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1 is taking care of Makua, and they have all these  
2 scientists that know about plants, they've studied  
3 plants, they know so much about plants and even the  
4 environment, and they're not slacking. You go over  
5 there any one particular time and you will find  
6 them people are hard at work trying to maintain the  
7 Valley the best they know how, with all them  
8 scientists, all them guys with degrees, and yet we  
9 come to a place like this and we shoot them down,  
10 ungrateful, I feel.

11           Thank goodness we're in America, but I  
12 want to be a good American and call it like I see  
13 it, at least this Army is doing a wonderful job.  
14 Hear me and call me a liar if you want to, but show  
15 me any other large landowner that is taking care of  
16 their property like they do at Makua. Thank you.

17           ANNELLE AMARAL: Thank you very much.

18           Our next speaker is Mr. Vince Dodge  
19 followed by Jonathan Deenik.

20           Vince?

21

22           VINCE DODGE: Aloha Kakou, my name is  
23 Vince Dodge, it's Kanai Dodge, and mahalo for  
24 sharing that, Mr. Silva, it's really a pleasure to  
25 hear your mana'o, especially in the days of old

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1 and, you know, kind of the richness of the aina.

2 I want to make a few comments on the  
3 marine study, and as I sit here listening to the  
4 discussion, I'm very thankful for Mr. Iaea's  
5 comment, I know his son Bula pretty well, you know,  
6 that all the land is sacred, and that's my belief,  
7 you know, our mother earth, she really does take  
8 care of us, and for the most part we treat her  
9 pretty bad, you know, I drive my truck around, I  
10 got here in an automobile, just like probably most  
11 of you, I know that's not good for our earth, and  
12 doing what I can in other departments to balance  
13 that out, but I'm part of the problem as much as  
14 anybody else here.

15 I've come to the conclusion recently that  
16 it's all about food, you know, I get to work with  
17 youth across the street at the intermediate school,  
18 and I got a garden growing there, I mean, food is  
19 essential to every culture, it nourishes our body,  
20 and I just had a really wonderful experience in the  
21 last couple of years spending more time growing  
22 food, especially growing food with people. It's a  
23 very rich part of my life right now, and then to  
24 eat the food that we grow, to do that with the  
25 youth, to see the way that they enjoy, you know,

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1 what their efforts and Mother Nature has brought  
2 forth is also a wonderful thing to see.  
3           And we're really fortunate we live in  
4 this country in this time. I think that, you know,  
5 we have the opportunity to make some great changes  
6 here in our world because our world is pretty  
7 messed up when you look around, you know, when you  
8 look in Waianae, but when you look bigger globally,  
9 we've made a mess of it, you know, and we have  
10 special freedoms, I agree, and I'm grateful for  
11 those. But there's a lot of things that we're not  
12 free, and one of the things having to do with food  
13 is that we're not free to choose whether we want to  
14 eat genetically modified food or not, and this  
15 wonderful, this powerful nation of America, we're  
16 not free to do that, and it's real simple why, it's  
17 because the businesses that are promoting this type  
18 of food don't want it labeled because they don't  
19 want any accountability in case this food should  
20 turn out to be not good for us. And I think that's  
21 a major challenge for living in our world today,  
22 living in this country, is that it really is a lack  
23 of accountability kind of across-the-board, and we  
24 have institutions and people in businesses that are  
25 very powerful and that influence our lives

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1 tremendously. I mean, you imagine every time you  
2 eat something with corn or soy bean in it that you  
3 might be eating, not you might, you're most likely  
4 eating something that's genetically modified unless  
5 the label says it is not, and these are foods that  
6 are concocted, which brings me back to the marine  
7 study because the marine study is about food, and I  
8 love my 'ia, I love my fish, and one of the things  
9 that I noticed is missing in that study, and Gary  
10 from Tetra Tech was kind enough to tell me that  
11 they spent five weeks catching fish, they didn't  
12 catch too many species, they only fished in the  
13 daytime, they didn't fish early in the morning,  
14 they didn't fish at night, they didn't go diving,  
15 so their methodology and their window of, you know,  
16 trying to catch fish was pretty limited, you know,  
17 and as fishermen we know there's certain things you  
18 catch in the middle of the day and there's certain  
19 things you got to go in the morning early or you  
20 got to go at night, and you got to throw palu, you  
21 know.

22           Now, we're looking for good information  
23 from this marine study because many of us eat from  
24 the ocean, that's part of our ice box, and even  
25 though the ocean is pretty fished out, as William

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1 said earlier, and when I look at that marine study,  
2 I'm like either these guys are not good fishermen  
3 and/or there's just no fish in the ocean anymore,  
4 but one of the things that they did not catch and  
5 they did not make any real effort to catch, was the  
6 puhi, the eel, and in the scoping meetings, as  
7 folks that live down here, as folks that fish and  
8 eat fish, you know, we strongly recommended many  
9 times that they catch puhi because the puhi is a  
10 creature that eats near shore, inshore fish and  
11 crustaceans, and he's at the top of the food chain,  
12 pretty much, you know, and he lives in the area,  
13 and he's going be to the one that if there are  
14 toxins he's going to be one that you're going to  
15 find the concentration in, you're not going to find  
16 concentration in oholioli that are this big, you  
17 know, moana that are like eight inches, I mean,  
18 that's a fish that's maybe a year or two old,  
19 that's not an old fish but a nice big puhi, one of  
20 the green ones or a big white eel, that fish, that  
21 fish has been around for awhile, he's eaten a lot  
22 of things and we'd get some, it would be a good  
23 indicator.

24           So I think that for my, you know, I'm not  
25 a scientist, in my somewhat uneducated mind, you

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23 indicator.

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25 a scientist, in my somewhat uneducated mind, you

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1 and working the fences to keep the goats out and  
2 whatnot, they do an awesome job, they serve us  
3 really, really well, and I just have a deep mahalo  
4 and appreciation for what they do, and it sounds  
5 like they really enjoy their work. Mahalo.

6 ANNELLE AMARAL: So our next speaker is  
7 Dr. Jonathan Deenik, followed by Mr. David Henkin.

8

9 DR. JONATHAN DEENIK: Aloha kakou. Thank  
10 you for giving us the opportunity to speak today.

11 I have just very simple, concise comments, much  
12 similar to what Mr. Aila shared before.

13 With addressing the concept of  
14 uncertainty or certainty that's outlined in the  
15 marine study, you know, it's very difficult to  
16 predict and gather information that can give us 100  
17 percent certainty on a biological phenomenon, so  
18 how do we deal with that, how do we try to get an  
19 estimate of certainty or uncertainty? Well, one  
20 way is by taking many samples. So here is, I  
21 think, a basic flaw in this study is the number of  
22 samples that were gathered. Now, maybe it was  
23 constrained by money, well, that's fair enough, you  
24 know, we have to operate within a budget, but if  
25 you were to look at this and say that decisions are

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1 being made on four samples of limu, that's at least  
2 what's said in the paper there, well, then, of  
3 course, you're going to have a lot of uncertainty  
4 and you cannot, anybody in their right mind can't  
5 make, you know, a good prediction of what is the  
6 health hazard on four samples. So that's a pretty  
7 fundamental basic baseline.

8           The other important question is what are  
9 we comparing this to, so there's always in any kind  
10 of study a control group and an affected group, so  
11 Mr. Aila clearly pointed out the flaws associated  
12 with the control group. I don't think the study  
13 needed to select a control within the Waianae  
14 Coast, that was never one of our suggestions during  
15 the scoping meeting, so where do you go find an  
16 area that has not been affected by military use?  
17 Well, Oahu, it's not easy to find an area that  
18 hasn't been impacted by military activity, in fact,  
19 I still think there are two or three super fund  
20 sites associated with military activity on this  
21 island, so you're going to have to go somewhere  
22 else, Molokai, that's a fair enough comparison,  
23 same type of sediments in east Molokai as Makua,  
24 similar, at least, make a comparison. That becomes  
25 a real control, and then you can say with a little

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1 bit more certainty, well, there is an impact or  
2 there isn't an impact.

3           Now, obviously, you look at the numbers  
4 associated with this study, and I'm not an expert  
5 in all of these chemicals that they're outlining  
6 there, and we see very small concentrations, well,  
7 what does that mean, you can only get a handle of  
8 the meaning if you compare it to an unaffected  
9 area, it may have been non-detectable in the  
10 unaffected area, Lanai, I don't know, somewhere  
11 else. So those are two pretty serious flaws, and  
12 we, you know, not to blame anybody, but we  
13 discussed that these issues came up, I think, two  
14 years ago, so we just are repeating ourselves, and  
15 we get the same kind of results, and the results  
16 only raise more questions, as Mr. Aila pointed out,  
17 so we're even less certain now than we were two  
18 years ago, so those are two points I'd like to  
19 share with you folks today. And I did, I married a  
20 Hawaiian, but I wasn't like the older guys, I'm not  
21 so handsome and I don't got a lot of money, so my  
22 poor wife. Mahalo.

23           ANNELLE AMARAL: The last two speakers  
24 now are David Henkin followed by Dr. Fred Dodge.

25

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1           DAVID HENKIN: Aloha, hana hou. I'm  
2 going to start by addressing one of the issues that  
3 Jonathan Deenik raised which goes to, you know, how  
4 good is the good study, and it's true in everything  
5 in life there are constraints, but in this case we  
6 have a court order, and the court order, just to  
7 make it clear for those who aren't familiar, this  
8 court order is the result of an agreement that was  
9 ratified by the court, so it's not something the  
10 court imposed on the Army, it was something the  
11 Army voluntarily agreed to in order to address the  
12 community's concerns about issues like the ones  
13 we're addressing today, archeological studies and  
14 potential contamination of marine resources that  
15 people rely on for their subsistence or for their  
16 recreation, bringing food home to the keiki. So we  
17 don't need to, and, you know, as a taxpayer my  
18 experience has been if the Army needs the money to  
19 do a study that's required by law or hear a court  
20 order, it gets it. So, we're entitled under not  
21 one but two court orders, one that was entered into  
22 October 4th, 2001, and one that was entered just  
23 this last January, January 8th, 2007, we're  
24 entitled to a study that evaluates fish, limu and  
25 other marine resources on which area residents rely

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1 for subsistence. That was the 2001 agreement which  
2 we clarified just last month, we are entitled to  
3 one or more studies to determine whether fish,  
4 limu, shell fish and other marine resources near  
5 Makua Beach and in the muluwai, on which area  
6 residents rely for subsistence, are contaminated by  
7 substances associated with the proposed training  
8 activities at Makua military reservation. So we  
9 have a court order, we're entitled to that  
10 information.

11           So when you do a study based on very  
12 limited sampling size such that the uncertainties  
13 are so great that you cannot say anything  
14 meaningful about the potential for contamination by  
15 substances associated with proposed training at  
16 Makua, you haven't done what the court order said,  
17 you haven't done what you agreed to do, so money in  
18 this case really is not relevant, what's relevant  
19 is what the Army voluntarily entered into and what  
20 the court ordered. That goes to a number of  
21 different issues. The emphasis here is marine  
22 resources, limu, shell fish, fish on which area  
23 residents rely for subsistence. That goes to the  
24 point that Vince Dodge raised, people fish at  
25 night, people dive, people eat a variety of things

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1 out of the ocean, these are the things that the  
2 Army agreed to and is obliged to study, and that's  
3 not what we got.

4           One thing, you know, and I haven't had an  
5 opportunity, these reports came out a couple weeks  
6 ago, even our experts that we've retained to take a  
7 look at them have only been able to get back on  
8 such short notice with impressions, and we'll be  
9 offering more detailed comments over the course of  
10 the public comment period which I must emphasize  
11 again should be extended to allow 60 days from the  
12 availability of all of the data on which the  
13 studies were based, but I'll give you some of the  
14 things that we have noticed so far.

15           How many people here in the room ever eat  
16 fish for dinner? When you eat fish, do you eat an  
17 ounce size portion of fish or do you eat more than  
18 that, and my guess is that the answer is going to  
19 be more than that because an ounce is not very  
20 much. Well, the study assumed that for  
21 recreational fishermen, so people that are not  
22 subsistence, that a meal of fish is 34 grams, 28  
23 grams is an ounce, so we're talking a little bit  
24 more than a couple of bites, that was the,  
25 obviously, how much of something you eat has a

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1 strong correlation to the likelihood you're going  
2 to get poisoned by it or it's going to contribute  
3 to cancer rates, so if you start with an  
4 unrealistically low assumption that people take a  
5 bite of fish and that's their fish meal and that's  
6 what you're going to evaluate, you're going to get  
7 inaccurate results that are not reliable because  
8 the point of the exercise really is not to, we  
9 didn't enter into this to try and prove that marine  
10 resources at Makua are unhealthy, because that  
11 would really be damaging to this community if that  
12 were the truth, we'd like to have good data that  
13 proved that marine resources at Makua are healthy  
14 because the fact of the matter is, that healthy or  
15 unhealthy, people are going to be keep eating them.

16           The reason we entered into the agreement  
17 with the Army, the reason we insisted on this  
18 particular type of study is because we know the  
19 people in Waianae rely on their resources for the  
20 livelihood, for their subsistence, for their  
21 recreation, for their paina, and we want them to  
22 have good information about the likelihood that  
23 these are killing them, that's why we need good  
24 information and that's why we entered into the  
25 agreement. So if a good study is done and the

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1 study reveals there's nothing to worry about, you  
2 can eat the limu, you can eat the fish, you can eat  
3 the shell fish, that's good for everyone, that's  
4 fine, that's it, that's a fine result because I  
5 think that there are some out there who assume that  
6 what the community is trying to do and the groups  
7 that Earth Justice represent are to say "Gotcha" to  
8 the Army, to prove that something is harmful, and  
9 that's not accurate, particularly in this case, all  
10 we want is good information.

11           So when you do a study that assumes that  
12 we only eat an ounce of fish at a meal, that  
13 doesn't give us good information. When you do risk  
14 assumptions, it may get you a good sound bite in  
15 the media that your odds of getting cancer are less  
16 than your odds of being hit by lightning -- I might  
17 state for the record I've been hit by lightening,  
18 so it happens, it's true, in Wisconsin, anyhow, but  
19 it gives you a good sound bite, it doesn't give you  
20 good information, because if you're actually going  
21 to eat more than an ounce you're going to get a lot  
22 more toxic loading.

23           Now, for a subsistence fisherman, now  
24 this is someone who is relying on this area to  
25 really survive, I mean, they're not going to the

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1 supermarket for their fish, this is survival, they  
2 consume 110 grams, so that's about a four ounce  
3 portion, it's a quarter pound of meat, so those who  
4 go get a quarter pounder, not very much, again. So  
5 in terms of what the experts who do this over at  
6 EPA, EPA assumes that an average fish sized meal is  
7 227 grams, so over twice as much they consume for  
8 subsistence fishermen or about half a pound, and  
9 based on my own experience and 41 years on this  
10 earth, that's kind of more like what people tend to  
11 eat when they sit down to eat fish, so we need  
12 studies that are based on good data, and we're  
13 entitled to them.

14           One of the big issues that's totally  
15 unresolved in this study is the likelihood that  
16 people are eating toxic levels of arsenic. They  
17 came out in the study with extremely high levels of  
18 arsenic in the fish and the limu, the problem is  
19 they don't tell us whether the arsenic is organic  
20 arsenic, which has a lower toxicity, or inorganic  
21 arsenic, which has a very high toxicity, there's no  
22 reason for that. You can analyze a sample and  
23 determine the proportion that's organic and  
24 inorganic.

25           Now, I talked to the folks who are

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1 putting together the study, and I mean them no  
2 personal disrespect, I'm sure they were following a  
3 plan that the Army approved and told them to carry  
4 out, they didn't analyze whether the arsenic was  
5 organic or inorganic, they looked at studies that  
6 said worldwide, most fish has organic arsenic in  
7 it, therefore, we assume that all of the arsenic  
8 that we found is organic. Well, that doesn't  
9 follow logically because most fish aren't in a near  
10 shore area where we have surface water studies that  
11 the Army has done that inorganic arsenic is flowing  
12 in the streams into the water, so you can't just  
13 sort of assume, you know, sort of Socrates was a  
14 man, that type of logic. Unless you study the  
15 specific fish that people are going down and eating  
16 to determine whether it's organic arsenic or  
17 inorganic arsenic, you're not going to get good  
18 data. Same thing with limu, limu had very high  
19 levels of arsenic, they did not go into any  
20 analysis of whether it was organic or inorganic,  
21 that's information that we need, that's information  
22 that we're entitled to. Also, with limu, I'll get  
23 into a little bit later the references that were  
24 used for these various studies, but for limu they  
25 did not sample limu anywhere else in the Hawaiian

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1 islands, in fact, anywhere else at all, they just  
2 looked at the chemical constituents that are in  
3 this limu that people are eating, people are  
4 gathering, people are eating, I've eaten it,  
5 there's no comparison, so we don't know what  
6 pristine limu would have, maybe it is that all limu  
7 in Hawaiian waters have elevated levels of arsenic,  
8 and even if you go to pristine areas on neighbor  
9 islands that are not affected not only by military  
10 activities, and I'll get into this, but by any  
11 urbanization or human input, any anthropogenic  
12 input, maybe that's just the way our limu is, well,  
13 that would be a meaningful study, that would  
14 provide meaningful information, that this is the  
15 level arsenic that you get in limu. Sampling is  
16 one place not breaking that organic/inorganic and  
17 not having any baseline, any comparison doesn't  
18 provide information we're entitled to.

19 I'm going to highlight one of the parts  
20 of the marine study that is completely missing,  
21 and, again, I'm quoting from an agreement that was  
22 entered by the court on January 8th of this year:  
23 Defendant shall complete one or more studies to  
24 determine whether shell fish near Makua Beach and  
25 in the muluwai on which area residents for life for

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1 subsistence are contaminated. Shell fish. There's  
2 nothing in this study about shell fish, they didn't  
3 gather shell fish, whether it's crabs in the  
4 muluwai or urchin in the inshore areas, there's no  
5 study of shell fish at all, none. So they have  
6 failed to comply with their agreement and the court  
7 order to study shell fish, they need to do that,  
8 they need to do that, they need to take these  
9 comments, they need to revise the study and also  
10 under the agreement we reached last month they need  
11 to go out and do another 60 day public comment  
12 period because it's not, you know, don't blame  
13 Earth Justice, don't blame Malama Makua, you  
14 entered into the agreement, you agreed to do  
15 certain things, and when we get the study they're  
16 not there, so if you want to know who's dragging  
17 this process out, you have to look in the mirror  
18 because it's the decisions that the Army's making  
19 not to fulfill the black and white terms of the  
20 agreement.  
21 I'm not singling out any individual, I'm  
22 just saying the reality is that we will insist on  
23 complete compliance with these study requirements  
24 because we want good information and we're entitled  
25 to that information because that's the agreement

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1 that we have. So I think everyone on both sides of  
2 this issue hopefully can agree that when two  
3 parties who may disagree about something have  
4 nonetheless entered into an agreement, they're  
5 entitled to be held to that agreement, and there's  
6 nothing improper about doing that, and we will.

7           In terms of the sampling, the so-called  
8 background areas of the reference sites, let's talk  
9 about Nanakuli muluwai. Nanakuli muluwai has the  
10 past and present military impacts, but in addition  
11 it's in an urbanized portion of the Waianae Coast,  
12 it's in the middle of Nanakuli, it gets all of the  
13 contaminates that flows whenever people drive  
14 through on the Farrington Highway or repair their  
15 car or throw their garbage or all those things  
16 affect that muluwai, so when the Army tells us that  
17 with respect to certain contaminants the levels at  
18 Makua which, other than the Army's activities, is  
19 in a remote and formerly pristine portion of the  
20 island are similar to the level of contaminates at  
21 Nanakuli and, therefore, there is no impact from  
22 the military, that's just wrong, it's like saying  
23 we've sampled the ash residue left at H power and  
24 it has greater levels of arsenic and heavy metals  
25 than the fish and limu in the muluwai, and,

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1 therefore, the military's doing no more than  
2 society as a whole is doing. You need to look at a  
3 non-contaminated muluwai, which is what Makua would  
4 be, and determine what the background levels are.

5           Let's go another step further. When  
6 you're looking at an Environmental Impact  
7 Statement, the Army has an obligation to talk about  
8 cumulative impacts, so the only thing this study  
9 wants to talk about is the incremental impact of  
10 what the Army is adding to what you would otherwise  
11 find in terms of contamination near fish. Let's  
12 take it as a given, this is an assumption, that  
13 even if the Army had never trained at Makua, there  
14 would be a certain level of contamination in the  
15 fish and the limu. They didn't say, well, the only  
16 thing that we're concerned about is the extent to  
17 which we add to it incrementally. Well, under the  
18 law that's not accurate, you need to disclose in  
19 your Environmental Impact Statement the cumulative  
20 impact, which is the impact of the Army's  
21 activities on top of the impact of everyone else's  
22 activities, including nature, I mean, just what the  
23 cumulative impact is, because with respect to a lot  
24 of contaminants, a lot of poisons, you get to a  
25 point where it's the straw that broke the camel's

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1 back, it would be okay if you had this level of  
 2 contamination, but when you add this level of  
 3 contamination, all of a sudden you've gotten to a  
 4 heightened risk that goes beyond what society will  
 5 accept, so you need to evaluate, you need to  
 6 analyze not the incremental damage, but in addition  
 7 you need to look at the cumulative effects. So  
 8 even if in pristine areas you have certain levels  
 9 of contamination because of global pollution,  
 10 there's just no way to run because we've  
 11 contaminated our environment or naturally occurring  
 12 pollution like, you know, vog coming out of the  
 13 volcano, if you're adding on top of that, you need  
 14 to analyze that, we're entitled to that  
 15 information.  
 16           Sandy Beach, there's been questions  
 17 raised whether that's an appropriate background for  
 18 the fish and so, in general, you need to address  
 19 how you selected the locations because if they're  
 20 not free of human input, if they're not pristine  
 21 areas, they don't tell us what the effects are of  
 22 the military being there.  
 23           Turning now to the archeological studies,  
 24 and if there are other people that want -- I mean,  
 25 I don't need to monopolize, does anyone else want

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1 to jump in or I should go ahead and finish?  
 2 On the archeological studies we also have  
 3 agreements on what needs to be done. Starting in  
 4 2001, we have an agreement that was substantially  
 5 modified in 2007 so we'll just focus on the January  
 6 8th agreement. With respect to archeology, the  
 7 defendants, in this case the Army, were supposed to  
 8 complete, complete surface and subsurface  
 9 archeological surveys of all areas within the  
 10 company combined arms assault course. For those of  
 11 you who are familiar with Makua, that's the south  
 12 fire break road, except for the area that is  
 13 suspected of having or that has been designated as  
 14 an improved conventional munitions area, and with  
 15 respect to that area the Army was supposed to  
 16 secure a waiver, or if the Department of the Army  
 17 would not give a waiver after good faith efforts by  
 18 the 25th Infantry then they would not have to  
 19 conduct the archeological surveys in those areas.  
 20 Today I tried to determine, because no surveys were  
 21 done within the ICM area, whether the waiver had,  
 22 in fact, been granted, denied, still pending, we  
 23 don't yet have information on that, we need that  
 24 information because under the agreement we're  
 25 supposed to be commenting after all archeological

T66-5

The Army did ask for an ICM waiver, but it was denied. The Army has provided correspondence reflecting this denial to Earthjustice.

**Comments**

**Responses**

60

1 studies are completed. So, presumably, we're going  
 2 to find out what the status of the waiver is. If  
 3 the waiver is still pending, this process is  
 4 premature.

5           The requirement is to complete surface  
 6 and subsurface archeological studies. When I spoke  
 7 with Laurie Lucking at deposition in, I believe,  
 8 November of 2005, we agreed that there was an area  
 9 within the south fire break road where, outside of  
 10 the ICM area but inside the fire break road that  
 11 had not yet been surface surveyed, that would be  
 12 the southeast lobe, it had not yet been surveyed at  
 13 that point, it needed to be surveyed, I haven't  
 14 seen anything in this study to suggest that those  
 15 surface surveys have been completed. If they have  
 16 been completed, great, but we are supposed to have  
 17 those disclosed to us so that we can also comment  
 18 on those.

19           With respect to the subsurface  
 20 archeological surveys, there are some serious  
 21 problems, and all these comments are preliminary  
 22 because of the short time for review, but, again,  
 23 the emphasis was on complete surveys so that we  
 24 would have all the information that we need in  
 25 order to evaluate the impact, the effects of live

T66-6

T66-6  
 All areas within the south firebreak road have been surface surveyed for archeological resources, including the southeast lobe.

**Comments**

**Responses**

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1 fire training at Makua, which the Army concedes and  
2 just logic dictates, has the potential to destroy  
3 cultural resources, misfired weapons, that happens,  
4 it's training, soldiers trampling, a variety of  
5 ways in which archeological resources could be lost  
6 forever, that needed to be disclosed as part of the  
7 rational analysis of whether Makua is a really good  
8 place to do the training the Army would like to  
9 carry out there.

10           As far as the subsurface archeology goes,  
11 there are a few problems that I've noticed. This  
12 study that we've been given to review is only a  
13 presence absence survey, in other words, they've  
14 dug some pits to determine whether subsurface  
15 deposits might be there. When they encountered  
16 them, and they did encounter them in areas where  
17 they didn't expect to encounter them, they weren't  
18 actually characterized, so we don't know what they  
19 are, and we don't know how vulnerable they are to  
20 training related impacts. That's a problem  
21 because, in my mind, from a common sense  
22 standpoint, that survey is not complete if you  
23 don't know what you've found.

24           They also only looked subsurface where  
25 there were no surface features, in other words, if

## Comments

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T66-7

1 they came across a surface feature in an area where  
 2 they were supposed to dig, they wouldn't dig there  
 3 because they knew there would be something  
 4 subsurface there. Well, again, the purpose of the  
 5 survey was to determine and characterize what types  
 6 of things were there, and nothing in the agreement  
 7 exempts an area from inquiry where you're  
 8 particularly likely to find something.

9 I might also note that we're talking  
 10 about archeological surveys in the core assault  
 11 course area, so this is an area where they have  
 12 been training, for, I believe, decades at this  
 13 point, 1985, I think, is when the CCAAC went in,  
 14 and prior to that they had been doing a lot of  
 15 training at Makua for decades before that. It is  
 16 notable that they continue to find surface  
 17 features, surface features, not subsurface  
 18 features, surface features that had not previously  
 19 been identified. Now, that clearly indicates that  
 20 there are -- and some of these features, I mean,  
 21 one of them, this is not a native Hawaiian feature,  
 22 but nonetheless it's an archeological feature, was  
 23 a Kiawe fence that was 150 meters long, so, you  
 24 know, a distance of one-and-a-half football fields  
 25 long, this is a pretty big thing, so they're still

## Responses

T66-7

If a feature was located, it would have been preserved. The Army's position has been to preserve the sites, not to destroy them by digging them up.

## Comments

## Responses

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1 finding things out there, and that raises concerns  
 2 about the thoroughness of the surface surveys in  
 3 the areas that they claim to have completed, and,  
 4 in fact, in the study it notes that we may have  
 5 missed some surface features along the way. Well,  
 6 again, we're entitled to complete surface  
 7 archeological surveys.

8           With respect to the subsurface surveys,  
 9 the report says that the plan that they had for the  
 10 probes, 350 probes that became another 200 just  
 11 along some roads, that that would be inadequate to  
 12 provide any meaningful information about subsurface  
 13 archeological resources at Makua, well, that's not  
 14 acceptable in the context of an agreement where you  
 15 have to do a subsurface survey that will provide  
 16 meaningful information about subsurface resources  
 17 at Makua.

18           There was one area, area two, where 200  
 19 probes were dug, and this was an area that they had  
 20 not previously surveyed, and of those 200 probes  
 21 five of them came up with either surface or  
 22 subsurface archeological resources, that's  
 23 two-and-a-half percent within that area, it's  
 24 extremely high in an area that the Army previously  
 25 said they didn't expect to find anything, so we're

T66-8

Approximately 500 shovel-test probes were placed within the south firebreak road in the most recent round of subsurface testing (2006/2007). 300 of these probes were placed randomly, and 200 were placed in areas that could be accessed without burning. Several other subsurface tests were completed prior to 2006/2007.

T66-8

**Comments**

**Responses**

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1 still waiting on a complete characterization of the  
2 resources there.

3           Another thing that concerned me is that  
4 the study makes clear that the Army would not do a  
5 subsurface hit if it found some unexploded ordnance  
6 below the surface, they would abandon that  
7 particular sampling location, it's on page 7 where  
8 they said they'd do that, that's contrary to the  
9 settlement agreement that we reached just last  
10 month, it said, quote, Defendants will make good  
11 faith efforts to clear unexploded ordnance, as  
12 necessary, to complete the subsurface archeological  
13 surveys within the south fire break road. In other  
14 words, if you hit UXO, you're supposed to clear it  
15 in order to complete the surveys. And how do we  
16 know that they didn't try? Well, it says, If  
17 safety concerns arise, the parties are supposed to  
18 meet and confer in a good faith attempt to resolve  
19 the concerns so we can determine whether there's  
20 any clearance that could take place. I'm the  
21 person they would have contacted if they had any  
22 safety concerns that would have precluded them from  
23 carrying out the unexploded ordnance clearance  
24 necessary to comply with the agreement, I didn't  
25 receive any phone calls, so there was no meeting

**Comments**

**Responses**

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1 conferred as required, consequently, I have to  
2 conclude there were no safety concerns that would  
3 preclude them from complying with the agreement.  
4           There's two problems here, why do I  
5 mention all this? I mention all this because we  
6 started down this path a long time ago to make sure  
7 that there was a thorough examination of the  
8 impacts of training at Makua and the alternatives  
9 to training at Makua, reasonable alternatives that  
10 would allow the Army to train elsewhere, satisfy  
11 its goals without impairing the unique cultural and  
12 biological resources at Makua, without continuing  
13 to impact this already heavily impacted community,  
14 and we're not there yet. But Earth Justice working  
15 together with Malama Makua, and the other community  
16 members, are committed to ensuring that we get a  
17 full disclosure of the impacts and a full  
18 discussion of the alternatives so that we can all  
19 make an informed decision about the best way  
20 forward. Mahalo.  
21           ANNELE AMARAL: Thank you very much.  
22 The last speaker, then, is Dr. Fred Dodge.  
23           Dr. Dodge? As Dr. Dodge is getting ready  
24 to come up, and don't rush, we're going to replace  
25 the tape, Dr. Dodge, so that we're assured you're

**Comments**

**Responses**

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1 not going to be interrupted.

2           DAVID HENKIN: I just have a question  
3 slash concern, when this public meeting/hearing was  
4 announced, it was announced it would run until  
5 6 o'clock, and I'm concerned that there may be  
6 people who assume that means they can show up any  
7 time between now and 6 o'clock, and particularly,  
8 as the Army has experienced, sometimes these  
9 meetings actually run late. So when you say he's  
10 the last speaker, I hope that if someone shows up  
11 between now and 6 o'clock, we'll have an  
12 opportunity to hear their comments.

13           ANNELLE AMARAL: So what David has raised  
14 is that it was announced that this meeting would go  
15 to 6 o'clock, and he's concerned should people be  
16 coming after this last speaker will we still be  
17 here to take comments. So I'm going to go over and  
18 talk to the Colonel, I thought I heard him say we  
19 will be here, so let me settle that before the end  
20 of this. Thank you.

21           Dr. Dodge.

22

23           DR. FRED DODGE: Aloha kakou everyone.  
24 Thank you, Annelle, Colonel, and everybody that's  
25 here, including our stenographer and our Hawaiian

**Comments**

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**Responses**

1 translator, I don't think I'm going to give you  
2 much work on that.

3           First of all, a little bit of background,  
4 I also served in the military many, many moons ago,  
5 well over 50, I was in Korea, and I have an  
6 appreciation for the military that a lot of people  
7 may not realize I do, but I do. That appreciation  
8 isn't always shared by what our leaders do with our  
9 military people, and perhaps I shouldn't go there,  
10 but I think it's very important to elect good  
11 leaders who aren't afraid to negotiate, who wait to  
12 use war as an absolute last resort. I better quit  
13 on that note, on that particular subject.

14           I don't know where our other friends  
15 went, but I was going to also mention to our  
16 friends on the other side, concerned citizens and  
17 so on, that I, too, appreciate the fact that  
18 there's this give-and-take, that, you know,  
19 Albert's reminiscence of the way Makua used to be  
20 is really wonderful, he reminds me a great deal of  
21 Ivanhoe Naiwi, who was born in Makua, who I got to  
22 know and really appreciate during the Ohikilolo  
23 struggle where the community got together and was  
24 able to save Albert Silva's farm. I also know his  
25 family quite well, Adrian Junior, Uncle Jay Landis,

**Comments**

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1 a very dear friend, is another person who, along  
2 with Ivanhoe Naiwi, who actually got me involved in  
3 Makua, so although I'm not Hawaiian, I wasn't even  
4 born in the islands, I came to appreciate that aina  
5 tremendously because of these wonderful people. I  
6 also had the pleasure of knowing and caring for  
7 Albert's mother, Annie, who was a wonderful,  
8 wonderful person, lived to be more than 95 years  
9 old. And this hasn't got anything to do with it,  
10 but I can't help but state that when she was in a  
11 nursing home and I was making rounds, I would  
12 sometimes bring my kids, so I brought my daughter  
13 Summer, who is now in the mid 20s, she was five  
14 years old then, Annie Silva was 95, and I was  
15 looking at these two human beings, almost a century  
16 difference in age, and I got to thinking about  
17 life. And as I get older I think more, and I have  
18 to agree with my son Vince, and I have wonderful  
19 kids, but there really shouldn't be us and them,  
20 we're in this together. They eat the same fish  
21 that we do, presumably, I'm quite sure, we're all  
22 subject to the same influences, and I did want to  
23 say that at the outset. Actually, William Aila,  
24 Jonathan Deenik, Vince, my son, certainly David,  
25 have gone over much of what I wanted to, so I will

**Responses**

## Comments

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T67-1

1 save you repetition except that I, too, would like  
 2 to know what the status is on Representative  
 3 Abercrombie and congress's request for a list of  
 4 alternative locations to Makua, and this is  
 5 supposed to be done by, I believe, the beginning of  
 6 March, certainly sometime in March, and I would  
 7 think that that should be included in this EIS.

T67-2

8 I'm also concerned about the strykers,  
 9 William mentioned them briefly, and we've asked  
 10 this in the past, what role does a stryker brigade  
 11 or would the stryker brigade play now in Makua,  
 12 I've heard different scenarios, but I think this  
 13 should be included. I have a map, compliments of  
 14 the military, of the archeological sites in Makua,  
 15 it's the red, there's a little bit larger picture  
 16 in the book that Laurie Lucking brought, and,  
 17 again, this is a previous request that I'm  
 18 requesting again.

19 As you can see, a great deal of the  
 20 valley is archeologically rich, and, as such,  
 21 should be declared an archeological district.  
 22 Dr. Lucking agreed with me in the past, and I just  
 23 wondered, again, where are we in that kind of  
 24 request. Now, for those that feel that this might  
 25 interfere with military training, at least from my

## Responses

T67-1

A summary of report prepared pursuant to the Fiscal Year 2007 National Defense Authorization Action has been added to Section 2.2 of the EIS.

The EIS considered other alternatives in Section 2.5. The EIS now includes evaluation of an alternative in which training proposed for MMR would be conducted at the Pohakuloa Training Area, island of Hawaii (See Chapter 2 for a description of this alternative). This alternative was added in response to public comments received on the Draft EIS. Use of MMR, however, remains the preferred alternative.

T67-2

Like any other unit, the Stryker Brigade Combat Team forces would have access to MMR for training, as discussed in Section 2.2. Those forces would be subject to the constraints and limitations that apply to all units using MMR.

**Comments**

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1 experience in Kahoolawe, which was declared an  
2 archeological district, it does not stop military  
3 training. It doesn't make sense, but, basically,  
4 it doesn't by present laws, to the best of my  
5 understanding. So if we can try to get moving on  
6 that, at least, I think that would be very  
7 appropriate to declare Makua as an archeological  
8 district.

9           This is my last show and tell. Now,  
10 Malama Makua members, Hui Malama O Makua, you're  
11 not supposed to answer this because you guys know,  
12 but what is this, where is it? Give you a little  
13 information on it, this was taken from Ohikilolo  
14 Peak, that's the ridge between Ohikilolo Valley and  
15 Makua, and it was taken in 1979, at that time I  
16 wasn't involved in this, and I assumed that these  
17 were craters filled with water, which they were,  
18 but I assumed that they had occurred from military  
19 training and use. Does anybody want to -- well,  
20 this is the OBOD site, open burn, open detonation  
21 site here, this is the south fire break road that  
22 runs through it. And the reason I'm showing this,  
23 what brought it to mind, what made me look up this  
24 thing is that Tetra Tech, for all the criticisms  
25 that you heard today and shortcomings of the study,

**Responses**

**Comments****Responses**

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1 which does appear to be flawed, but they did find  
2 quite a bit of dioxins and furans in their studies,  
3 and then they added that these occur often with  
4 household burning. Well, as Mr. William Aila can  
5 tell you, and he's shaking his head, the OBOD site  
6 used to use old diesel fuel, gas, crates, wood, all  
7 kinds of things, I don't know how related it is to  
8 household burning things but Tripler brought  
9 materials to be burned in that area, University of  
10 Hawaii, also, and this is documented in the studies  
11 that we've been able to ascertain. And I have  
12 copies in case anybody wants, so there's a lot of  
13 opportunity for the dioxins, et cetera, to be  
14 generated in this area and find their way down into  
15 the muluwai area.

16 I do want to take this opportunity also  
17 to thank the good Colonel over here and our  
18 military friends. I know you have tried and, you  
19 know, we want you to get a good study, we want you  
20 to go back to the drawing board and really do it up  
21 right, but thank you very much for this  
22 opportunity, and I wish you all aloha and mahalo.

23 ANNELLE AMARAL: Thank you.

24 What we're going to do now is we're going  
25 to take a bit of a break, say about 10 minutes, it

**Comments**

**Responses**

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1 gives you an opportunity to sign up now if you want  
2 to speak. We also have, as we mentioned earlier, a  
3 transcriber in the back room. If you want to give  
4 testimony, you know, not here but in private,  
5 that's available, so we'll take a break. And as  
6 David had questioned, we will remain here until  
7 6 o'clock, absolutely, we will remain, the doors  
8 will stay open, and we will receive testimony until  
9 then.

10 David?

11 DAVID HENKIN: I wanted to make clear to  
12 everyone how much I appreciate and I think it would  
13 be fair to say Earth Justice clients appreciate the  
14 efforts that were made to hold the meeting in this  
15 format. We had some dialogue about it following  
16 the stryker meeting and very much appreciated, I  
17 think it's something that works very well,  
18 particularly in this community, I think it works  
19 well in most communities, and the efforts that the  
20 Army made to accommodate that request are  
21 appreciated, and I think it's helped to generate  
22 some good comments today, so I want to say mahalo,  
23 thanks for the sensitivity to the community's  
24 concerns.

25 ANNELLE AMARAL: We'll take a bit of a

**Comments**

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1 break, and you can sign up, get some food, there's  
2 still some food and drink.

3 (The proceedings were at recess.)

4 ANNELLE AMARAL: It looks like we're sort  
5 of picking up chairs and putting things away, so it  
6 probably would be good for us to just sort of close  
7 this off formally.

8 I'm wondering, Colonel Killian, do you  
9 want to say anything? No.

10 Then let me say something, I want to  
11 thank all of you for your conduct today, this was  
12 an excellent public hearing, I appreciate the  
13 cooperation with which we all worked together, and  
14 I was very happy to be able to facilitate this  
15 meeting. And before we go, I think it would be  
16 good if we could just form a circle, let's do a  
17 final closing pule and then we can all go home in  
18 safety.

19 (The proceedings concluded at 6:00 p.m.)

20

21

22

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24

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**Responses**

Comments

Responses

1 CERTIFICATE

2

3 STATE OF HAWAII )

4 COUNTY OF HONOLULU ) ss.

5

6 I, Rita King, RPR, CSR, Court Reporter and

7 Notary Public, State of Hawaii, do hereby certify

8 that on Saturday, February 24, 2007, at 2:00 p.m.,

9 that the proceedings contained herein were taken

10 down by me in machine shorthand and was thereafter

11 reduced to computerized transcription under my

12 supervision; that the foregoing represents, to the

13 best of my ability, a true and correct copy of the

14 transcript of proceedings had in the foregoing

15 matter.

16 I further certify that I am not of counsel

17 for any of the parties hereto, nor in any way

18 interested in the outcome of the cause named in

19 this caption.

20 Dated this 12th day of March 2007.

21

22 \_\_\_\_\_

23 RITA KING, RPR, CSR No. 373

24 Notary Public, State of Hawaii

25