATION

9           THE WITNESS: I know that with regard to  
10          the highway or the roadway infrastructure, I think  
11          our engineering division head Mike Moule responded to  
12          the DEIS with comments and concerns.

13          Other than that, I am not aware of any  
14          closed consultation that's occurred between the  
15          County and the developer.

16          VICE CHAIR CABRAL: Thank you.

17          CHAIRPERSON SCHEUER: Commissioner  
18          Giovanni.

19          COMMISSIONER GIOVANNI: Like to follow up  
20          on that question.

21          So the County of Kaua'i issued a fairly  
22          comprehensive letter on September 1st, 2017, to the  
23          traffic consultant that was hired by the Petitioner,  
24          enumerating several areas of concern and items that  
25          were not yet resolved.

1 Does the County feel that the Petitioner  
2 has adequately addressed the concerns enumerated in  
3 that letter in its Final Environmental Impact  
4 Statement?

5 MS. SAYEGUSA: In all candor, I wasn't able  
6 to touch base with our engineering division to see  
7 whether they are satisfied with the updated TIAR that  
8 was prepared along with the FEIS. I apologize.

9 COMMISSIONER GIOVANNI: Do you know if the  
10 County of Kaua'i received any response to his letter  
11 of September 1st, 2017?

12 MS. SAYEGUSA: I'm unaware.

13 CHAIRPERSON SCHEUER: Commissioner Okuda.

14 COMMISSIONER OKUDA: Thank you, Mr. Chair.

15 Based on all the questions that you are  
16 hearing from the Commissioners, does the County of  
17 Kaua'i have at least a little bit of a concern that  
18 there's a possibility here that this EIS does not  
19 meet the standard that the supreme court has set  
20 forth in Price versus Obayashi and the Kaleikini  
21 case?

22 MS. SAYEGUSA: I understand we are not  
23 talking about merits of the proposed -- we do note  
24 that there is support offered by the General Plan  
25 designation --

1           COURT REPORTER: You need to speak into the  
2 microphone.

3           MS. SAYEGUSA: Again, we do note that the  
4 General Plan designation of Neighborhood General does  
5 support the overall the project.

6           The part of the -- we do not have an  
7 updated East Kaua'i Regional Development Plan, and so  
8 it's quite outdated in the '70s. I think the  
9 regional plan that does pertain to this area was done  
10 in the '70s.

11           So really the guidance that will eventually  
12 guide the decision-making by the this body and  
13 Planning Commission and eventually County Council  
14 would be the EIS.

15           We, the Planning Department, did submit  
16 some comments back in 2017. What we offered as  
17 guidance instead of the updated East Kaua'i Plan was  
18 to suggest that certain policies be incorporated in  
19 the ultimate development plan.

20           That, in our opinion, is still a little bit  
21 unresolved. Namely, to incorporate complete streets,  
22 principals, our multimodal plan, transportation plan.

23           I think there was a lot of mention within  
24 the EIS of smart code. I think we infer that that's  
25 mention of (indecipherable) code. But, you know,

1     aside from referencing those things, there hasn't  
2     been a response to a more formalized development plan  
3     discussed in the EIS in great detail. Those are some  
4     of the concerns that we have.

5             COMMISSIONER OKUDA: So in other words,  
6     because the East Kaua'i Development Plan is outdated  
7     or significant time has the passed, the County of  
8     Kaua'i would be looking at the EIS for guidance; is  
9     that your testimony?

10            MS. SAYEGUSA: Correct.

11            COMMISSIONER OKUDA: And so, in fact, this  
12     case, it's even more paramount and important that we  
13     have a sufficient Environmental Impact Statement.

14            Is that a fair statement?

15            MS. SAYEGUSA: Correct.

16            COMMISSIONER OKUDA: Thank you.

17            No further questions, Mr. Chair.

18            CHAIRPERSON SCHEUER: Commissioner Wong.

19            COMMISSIONER WONG: I'm going to go back to  
20     Commissioner Okuda's statement.

21            As you note, Environmental Impact  
22     Statement, it's pretty much a check box of things to  
23     do, the Petitioner has to do.

24            Do you feel -- you can say yes or no, or no  
25     opinion -- that they have put a check on the boxes?

1 MS. SAYEGUSA: We know of no official  
2 opinion.

3 COMMISSIONER WONG: Thank you.

4 CHAIRPERSON SCHEUER: Commissioner  
5 Giovanni.

6 COMMISSIONER GIOVANNI: So you just  
7 mentioned that the General Plan and the comments  
8 provided to the Petitioner reflect general policies  
9 of the County.

10 Does the County have an express policy that  
11 wishes to be recognized by this Petitioner as it  
12 pertains to affordable housing and the role of rental  
13 versus for sale, workforce housing or affordable  
14 housing, should be reflected by the Petitioner as a  
15 matter of policy?

16 MS. SAYEGUSA: Well, the EIS did discuss  
17 that the project will meet the affordable housing  
18 requirements and the housing policy requirements  
19 under the code, under the Kaua'i County Code.

20 COMMISSIONER GIOVANNI: My question is a  
21 little different, a little nuance.

22 Does it meet the criteria specifically for  
23 the number of affordable units? Does the County have  
24 a policy position or not regarding the rental  
25 affordable housing versus for sale affordable

1 housing?

2 MS. SAYEGUSA: Not at this time. I  
3 actually -- I would prefer if perhaps we had our  
4 housing director possibly here to respond to that  
5 comment, but we do note that they have an analysis,  
6 express a willingness to cooperate and to meet the  
7 hard line common goals of the department.

8 CHAIRPERSON SCHEUER: Commissioners,  
9 anything further right now for the County?

10 If not, OP, how long do you need?

11 MS. APUNA: A minute.

12 CHAIRPERSON SCHEUER: I would give you a  
13 minute.

14 MS. APUNA: I can make it shorter.

15 CHAIRPERSON SCHEUER: Please proceed.

16 To give you my inclination -- sorry, I want  
17 to briefly check. What time has lunch been ordered?

18 CHIEF CLERK: 12:30.

19 CHAIRPERSON SCHEUER: We will let OP go,  
20 then take a brief 15-minute recess. OP.

21 MS. APUNA: The Office of Planning has  
22 reviewed the FEIS and we believe that it is legally  
23 adequate and we recommend acceptance by the  
24 Commission.

25 CHAIRPERSON SCHEUER: That wasn't a minute.

1           Are there questions for OP from the  
2           Petitioner?

3           MR. YUEN:   None.

4           CHAIRPERSON SCHEUER:   County?

5           MR. MICHAELS:   No questions.

6           CHAIRPERSON SCHEUER:   Commissioners?

7           Commissioner Okuda.

8           COMMISSIONER OKUDA:   Thank you very much,  
9           Ms. Apuna.

10           If the Commission were to exercise its  
11           discretion -- let me back up a bit.

12           You do agree, or you can disagree, it's  
13           discretionary for the Commission whether or not to  
14           accept the EIS or not accept it as long as we follow  
15           the standards that the supreme court set out in the  
16           Price case and in Kaleikini; is that a fair  
17           statement?

18           MS. APUNA:   Yes.

19           COMMISSIONER OKUDA:   Would you believe it  
20           to be an abuse of discretion and reversible by the  
21           Hawaii Supreme Court if the Commission, based on the  
22           record that's been presented to us, and the testimony  
23           that's been given here, including representations of  
24           counsel, would it be an abuse of discretion if the  
25           Commission were to deny at this point in time the

1 acceptance of the EIS?

2 MS. APUNA: I think it would depend on what  
3 the basis is for denying it. I'm assuming that it  
4 would be based on a finding of inadequacy, but I  
5 would want to understand what that inadequacy would  
6 be in order for you to -- for it to be not considered  
7 an abuse of discretion by the Commission.

8 COMMISSIONER OKUDA: Maybe I can follow up  
9 on that.

10 In the section of the Final EIS that deals  
11 with the no-build alternative, do you agree that  
12 there was no discussion of the benefits of not  
13 building the development as proposed?

14 MS. APUNA: I understand that's what the  
15 Petitioner has stated that there was no -- yeah, that  
16 that was not included.

17 COMMISSIONER OKUDA: Under the record of  
18 this case, was it -- do you believe it was just  
19 absolutely impossible to have a discussion in that  
20 section of the benefits of not building the  
21 development as proposed?

22 MS. APUNA: I wouldn't say absolutely not  
23 possible. I think it goes back to weighing and  
24 balancing what Price versus -- stated in the supreme  
25 court that it is discretionary, that it's not an

1 exhaustive look at the information.

2 I also understand that Petitioner stated  
3 that this is the land that they have to do the  
4 project. And so considering that, they are looking  
5 at a proposed option on the land, and I think that  
6 that's reason -- and that they have only listed what  
7 the action is, what they would do as far as what is  
8 proposed for the action, and maybe not have  
9 considered a no-action alternative.

10 COMMISSIONER OKUDA: Well, would you think  
11 it -- would it be unreasonable for the Land Use  
12 Commission to consider the potential benefits to the  
13 community of not building the development as  
14 proposed? Would it be unreasonable for us to  
15 consider the benefits of not building the development  
16 as proposed?

17 MS. APUNA: I think it wouldn't be  
18 unreasonable to have that concluded, but I guess it's  
19 also for the Petitioner, in a good faith -- making a  
20 good faith effort to provide different options,  
21 whether no action or alternative action.

22 COMMISSIONER OKUDA: And the final question  
23 is one maybe process or burden of proof or burden for  
24 coming forth with this process.

25 The burden of demonstrating that the

1 Environmental Impact Statement is sufficient under  
2 the standards that the Hawaii Supreme Court has set  
3 forth, that burden is Petitioner's burden; correct?

4 MS. APUNA: Correct.

5 COMMISSIONER OKUDA: So if the Petitioner  
6 hasn't met that burden, then the Land Use Commission  
7 would be justified in not accepting the Final EIS;  
8 correct?

9 MS. APUNA: Correct.

10 COMMISSIONER OKUDA: Thank you, Mr. Chair.  
11 No further questions.

12 CHAIRPERSON SCHEUER: Commissioners?

13 Ms. Apuna, you heard my questioning  
14 regarding Ka Pa'akai and water issues?

15 MS. APUNA: Yes.

16 CHAIRPERSON SCHEUER: Thinking about the  
17 assertion from the consultant on water issues, Mr.  
18 Nance, that there was this impervious layer of rock  
19 that will keep all pollution from the overland site  
20 from infiltrating into the drinking water source, and  
21 with the acknowledgment that there appears to be no  
22 evidentiary basis on the record for that assertion,  
23 do you -- but I gather from your testimony, OP still  
24 stands by its statement that you believe the EIS is  
25 legally adequate?

1 MS. APUNA: Yes, we do.

2 CHAIRPERSON SCHEUER: Can you expand?

3 MS. APUNA: I think, based on good faith  
4 effort of what is provided by the Petitioner as far  
5 as the information that is required under the rules  
6 and statute; and I believe under the Hawaii Supreme  
7 Court under Price, if there's a disagreement as to  
8 the information or the opinions of information that  
9 that necessarily lends itself to the Commission, made  
10 by the Petition, so there might be disagreement as  
11 far as what your information or the Petitioner's  
12 information might be, disagreement on the facts, but  
13 so long as there is a good faith effort and trying to  
14 put forth the information on these certain areas that  
15 are required, that it should be sufficient.

16 CHAIRPERSON SCHEUER: Ms. Apuna, if indeed  
17 there was like, say, a common letter that had said  
18 we're not sure this impervious layer exists fully,  
19 and then there was response from the Petitioner  
20 relying on their consultant, said, well, based on  
21 these things, I think that it does exist and in that  
22 area, that would be a mutation of facts.

23 But in their case it's actually just an  
24 assertion from a person who is neither hydrologist or  
25 geologist, actually a well driller, that this layer

1 exists, but no factual basis for that.

2 So I understand, and I believe you're  
3 correct in the reading of Price versus Obayashi, but  
4 there's disputed facts, there's reasonable basis on  
5 the record for choosing one set of facts that meets  
6 the standard of good faith effort.

7 What about when there is assertion and just  
8 no factual basis at all?

9 MS. APUNA: As far as adequacy of the FEIS  
10 for that particular omission, that's up to the  
11 Commission. I don't think OP has a specific opinion  
12 on that particular issue.

13 CHAIRPERSON SCHEUER: Thank you. I don't  
14 have anything further for OP.

15 Is there anything else right now for OP  
16 from the Commission?

17 If not, it's 11:36, let's break --  
18 Commissioner Aczon -- lunch is at 12:30 scheduled.

19 Commissioner Aczon.

20 VICE CHAIR ACZON: I want to move to go  
21 into executive session to consult with the Board's  
22 attorney on the authority and questions and issues  
23 pertaining to the Board's powers, duties, privileges,  
24 immunities and liabilities.

25 CHAIRPERSON SCHEUER: A motion has been

1 made by Commissioner Aczon. Is there a second?

2 VICE CHAIR CABRAL: I'll second.

3 CHAIRPERSON SCHEUER: Seconded by  
4 Commissioner Cabral.

5 Is there discussion on the motion? Seeing  
6 none, all in favor say "Aye". Anybody opposed? The  
7 Commission is going to go into executive session.

8 Riley, do we have an alternate room or do  
9 we need to clear this room? The Commission will go  
10 into executive session in this room.

11 (Executive session.)

12 CHAIRPERSON SCHEUER: Aloha. Sorry to pull  
13 everyone in and out of the room, but I think what  
14 we're going to do now for the sake of our proceedings  
15 is break for lunch. It's 11:58. We will reconvene  
16 at 1:00 p.m.

17 At that time where we are in our  
18 proceedings, there will be the opportunity for  
19 Commissioners to ask any additional questions of the  
20 Petitioner, the County, and then OP.

21 The Petitioner will be allowed to make any  
22 concluding remarks, and then the Commission will  
23 enter into deliberation.

24 Clear on the remaining procedures?  
25 1:00 o'clock okay for you folks?

1           We're going to go into recess until 1:00  
2 o'clock. Thank you very much.

3           (Noon recess taken.)

4           (Dawn Apuna not present after noon recess.)

5           CHAIRPERSON SCHEUER: I think we were going  
6 to have initial presentation from OP; is that  
7 correct?

8           MS. MAKI: No.

9           CHAIRPERSON SCHEUER: We're at the point in  
10 our proceedings -- where we are at is for the  
11 Commissioners to ask any final questions of the  
12 parties, any of the parties.

13           Commissioners? Commissioner Wong or Cabral  
14 or Giovanni?

15           Commissioner Wong.

16           COMMISSIONER WONG: For the Petitioner,  
17 what is the date that the EIS was done? I mean I  
18 know it stopped and started. When was this  
19 completed?

20           MR. YUEN: Final EIS was completed in  
21 November of this year.

22           COMMISSIONER WONG: So the question I have  
23 is, some of the information was from 2017 from the  
24 DOT; am I correct?

25           MR. YUEN: The last full traffic analysis

1 we did was done in 2017.

2 COMMISSIONER WONG: Was there any, I guess,  
3 time that you tried to update it during that 2000 --

4 MR. YUEN: We have not updated the traffic  
5 study.

6 COMMISSIONER WONG: Also with DOE, did you  
7 talk to DOE after that 2017 period?

8 MR. YUEN: I believe the DOE numbers came  
9 in 2018.

10 COMMISSIONER WONG: I just know that  
11 probably you should change it over time, and with  
12 growth of people coming into this area, that it may  
13 have changed within a couple years.

14 MR. YUEN: We updated the DOE number I  
15 believe in 2018. Certainly after 2017.

16 COMMISSIONER WONG: Thank you.

17 CHAIRPERSON SCHEUER: Thank you,  
18 Commissioner Wong.

19 Commissioners, questions for any of the  
20 parties? If not, I'm happy to allow Mr. Yuen to make  
21 any final statements on behalf of the Petitioner.

22 MR. YUEN: I think that the Final EIS meets  
23 the standard of adequacy. I respect the comments  
24 raised by Commissioner Okuda and Chair Scheuer. I  
25 don't believe it's necessary to study everything to

1 exhaustion to have an EIS be acceptable.

2 Certainly with respect to the no-action  
3 alternative, technically, the alternative for the  
4 Petitioner, if a Land Use Commission Petition were to  
5 be denied, would be to pursue development of an  
6 Agricultural subdivision, and that alternative is  
7 discussed in the EIS.

8 We submit that the consultant report  
9 submitted by Mr. Nance stands on its own. He did not  
10 obviously produce a detailed geological analysis, but  
11 that can be done at the time of the Petition, of the  
12 hearing on the Petition. No further comments.

13 CHAIRPERSON SCHEUER: Thank you.  
14 Commissioners, we are in deliberation.

15 Commissioner Cabral.

16 VICE CHAIR CABRAL: I just like to say I'm  
17 not -- I think there's a number of concerns that I  
18 would have, especially some of the new ones that were  
19 raised today on inadequacies or the lack of real in  
20 depth information in the EIS.

21 At the same time it's my understanding that  
22 the receipt of it as a group does not mean that we  
23 can't take questions of the information into the  
24 future activity.

25 So for that reason I would probably be

1 willing to -- unless something else pops up from my  
2 fellow Commissioners -- be willing to support  
3 acceptance of this EIS.

4 CHAIRPERSON SCHEUER: Are you making a  
5 motion, Commissioner Cabral?

6 VICE CHAIR CABRAL: I can do that, unless  
7 someone else has a comment here.

8 CHAIRPERSON SCHEUER: We are in  
9 deliberation. You can make a motion and we can  
10 debate.

11 VICE CHAIR CABRAL: I make a motion. I  
12 move that the Petitioner's Final EIS that appears to  
13 comply with the content requirements of the FEIS is  
14 accepted pursuant to Hawai'i Revised Statutes 343 and  
15 HAR Chapter 11-200.

16 Further that I would -- this Commission  
17 authorize the Executive Officer to notify and submit  
18 a letter of this acceptance to the Applicant, to the  
19 Office of Environmental Quality Control by the  
20 December 23rd, 2019 deadline for that Commission  
21 action.

22 That's it. Thank you.

23 CHAIRPERSON SCHEUER: It's been moved to a  
24 motion made by Commissioner Cabral. Is there a  
25 second?

1 COMMISSIONER GIOVANNI: I'll second it.

2 CHAIRPERSON SCHEUER: Commissioner Giovanni  
3 has seconded the motion.

4 You have somewhat spoken to the motion  
5 already, Commissioner Cabral. Do you have anything  
6 you wish to add?

7 VICE CHAIR CABRAL: No.

8 CHAIRPERSON SCHEUER: Commissioner  
9 Giovanni?

10 COMMISSIONER GIOVANNI: Thank you, Chair.

11 This is a tough one for me in part because  
12 I think that I will defer to interpretations that the  
13 FEIS technically does meet the requirements or  
14 criteria for acceptance.

15 I still find it, as Commissioner Cabral  
16 indicated in her commentary, to have many areas that  
17 would be in dire need of improvement for refinement  
18 or reconsideration as this project moves forward  
19 toward approval before this Board.

20 I also found it discouraging that the  
21 representation for the County was basically a no  
22 comment on the record in support or not in support of  
23 this Commission's accepting a Final EIS.

24 My primary area of concern is the traffic  
25 issues. And I feel that as it stands, the Petitioner

1 did recognize that an update was warranted before it  
2 came forward with a Final FEIS, but even that update  
3 is quite lacking, in my opinion, despite the fact  
4 it's 412 pages long, and has a lot of numerical data  
5 in it.

6 I do not think it adequately represents the  
7 situation which is currently in existence in Kapa'a,  
8 or that would even be further in existence as we get  
9 closer to the commercialization of a project such as  
10 this.

11 So I would very strongly encourage the  
12 Petitioner to do a more comprehensive update of the  
13 traffic impact analysis, and to bring forward some  
14 concrete proposals and solutions for remedy and  
15 mitigation of those impacts.

16 That will be a primary consideration for  
17 whether or not I will support this project on a going  
18 forward basis.

19 In doing so, I ask the County and the State  
20 Office of Planning to take that very seriously as  
21 well. It's just -- how many times it comes before us  
22 that there's a project that's planned, and somebody  
23 else is going to do it, or will study what happens at  
24 3:00 o'clock in the afternoon and not worry about  
25 noon time.

1           I can tell you, I live on this island, the  
2 West side of this island, and I don't go to North  
3 Shore unless I absolutely have to regardless of what  
4 time it is, what date it is, what day of the week it  
5 is or what month it is, because the traffic  
6 congestion in this part of the island is horrendous.

7           And I don't think that the study accurately  
8 represents how bad it is, or what might ultimately be  
9 needed to mitigate that problem, and to further allow  
10 projects such as this to proceed in this community.

11           With that speech, I begrudgingly, for  
12 technical reasons, support acceptance of the motion.

13           CHAIRPERSON SCHEUER: Thank you,  
14 Commissioner Giovanni.

15           Commissioner Aczon.

16           VICE CHAIR ACZON: I just want to echo  
17 Commissioner Giovanni and Commissioner Cabral's  
18 comments. And I'm from Honolulu, and although I  
19 lived here for a year in the 1980s, but I don't know  
20 too much about this island.

21           So I was kind of looking forward to getting  
22 some insight from the County, and I was kind of  
23 disappointed that they didn't have anything.

24           Having said that, the testimony of the  
25 Office of Planning said that there's a requirement

1 for the Petition to follow when they check the box,  
2 and they testified that they accept the process  
3 whether it's good or not.

4 I'm hoping that if this motion passes, we  
5 can have some of those concerns during the District  
6 Boundary Amendment. And for me to support the  
7 project, I would like to hear more about those  
8 answers.

9 So like, you know, I'm kind of -- it's kind  
10 of hard for me, but I will support that motion.

11 CHAIRPERSON SCHEUER: Thank you,  
12 Commissioner Aczon.

13 Commissioner Okuda.

14 COMMISSIONER OKUDA: Thank you, Mr. Chair.

15 Respectfully, I plan to vote against the  
16 motion, and this is the reason why.

17 I recognize that the standard for  
18 acceptance of an EIS is not really a high standard,  
19 but in even applying a low standard, on the face of  
20 this Final Environmental Impact Statement, it does  
21 not provide sufficient information for us to, and I  
22 quote here, make a reasoned choice between  
23 alternatives, and the element or the requirement of  
24 an EIS containing information to allow a reasoned  
25 choice is a requirement that the Hawai'i Supreme

1 Court has set out in Price versus Obayashi.

2 And this is not, in my view, a simple legal  
3 technicality. The EIS is supposed to function as a  
4 neutral planning document, not an advocacy document  
5 or sales brochure or anything like that, but it's  
6 supposed to dispassionately and rationally lay out  
7 all the alternatives and the factors and facts that  
8 deal with the proposed development or proposed  
9 governmental action, so that the decisionmaker can  
10 weigh impacts and advantages and take all these  
11 different factors into account.

12 I would find that the no-build alternative  
13 has only one side to it, which is the only thing  
14 that's discussed favorably there is basically  
15 building. There is no discussion in there about the  
16 positive benefits of not building this development in  
17 the place where it's proposed, and I would submit  
18 that this is not really intended to be an attack on  
19 the Petitioner or anything like that because, you  
20 know, housing is a necessity in this state. No  
21 question about it.

22 But for us to make a rational decision or  
23 decision among choices that the supreme court has  
24 laid out, it requires that these alternatives be  
25 spelled out and placed in the EIS, and that items are

1 basically not lacking.

2 And I would submit that if and when this  
3 matter goes to a hearing on a District Boundary  
4 Amendment, I think the Petitioner is going to have  
5 some serious evidentiary issues, because now there  
6 might be some arguments being made which aren't going  
7 to be reflected in the EIS and there is, I would  
8 contend, at least looking at this point in time, the  
9 procedural nature caused by this EIS really can  
10 create some serious problems for Petitioner whether  
11 this boundary amendment can be granted or approved in  
12 the end.

13 And the final point I would like to make is  
14 that we're hearing uniform comment concern about  
15 traffic impacts, and based on what's been disclosed  
16 in the EIS without this comprehensive -- not  
17 comprehensive, but a more well-rounded discussion  
18 about the no-build alternative, on the face of this  
19 project, it seems to fly in the face of what seems to  
20 be current planning practice, which is basically not  
21 to put a big development that's going to throw a huge  
22 amount of automobiles and traffic on a single  
23 transportation, without consideration really of, can  
24 you put such a development closer to places of  
25 employment?

1           Maybe this is the best place for  
2 employment, but the problem is none of that is really  
3 discussed in necessary detail in the EIS.

4           So for those reasons, I plan to vote  
5 against the motion.

6           CHAIRPERSON SCHEUER: Thank you,  
7 Commissioner Okuda.

8           Commissioner Wong.

9           COMMISSIONER WONG: I went to elementary  
10 public school. And you get grades from A through F,  
11 a D is still passing. And I got a D, I still passed.  
12 I went through to the next grade.

13           Final EIS was for -- has a list of persons  
14 and organizations commenting, so they did check the  
15 boxes. They may not be the best checks. May not  
16 have done everything that everyone wanted. But they  
17 still did the boxes.

18           To me the EIS is okay. It's like a C minus  
19 to a D, but it still checked the box. This is about  
20 the EIS itself. It's not about the project. The  
21 project is another go-round whereas some of the  
22 Commissioners said, we going to really look deep into  
23 this project. And this project itself to me better  
24 get ready because, you know, we don't know what's  
25 going to happen.

1           It may fail, but there will be a lot of  
2 questions from the Commissioners about this project.  
3 You just heard the tip of the iceberg.

4           That's the reason I'm just going to support  
5 this motion.

6           CHAIRPERSON SCHEUER: There needs to be  
7 five votes in favor for this EIS to pass.

8           Let me preface my remarks by saying  
9 directly to the Petitioner that I do personally  
10 appreciate the financial and other risks that it  
11 takes to do development anywhere, and particularly in  
12 Hawai'i. And despite what some people might say, the  
13 LUC's job is not to make developers fail, far from  
14 it, we want developers to succeed because there is so  
15 much in Hawai'i, particularly affordable housing that  
16 we really need to see happen. But we take our duties  
17 very seriously as well.

18           And, you know, there was a time in Hawai'i,  
19 if you've ever picked up the book from one time  
20 Kaua'i resident, George Cooper, Land and Power in  
21 Hawai'i, which is mostly about this Commission. And  
22 there was a time when the LUC really was just a  
23 rubber stamp for interests who wanted to develop land  
24 in Hawai'i.

25           Those days are passed. I'm in my sixth

1 year on this Commission. We have, in my six years,  
2 twice rejected EISS that were woefully lacking in  
3 very substantive ways.

4 And I'm really troubled by Mr. Nance's  
5 analysis, because of the implication it has. I mean,  
6 you know, to put it non-delicately, we don't want  
7 people in this area to drink their own poop.

8 It is important to know what the  
9 relationship between the high level and low level is  
10 in this area, and the mere assertion is not something  
11 that gives me great comfort of going forward.

12 I believe the level of analysis done to  
13 address issues raised by our standards of Ka Pa'akai  
14 were minimal at best. I agree with the majority of  
15 the Commissioners that, and as really aptly said by  
16 my fellow Commissioner Wong, you know, it is a low  
17 bar and you have met it. Which is not where we want  
18 to be when you come back before us.

19 One of the most recent major concerns and  
20 ongoing and abiding concern of this Commission is the  
21 provision of affordable housing to our people. And  
22 we know on the Island of Kaua'i it's particularly  
23 just a harsh situation.

24 On the Island of Maui recently in the last  
25 couple years we've had one very, very large

1 project fail the process, both the EIS approval  
2 process as well as the Final DBA process.

3 Because the Petitioner worked tirelessly  
4 with every stakeholder to address all of their  
5 concerns in trying to go above and beyond to address  
6 affordability of housing and other issues.

7 We recently approved an amendment about two  
8 weeks ago to a different project on Maui which was  
9 looking very scary a couple months ago, but the  
10 developer doubled down his effort to engage with  
11 community. And while he had come in front of us  
12 earlier this year saying the County's requirement of  
13 50 percent affordability just couldn't possibly be  
14 met, and no way it's going to be developed.

15 He came in, and actually came in with more  
16 affordable housing than was initially promised when  
17 they finally came into us two weeks ago.

18 So we take our jobs seriously. We get no  
19 relish from rejecting, but we do really enjoy being  
20 this affirmative mark when the private sector has  
21 engaged meaningfully with the County and other  
22 agencies in the community to come up with a project  
23 that everybody can be pleased with.

24 For the members of the community who have  
25 been concerned about this and who testified today,

1 including those who testified today, so be very clear  
2 in your mind, today's vote is not approval of the  
3 project, it is saying technically we believe the EIS  
4 met the very low legal requirements of the law and  
5 that's what the court has given us.

6 Among other things, I would encourage  
7 everybody in this room, including members of the  
8 public, to seek reform to 343 that would give a  
9 little bit more substantive teeth to the law.

10 I would also like the community to be  
11 familiar with, if you're not already, when we come to  
12 the next hearing on this process we have three  
13 essential options.

14 We can deny a petition, say, no, we are not  
15 going to rezone it.

16 We can agree to it.

17 Or we can -- what we most often do -- agree  
18 to it with conditions specifically designed to  
19 address concerns that have come up during the  
20 entirety of the process.

21 UNKNOWN SPEAKER: Can we --

22 CHAIRPERSON SCHEUER: You are not allowed  
23 to speak at this time.

24 But it is possible for the community to  
25 very positively influence our actions by having

1 identified those greatest concerns to them and to  
2 have proposed conditions that will address those  
3 concerns if the project is approved.

4 So in case it wasn't entirely clear, my  
5 intention is to vote for this, but with the same  
6 reluctance my fellow Commissioners have, and I both  
7 wish the Petitioner well, but strongly encourage them  
8 to come, between now and when they come forward with  
9 us, with serious engagement and with -- to come ready  
10 to engage before us.

11 Anything further? If not, Mr. Orodener,  
12 please poll the Commission.

13 EXECUTIVE OFFICER: The motion is to accept  
14 the FEIS and authorize the Executive Officer to  
15 transmit the necessary notices to the OEQC and the  
16 Petitioner.

17 Commissioner Cabral?

18 VICE CHAIR CABRAL: Yes.

19 EXECUTIVE OFFICER: Commissioner Giovanni?

20 COMMISSIONER GIOVANNI: Aye.

21 EXECUTIVE OFFICER: Commissioner Wong?

22 COMMISSIONER WONG: Aye.

23 EXECUTIVE OFFICER: Commissioner Aczon?

24 VICE CHAIR ACZON: Aye.

25 EXECUTIVE OFFICER: Commissioner Okuda?

1 COMMISSIONER OKUDA: No.

2 EXECUTIVE OFFICER: Chair Scheuer?

3 CHAIRPERSON SCHEUER: Aye.

4 EXECUTIVE OFFICER: Thank you. Mr. Chair,  
5 the motion passes with five affirmative votes and one  
6 nay.

7 CHAIRPERSON SCHEUER: Thank you, Mr.  
8 Orodenker.

9 With that, there being no further business,  
10 this meeting is adjourned.

11 (The proceedings adjourned at 1:25 p.m.)  
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## CERTIFICATE

STATE OF HAWAII                    )  
  ) SS.  
COUNTY OF HONOLULU            )

I, JEAN MARIE McMANUS, do hereby certify:

That on December 17, 2019, at 9:30 a.m., the  
proceedings contained herein was taken down by me in  
machine shorthand and was thereafter reduced to  
typewriting under my supervision; that the foregoing  
represents, to the best of my ability, a true and  
correct copy of the proceedings had in the foregoing  
matter.

I further certify that I am not of counsel for  
any of the parties hereto, nor in any way interested  
in the outcome of the cause named in this caption.

Dated this 17th day of December, 2019, in  
Honolulu, Hawaii.

/s/ Jean Marie  
JEAN MARIE McMANUS, CSR #156