

1 June 13, 2018

2 Victoria, BC

3 (DAY 3)

4 (PROCEEDINGS COMMENCED AT 9:32 A.M.)

5 TED LEA, the Respondent,

6 recalled

7 [RULING ON ADMISSIBILITY OF WITNESS EVIDENCE

8 - OMITTED]

9 THE CHAIR: And Mr. Hanman, you may continue with your
10 witness.

11 MR. HANMAN: Thank you, chair. Possibly before we get
12 started my friend and I were just talking about
13 the video and how to deal with it. And I had
14 said that I was quite happy to have that dealt
15 with in chief or in cross, however he wanted to
16 deal with it. So all we would have in chief if
17 my friend -- if it's left with me is the words,
18 the statement. And -- but I'm happy to have that
19 so the panel sees the video clip. I understand
20 they are not going to show the whole meeting
21 which is, like, two hours or something like that.

22 MR. UNDERHILL: Goodness, no.

23 MR. HANMAN: But whatever the clip is. And so I'm in the
24 panel's or my friend's hands as to how to deal
25 with that. We will get to it later this morning

1 I hope.

2 MS. FONG: And just so counsel know, what we have arranged
3 for is Charest has one room, we can't move the
4 equipment, but they have got the one room where
5 we can all walk over and look -- and watch the
6 video and hear it on the big screen. There's
7 just a period of time when it is not available?

8 MR. POLLITT: Yeah, from 2:00 to 3:00 this afternoon they are
9 running a test call and they want that time free
10 for their own use.

11 MS. FONG: Yes. But otherwise we can make that arrangement.

12 MR. UNDERHILL: Mr. Chair, I certainly don't have any strong
13 views. If we need to work around that schedule,
14 it may make sense to watch the video during
15 direct just in case I'm in cross and we don't
16 have the availability of the video at the right
17 time. I know, I think Mr. Hanman, to be fair, is
18 planning on taking most of the day in direct.
19 But, you know, I don't know that it -- much turns
20 on when the panel sees the video. And I also
21 arranged for -- you will recall I took you
22 through the statements in the contents of Notice
23 of Application. They were contained within the
24 statement of points. I've just now had an email,
25 I have just arranged for them to be cut and paste

1 into a stand-alone document that I am also happy
2 to have marked as an exhibit at any time so the
3 panel has it as a stand-alone document.

4 THE CHAIR: So maybe we can view them after a break later,
5 set up the room perhaps during the break and then
6 all view the video, see the video -- view the
7 video at a convenient break during the day.

8 MR. HANMAN: So I want to make sure I didn't mishear. So the
9 video, there is a window of opportunity, is
10 there?

11 MS. FONG: To use that room, yes --

12 MR. HANMAN: Right, so --

13 MS. FONG: -- that has the equipment.

14 MR. HANMAN: Okay. And so what's the timing of that?

15 MS. FONG: We are not able to use it between 2:00 and 3:00
16 but otherwise able to use the room.

17 MR. HANMAN: Oh, okay, otherwise. I thought -- I thought,
18 sorry, I thought you said between 2:00 and 3:00.
19 All right. Okay. Well, then we'll just slip it
20 in where we -- what's convenient. So I am just,
21 yeah, I'm sorry to be vague about when we'll get
22 to it, but, yeah, we should be there before 2:00
23 please, so. All right.

24 THE CHAIR: Good.

25 **EXAMINATION IN CHIEF BY MR. HANMAN (Continued):**

1 Q So, the chair and the panel is moving forward
2 with the testimony. And just so that you have
3 some clarity as to where we are at, we are coming
4 to the end of the Alberg discussion but for the
5 issue of the conflict; right? The question you
6 recall there was a conflict issue raised and
7 Mr. Lea dealt with that or responded to that.
8 And so I am going to take the witness to that as
9 part of the response of his evidence in dealing
10 with Citation 1(a). So from this point forward
11 or very shortly as soon as I take him to the next
12 couple of documents which deals with Alberg, then
13 we are going to try to have this evidence in
14 chunks, if you will, dealing with citation
15 components. And hopefully that will be of
16 assistance.

17 All right, Mr. Lea?

18 A So we were on Document, Volume 1, 17.

19 MS. BEEDLE: Sorry, which volume are you on?

20 A Volume 1.

21 MS. BEEDLE: Oh, right.

22 A 17.

23 MS. BEEDLE: Oh, 17.

24 A So I just wanted to give some final comments on
25 this report. We followed the bylaw and the

1 guidelines document, the assessment guidelines
2 document, to great detail. I actually believed
3 that all the detail that was used that we
4 collected was unnecessary because it was such an
5 obvious site of not meeting the SEI standards.
6 It was significantly modified from original
7 condition.

8 So in process we found out later, Saanich
9 staff could actually walk on the property and
10 recommend that that property could be removed and
11 recommend to council to remove it. This was a
12 development permit process; so the report was
13 required. But in my scientific opinion I don't
14 think it was necessary to the level that it was
15 done. And that -- it will explain why I did less
16 detailed reports later.

17 MR. HANMAN:

18 Q All right. So if you could go to tab 168 which
19 is Volume 8.

20 THE CHAIR: Sorry, could you repeat that?

21 MR. HANMAN: Yeah, no problem. 168, Volume 8.

22 Q Sir, Mr. Lea, so could you advise the panel who
23 is Roger Tinney and what this letter relates to?

24 A Certainly. I will start with saying that our
25 report, Patrick Lucey and my report through

1 Aqua-Tex, was delivered June 10th. This letter
2 is from June 25th, 2013. Roger Tinney was the
3 project planner on the Alberg property who had
4 hired Aqua-Tex to do the assessment on the
5 property. The letter is from Sharon Hvozdanski,
6 the director of planning for District of Saanich.

7 I just want to show you a couple of things
8 from this on page 2. The last bullet indicates:

9 In a conversation with yourself last week
10 I indicated that refinements of the
11 sensitive ecosystem boundary was
12 absolutely supported by staff but not its
13 entire elimination. I also indicated that
14 based on the original 16-lot subdivision
15 layout that approximately 11 to 12 lots
16 were going to be possible."

17 So refinements were supported but not the entire
18 elimination.

19 If you go back to the exemption clause 14
20 from the EDPA bylaw, I will just paraphrase, it
21 indicates that if an R.P. Bio determines through
22 field verification that there was no ESA, then
23 there would be no requirement for an
24 Environmental Development Permit.

25 The other important piece with this is from

1 the Saanich assessment guidelines which indicates
2 that elimination is allowed but the biologist
3 must follow the Ecosystems At Risk manual.

4 So to us, Saanich staff were clearly not
5 following their own bylaw in implementation.

6 Q All right.

7 A I just want --

8 Q Sorry.

9 A -- one more page on this so -- everyone's
10 writing.

11 So if you turn to the next page there is a
12 map. So the figure on the left is the original
13 sensitive ecosystem polygon that was mapped on
14 this property. The figure on the right was a
15 proposed area by Saanich. From our study we had
16 determined that none of the area on the left met
17 the criteria of being an ESA. So what was being
18 proposed by Saanich was removal of a portion that
19 was ecologically equivalent to the part they
20 wanted to retain in the EDPA. So we could not
21 see any scientific basis for this map that was
22 produced.

23 Q All right. Sir and panel, Volume 2, tab 42.

24 A 41? 41 -- 42.

25 Q 42.

1 A Yes, 42.

2 So this is a letter from Adriane Pollard to
3 Roger Tinney, the planner for the Alberg
4 property. It's dated July 15th, 2013. And in
5 the second paragraph it says:

6 In the letter to you from Sharon
7 Hvozdanski, dated June 25th, 2013, a map
8 was provided that showed approximate
9 location of the area recommended for
10 Environmental Development Permit Area."

11 So this refers back to the map I just showed you.

12 This area combines the area recommended by
13 Aqua-Tex for protection --"

14 This was a small area of camas.

15 "-- recognizing that it was too small to
16 be a viable EDPA on its own."

17 I would look at that as a viable sensitive
18 ecosystem on its own.

19 It also includes the area recommended by
20 environmental services staff for
21 protection under the environmental and
22 social review process, the area of
23 greatest concentration of Garry oak trees
24 identified by Gye & Associates, and the
25 10-metre buffers of the EDPA on adjacent

1 properties. The intent is to combine the
2 various inventories and create one larger
3 area for conservation rather than many
4 small areas."

5 So going back again to the wording of
6 the EDPA bylaw, none of these issues are
7 considered to be Environmentally Significant
8 Areas, certainly not Garry oak trees, certainly
9 not an area for the sake of an environmental and
10 social review process. The wording of the bylaw
11 includes sensitive ecosystems and four other
12 kinds of Environmentally Significant Areas. Our
13 report, mine and Patrick Lucey's, pointed out
14 that there was no sensitive ecosystem remaining.
15 So in this letter, Saanich staff are trying to
16 protect things under the EDPA that do not meet
17 the bylaw definition.

18 Q All right. So wouldn't it be nice if all of
19 these things were in some sort of a logical
20 order.

21 A I tried.

22 Q Tab 161, which is Volume 8, I think?

23 MR. STEVENTON: Tab number again?

24 MR. HANMAN: 161.

25 Q So could you tell the panel what this document

1 is, sir?

2 A This is an email that I wrote to the Aqua-Tex
3 team after a meeting of Patrick Lucey and Tracy
4 Motyer of Aqua-Tex, myself, and Adriane Pollard
5 that was from September 9th, 2013.

6 Q This is following the exchange that you have just
7 been through?

8 A Yes.

9 Q So you have got a meeting of the group; right?

10 A Right. We tried to find out from Ms. Pollard
11 what her rationale was or why she believed there
12 was still a sensitive ecosystem on the property.

13 This is the second paragraph. And my wording:
14 Adriane clearly did not want to provide an
15 answer to this and deflected two or three
16 times to other topics. She would not
17 answer when directly asked what her
18 rationale was for believing it is still a
19 sensitive ecosystem on the property."

20 So we went through this exchange, and we never
21 received a scientific explanation of why
22 Ms. Pollard considered that there was a sensitive
23 ecosystem, Environmentally Significant Area, on
24 the Alberg property. Never got that explanation.
25 And this was -- this occurred -- realize this is

1 in September, we submitted the report in June,
2 June 10th. We went through a variety of emails
3 back and forth and a couple meetings and we still
4 could not understand her rationale for wanting to
5 maintain this property in the EDPA. Because to
6 us it did not meet the bylaw definition.

7 The next page we -- and the next steps right
8 at the bottom, we had a -- made an agreement with
9 Ms. Pollard that we would organize a field trip
10 to the site with herself, myself, Tracy Motyer,
11 and it would have included Patrick Lucey,
12 Jan Kirkby who was the -- we mentioned her
13 yesterday -- she was the federal government
14 expert on sensitive ecosystems, and Jo-Anne
15 Stacey who is the provincial ecologist from the
16 Conservation Data Centre. So the intent was to
17 review scientific rationale and ground-truth that
18 the Alberg property is or is not a sensitive
19 ecosystem. And it talks a bit about buffers
20 after that.

21 Q And then the tab immediately in front, 160?

22 A So this is a letter to Roger Tinney from
23 Ms. Adriane Pollard, dated November 5th, 2013.
24 And it's -- it was in response to that meeting
25 that we had.

1 "I met with Patrick Lucey and Ted Lea on
2 September 9th to further review
3 environmental development permit area at
4 1516 -- "

5 Q Slow down.

6 A "-- Mt. Douglas Cross Road."

7 Q And Mr. Lea, you don't need to read the whole
8 letter, if you could take --

9 A No, I'm sticking to the first two paragraphs.

10 Q All right.

11 A

12 An outcome of the meeting was that I would
13 contact Jan Kirkby of Environment Canada
14 and Jo-Anne Stacey of the Ministry of
15 Environment to request that they review
16 and comment on the June 10th, 2013, EDPA
17 report, if possible meet us on site to
18 discuss the sensitive ecosystem inventory
19 polygon."

20 Next paragraph.

21 Both Jan Kirkby and Jo-Anne Stacey
22 declined to comment on the report and to
23 meet on site as they feel this is a
24 municipal issue. However, some of the
25 feedback that I received was that while

1 the property alone may not be an
2 Environmentally Significant Area due to
3 its condition..."

4 That is a very important phrase, that it is not
5 "an Environmentally Significant Area due to its
6 condition." And this is coming from the two
7 provincial experts on sensitive ecosystems and
8 ecosystems at risk.

9 Ms. Pollard goes on to say:

10 "...in the greater context of the entire
11 polygon, a biologist may elect to include
12 it."

13 So this additional comment to me goes against the
14 Saanich EDPA bylaw because if it's not an
15 Environmentally Significant Area, there should be
16 no DP required.

17 MR. UNDERHILL: Mr. Chair, if I might just interrupt for a
18 moment. Because there is a number of times
19 Mr. Lea has offered up that opinion, I want to
20 get something on the record because it may impact
21 the evidence that needs to be called. I don't
22 know if Mr. Hanman is planning on in the course
23 of final submissions making an argument that in
24 fact for -- that there was not actual compliance
25 with the bylaws, in Mr. Lea's words, for 1516

1 Mt. Douglas Cross Road. If the truth of that,
2 Mr. Hanman wants to establish the truth of that
3 for the purposes of his submissions, then the
4 College would need to call Adriane Pollard,
5 perhaps other witnesses, to address that issue
6 and just to comment.

7 If it's just simply a case of this was the
8 belief held by Mr. Lea, I think as I have
9 indicated previously, you know, we can live with
10 that. That's his belief. But if the defence is
11 going to go further and try to establish the
12 truth of that belief then I think we have a
13 serious evidentiary issue and we are going to
14 expand the scope of the hearing. So I just
15 thought that should be clarified now rather than
16 let this go on because that opinion that Mr. Lea
17 has offered, he has done that a few times now.

18 MR. HANMAN: Is that -- that's the submission?

19 MR. UNDERHILL: Yes.

20 MR. HANMAN: I have said it multiple times, I thought, that
21 we are not here to have the panel, and it's not
22 the panel's task to determine that as a legal or
23 factual issue I suppose you may call it, mixed
24 fact and law, at least not in my assessment of
25 the citation process. What I have said is is

1 that the evidence of this witness under the
2 citation is that I held this view, and I held it
3 based on, you know, substantial background in
4 trying to work with Saanich, in trying to work
5 through the owners and work with the bylaw. And
6 so the Citation 1, and 2, raise the specter of my
7 client, of Mr. Lea acting as a -- with prejudice,
8 with malice, or as a rubber stamp, words like
9 that. And so all of this evidence as detailed as
10 it is does not go directly to the truth of that,
11 the conclusion of that, but goes directly to the
12 fact that his subsequent activities which are
13 complained of were ones that were done in the
14 context of his best scientific understanding and
15 of the law. In other words, the exact College
16 principles.

17 So, no, we are not trying to prove this.
18 And no, the panel doesn't have to make a
19 conclusion about this.

20 THE CHAIR: So Mr. Underhill, you did not raise a formal
21 objection and --

22 MR. UNDERHILL: Yeah, no, and that's very helpful. And that
23 I think alleviates my concern to a large degree.
24 I'm not sure we need this level of detail in
25 light of that, but let's carry on.

1 THE CHAIR: Thank you.

2 A So this document and the wording informed every
3 other property I attended and did reports about.
4 So to me the significant piece is, coming from
5 the federal provincial experts is that this
6 property is not an Environmentally Significant
7 Area due to its condition. This is a critical
8 statement for every property I did throughout
9 this process.

10 The third paragraph just at the end
11 indicates:

12 I have elected to accept the report by
13 Aqua-Tex dated June 10th, 2013."

14 So the report was accepted. And that was six
15 months later.

16 MR. HANMAN:

17 Q Right. And sir, I note in the fourth paragraph
18 that there is discussion from Saanich staff
19 regarding possible amendment to the EDPA or
20 counsel will clarify its intention, et cetera.
21 Do you see that?

22 A Yes.

23 Q Was there ever an amendment undertaken? We know
24 it was removed or taken --

25 A Yeah, there was an attempt to move amendments

1 forward in 2015, February of 2015, which we will
2 come to in the next portion.

3 So, yes, the intent, just to give this
4 little bit of background to when we get to that
5 document is that it appeared that Ms. Pollard's
6 intention was to seek advice from council whether
7 they wanted to protect areas that were
8 Environmentally Significant Areas no matter what
9 condition, whether they were poor or fair or good
10 or excellent.

11 Q All right. Now, sir, and for the panel we are
12 shifting gears a little bit now. We have sort of
13 ground through the background and we are now
14 going to direct our attentions specifically to --
15 or try to -- 1(a) -- 1(a), (b), and (c), Citation
16 1(a), (b), and (c).

17 Now, sir, I'm just going to draw you and the
18 panel's attention to a language of Citation
19 paragraph 1(a) in that it says, and I will
20 paraphrase, failing to avoid situations,
21 circumstances where there is a conflict of
22 interest. Do you see that?

23 And the first subparagraph, and I understand
24 these are to be read together, is that you are an
25 advisor, member, or participate in the affairs of

1 SCRES I think is what -- is casually what it's
2 called?

3 A Yes.

4 Q Saanich Citizens For a Responsible EDPA, a known
5 opponent to the District of Saanich bylaw. So
6 sir, in the fall of 2014, so this is after
7 Alberg?

8 A Yes.

9 Q In the fall of 2014 you had occasion to deal with
10 a lady named Anita Bull?

11 A Yes.

12 Q And could you tell the panel who this lady is and
13 how those dealings came about?

14 A I was asked by Anita Bull and her cousin Bob Webb
15 to attend a property on -- two properties on
16 Rainbow Street in Saanich. And these were the
17 properties of their parents. So parents lived
18 side by side, mother on -- with -- Ms. Bull's
19 mother lived in one property at 4007 Rainbow and
20 Mr. Webb's parents lived at 4011 Rainbow. They
21 asked me to attend the property to look at the
22 property in terms of the EDPA, whether there was
23 a sensitive ecosystem on the property or not.

24 Q All right. And if we go to Volume 2, tab 57, we
25 have photos of those properties I believe.

- 1 A So the first after the title --
- 2 Q Just wait a moment. Wait until everybody has got
3 the tab and is there.
- 4 A Sorry.
- 5 Q Volume 2, tab 57.
- 6 A So the first image is a photo from the Saanich
7 GIS website which shows the orange line is the
8 sensitive ecosystem polygon. And then the
9 further yellow which is a 10-metre buffer shows
10 that area.
- 11 If you go to the next photos and you can
12 just go through them one by one, these show the
13 property on the ground. I was there in I believe
14 late October of 2014. So this is almost a year
15 later than the Alberg property. But looking at
16 those photos, there is nothing on the property
17 that would meet the definition of a sensitive
18 ecosystem. This is just lawn, garden, pathways,
19 outbuildings, and in some cases the house was
20 within.
- 21 Q So when you reference the definition, you took
22 the panel to that document yesterday?
- 23 A Yes.
- 24 Q And --
- 25 A Yes, so from a sensitive ecosystem, these -- it

1 must meet being an area that is relatively
2 unmodified from original ecosystem that would be
3 expected on these properties before Europeans.
4 It clearly does not meet that definition.

5 Q All right. You did -- so we are now sometime in
6 the fall of -- when you initially attend on the
7 property and take pictures?

8 A Yes.

9 Q And so if we go to tab 47, Volume 2 --

10 MS. BEEDLE: So tab 4-7?

11 MR. HANMAN: Tab 4-7, 47.

12 Q So, sir, what do we have here?

13 A So tab 47 and 48 are the two reports that I did
14 for these two properties. I did them as letter
15 reports because it was clear to me that these
16 properties in no way met the definition of being
17 sensitive ecosystems or ecosystems at risk as is
18 required by the Ecosystems At Risk manual that
19 Saanich staff had provided.

20 Q Sir, and so I draw your attention to the first
21 paragraph there where it says in part, "Field
22 forms and sketch maps are not necessary."

23 A Right. So because of the clarity of this not in
24 any way meeting the definition, I did not provide
25 field forms or sketch maps. It would have

1 indicated that there was lawn and garden
2 underneath these properties. Certainly in doing
3 these assessments and subsequent assessments, I
4 had what I had learned from the Alberg property
5 of all the attributes that I should be
6 considering on these properties.

7 So when I went on those properties,
8 certainly considering context, is the property
9 surrounded by residential or natural areas or
10 otherwise, I was also looking at whether the
11 condition for sure was clear, and restoration
12 potential, I was definitely thinking about that.
13 And to restore these back to a natural community
14 would take significant work, time, money,
15 expertise that most landowners do not have. So I
16 believed that this level of document was all that
17 was required for a property that has no --
18 clearly no sensitive ecosystem on it.

19 Q Now, sir, this was not -- I should ask the
20 question. Was this a -- was this -- these
21 properties scheduled or intended for some
22 redevelopment, some development permit process?

23 A There was no plan for development on these
24 properties at all. They were made aware that
25 their properties were in the EDPA, and they

1 wanted them out because they were concerned about
2 future value of the properties. But there was
3 certainly no intent and there was no active
4 development permit involved in these ones.

5 Q All right.

6 A At the time the landowners had been provided with
7 information from Adriane Pollard that they could
8 take the step of hiring a biologist, and since it
9 wasn't in an application that they could take it
10 to Saanich council for decision on removal of
11 these properties from the atlas. So these
12 reports were the start of trying to get that
13 process going.

14 Q All right. And the two reports in at 47 and 48,
15 you discuss in the body of the report really --
16 what do you discuss in the body of the report?
17 What is the -- what are you referring to down
18 toward the bottom where it says, "I have
19 consulted three standards," et cetera? Is this
20 the material you referenced yesterday?

21 A Yes. So there is the three standards and an
22 additional, this third one is an additional one
23 which I didn't run through yesterday which has
24 never been brought up as being important to the
25 EDPA but it does have significance because it

1 defines Garry oak and associated ecosystems. But
2 the first two, the standard for mapping
3 ecosystems at risk was the one that the
4 assessment guidelines indicated must be followed
5 to change or eliminate a boundary on a property.
6 And then the second one is the sensitive
7 ecosystem inventory which I walked through
8 yesterday, the conservation manual which has the
9 description of the expected ecosystem to
10 determine whether the property was relatively
11 unmodified or not, in natural conditions.

12 And then I had some quotes from those
13 documents and indicated that for all three
14 documents that nothing -- this is three-quarters
15 of the way down the second page:

16 "Nothing on this property fits any of
17 these conditions as there is no natural
18 ecosystem on the property."

19 I made the statement next that by following the
20 EDPA bylaw clause 14 there should be no EDPA
21 required. Following the bylaw, that's incorrect,
22 because there needs to be a development
23 application in place. However, we believed that
24 the intent of the bylaw should be followed so
25 that if there is no Environmentally Significant

1 Area on the property, then it should be removed.

2 And then I asked for -- "look forward to a
3 detailed report."

4 Q All right. And then tab 49, sir, what is this
5 document?

6 A The letter -- so this document is a response from
7 Ms. Adriane Pollard on December 3rd, 2014, and
8 it's in response to my letter reports that were
9 sent in November 5th recommending removal.
10 Ms. Pollard correctly points out that exemption
11 14 should not apply in this case. And then she
12 talks about information from an adjacent property
13 that was pre-EDPA. And, however, does not
14 respond to whether she agrees whether there is an
15 Environmentally Significant Area on the property,
16 whether there is a sensitive ecosystem on the
17 property.

18 And then the last paragraph on the second
19 page indicates that:

20 "In an effort to resolve the situation, a
21 report will be prepared for council
22 seeking direction on whether they wish to
23 amend the Environmental Development Permit
24 Area atlas based on your findings."

25 And then talks a bit about the process and that

1 it will proceed to council early in the new year.

2 Q All right. And if we can then go to Volume 3,
3 tab 64. Volume 3, tab 64.

4 Now, sir, can you tell the panel what this
5 document is and what it relates to and how it
6 arises out of your exchange with Ms. Pollard that
7 you have just referenced?

8 A So this document is a memo from Adriane Pollard
9 to the Environment and Natural Areas Advisory
10 Committee, February 17th, 2015. I obtained the
11 document from Ms. Bull. She had got it from
12 Legislative Services because two of -- the two
13 properties that her family was involved with
14 would be discussed at this meeting. So it
15 also -- the second part was as I mentioned
16 earlier is that Ms. Pollard was recommending
17 amendments to the Environmental Development
18 Permit Area guidelines and atlas. So two
19 activities in this.

20 Q And so if you go to page 3, at the bottom
21 possibly?

22 A Do you have a paragraph?

23 Q Sorry, right at the bottom of the page. "Two
24 situations..."

25 A

1 "Two situations have occurred resulting in
2 debate about values in degraded Garry oak
3 sensitive ecosystem inventory areas and
4 methodologies to classify ecosystems.

5 This has prompted staff to recommend
6 changes to exemption 14. The wording of
7 exemption 14 is problematic. The wording
8 does not reflect the original intention of
9 this exemption to allow for fine-tuning of
10 mapping errors as outlined above."

11 And then it makes the recommendations of removing
12 clause 14 for sensitive ecosystems.

13 So page 6 just past halfway down, it makes
14 the statement that:

15 "Staff interpret that council intended to
16 protect SEI polygons regardless of their
17 condition unless the area was mis-mapped
18 to begin with."

19 Which is like pavement or housing or whatever.

20 So if staff believed that, council would not
21 have had a clause 14 in the EDPA bylaw and staff
22 would not have created a sensitive ecosystem
23 assessment guidelines that indicated to follow
24 the ecosystems at risk standard in order to
25 remove properties from the EDPA.

1 Then there was three options below that
2 were to clarify the intention of the use of the
3 SEI. So on page 8, option 3, it indicates:

4 "To continue to protect mapped EDPA areas
5 for values beyond SEI mapping standards
6 such as restoration potential, landscape
7 linkages, habitat, buffers, approved
8 landscape plans, significant trees, and
9 the condition of the entire mapped area as
10 opposed to properties in isolation."

11 As you may recall from the Saanich EDPA bylaw,
12 none of those criteria are mentioned as
13 Environmentally Significant Areas or as something
14 that needs to be protected by the bylaw. It is
15 silent. The bylaw is silent on all of these
16 issues except for buffers.

17 The next statement is:

18 "This option reflects current staff
19 interpretation of the EDPA guidelines and
20 a majority of consultant reports received
21 in support of development applications."

22 So staff interpretation, and this is my
23 interpretation of that, is that they were not
24 following the EDPA bylaw, the wording of the EDPA
25 bylaw, or the Sensitive Ecosystem Assessment

1 guidelines that were created.

2 Q Just over the page at the bottom, dealing with
3 the two properties, 8 and 9? Sorry.

4 A So at the bottom of the page it says, "Staff do
5 not support..." so this is about the two
6 properties on Rainbow avenue that I did reports
7 for:

8 "Staff do not support the proposed mapping
9 change 4007 and 4011 Rainbow Road."

10 But it made recommendations to amend, to remove
11 some parts of it, existing developed areas which
12 would be the house and driveways and pathways,
13 that sort of thing, buildings.

14 So the result of this meeting was
15 recommendation they did not want to deal with --
16 the committee did not want to deal with the
17 properties at that time so they deferred any
18 action on that. They provided no recommendation
19 to council on that. But to deal with the bylaw
20 issues they recommended to council to look at
21 having open houses and town halls to allow input
22 by landowners. They were realizing that
23 landowners had major concerns about how the EDPA
24 was being implemented.

25 Q All right, sir. Now, I take it this gives rise

1 to the SCRES organization?

2 A Yes.

3 Q And what role and what part did you play or not
4 play in that organization?

5 A So a group of landowners kind of coalesced around
6 Anita Bull to form a group to try to express
7 their concerns to Saanich council to try to move
8 forward in a more responsible manner in terms of
9 how the bylaw was being implemented. They formed
10 a loose group in the spring of 2014, and then
11 that became a society at the end of the year I
12 think in December or so. I --

13 Q And who was the head of that society if there was
14 a head?

15 A Anita Bull was the head and when it became a
16 society, she became the president. I became an
17 advisor, a scientific advisor to the board and
18 the group -- the group and then the board as it
19 was developing. My input was dealing with issues
20 of what we have gone through through my
21 testimony, what do the standards say, what does
22 the bylaw say, what does the guidelines indicate,
23 the assessment guidelines indicate. And I tried
24 to provide what I considered a very positive
25 direction to SCRES to help them think --

1 Q Sorry to interrupt, "positive" in what sense?

2 A Positive in trying to direct them to look at
3 biodiversity in a broad scale in Saanich. The
4 bylaw itself is very limited in the impact that
5 it can actually have on properties in Saanich.
6 Many of the properties, you have seen photos, are
7 either not meeting the definition of sensitive
8 ecosystem in any way, and there is others like
9 the Tudor properties which were -- again they
10 don't meet the definition of sensitive
11 ecosystems, they still have some natural
12 components left in them, but if left alone, the
13 invasive species which already dominate the
14 property will eventually remove almost all of the
15 native component of those properties.

16 Protecting degraded ecosystems does not
17 improve them. My belief and what I tried to help
18 SCRES understand is these needed a different
19 tool. They needed a stewardship tool which would
20 help improve the condition of these properties,
21 working in cooperation with landowners providing
22 education and knowledge and incentives so that
23 there may be some direction forward.

24 The other major piece that I think I helped
25 encourage was Saanich parks are very degraded,

1 like most of the Garry oak and associated
2 ecosystems, Saanich parks' ecosystems have become
3 more and more degraded over time and there is no
4 restoration occurring except by volunteers who
5 remove invasive shrubs. The major problem --
6 again like the private properties -- are
7 significant degradation by invasive grass
8 species. Except in one park and only by a
9 volunteer, Saanich is not dealing with the
10 invasive grass species that they have major
11 problems with.

12 So one of the concerns of landowners that
13 Saanich was expecting a higher level of
14 protection or maintenance by private landowners
15 while Saanich parks were becoming more and more
16 degraded. And certainly from a biodiversity
17 perspective, larger areas are better to preserve
18 biodiversity than small pockets of protected
19 areas that are becoming dominated by invasive
20 species or already are dominated by invasive
21 species.

22 The result of the EDPA bylaw in my
23 scientific opinion is there would be individual
24 properties sort of in a random fashion around
25 Saanich that would not have any major impact on

1 enhancing biodiversity in Saanich, but they would
2 just be pockets that either would just become
3 invasive species, if they were lawn and garden
4 they would gain invasive species very quickly.
5 And the other portion that was going on was
6 people were being required to plant native plant
7 gardens if they were in EDPA and they planned
8 development.

9 That to me was not improving biodiversity as
10 much as other initiatives could.

11 Q And speaking of other initiatives and your input
12 to SCRES that you have described, can you go to
13 tab 10, Volume 1. Can you tell the panel what
14 this document is?

15 A So just one statement to start with is SCRES was
16 called Saanich Citizens for a Responsible EDPA.
17 They did not ever push for removal of the EDPA.
18 They were trying to make recommendations to
19 council to improve the EDPA, improve the
20 implementation of the EDPA, and provide a broader
21 perspective on the EDPA.

22 This report was a SCRES document that was
23 sent to Saanich council. There was a draft I
24 think in June of 2015. This one was far more
25 comprehensive. So this was the final document

1 that was sent to council.

2 If you go to the table of contents, the --

3 Q Can I first ask, sir, can you tell me what, if
4 any, input you had into this document?

5 A So my input was dealing with issues of the
6 science around biodiversity enhancement, around
7 the standards, around guidelines. And so it was
8 providing recommendations for more stewardship
9 and work in Saanich parks. This report was put
10 together by a group, multiple experts, other
11 registered professional biologists and other
12 professionals from other organizations, and a
13 variety of landowners. So it has the thinking of
14 quite a few different people in this report.

15 From the table of contents my major input to
16 this report was Chapter 2, which provides vision.
17 And we went through issues and recommendations
18 for each of these issues. So I was involved in
19 Chapter 2, Chapter 3, Chapter 8 about Saanich
20 parks, and a few smaller portions throughout the
21 document.

22 So if we can go to page 13. So this was a
23 chapter on vision, and the vision was trying to
24 not only it says -- I have said not only what the
25 EDPA could provide, the portion is to me the EDPA

1 is an essential piece to protect the components
2 of the inventories that are in there. So
3 ecosystems at risk, actual locations of species
4 at risk, and the other three. Those are an
5 important piece that should exist, the
6 information -- implementation should be covering
7 areas that truly are of highest biodiversity in
8 Saanich. And so it's trying to figure out what
9 Saanich is trying to achieve with the EDPA and
10 other tools and to be able to provide that vision
11 to Saanich residents because up to this point we
12 did not see any vision about how the EDPA was
13 trying to improve biodiversity in Saanich.

14 So it goes through recommendations such as,
15 "Vision needs to be specific and focused and
16 accompanied by targets and measurables," bottom
17 of the page. And then it talks about things like
18 what's the relationship to things like the other
19 legislation, like the tree protection bylaw, and
20 there was a planned noxious weed bylaw that was
21 proposed. So this was trying to give direction
22 to Saanich council to start looking at a far
23 broader perspective than just the EDPA.

24 Chapter 3 on page 16, and these are the
25 issues that I talked about, my statements about

1 the bylaw and standards. And so this goes over
2 how I believed the bylaw to be being implemented
3 and the mapping to be implemented, and pointing
4 out that many of the properties that were mapped
5 within the EDPA did not in any way meet the
6 perspective to meet the criteria of being
7 sensitive ecosystems. So it goes through and
8 talks about some of the things I was talking
9 about in my opening to this citation item in that
10 invasive species and restoration and the
11 importance and the cost of that kind of thing.

12 And then on page 19 it provides
13 recommendations, two pages of recommendations.
14 Again it's trying to make the bylaw being applied
15 scientifically as I believed that at that point
16 it was not following the science of the sensitive
17 ecosystem standards and other standards.

18 Q So, sir, how much of this language can you assist
19 the panel with is your words or a compilation of
20 experts? What is your involvement with this?

21 A Certainly for Chapter 3 I had a significant --
22 wrote the significant portion of this. And in
23 conjunction with one other registered
24 professional biologist and working with others --
25 other biologists that I had contact with and

1 getting ideas. So I mean, it's an accumulation
2 of talking to multiple people. But most of the
3 words in Chapter 3 were mine.

4 Now, I will just take you to one more
5 chapter.

6 Q Page 33?

7 A Thank you. So page 33, Saanich parks, this
8 document, this chapter, talks about the issues
9 that I was talking about before is that Saanich
10 was not showing leadership on its own public
11 lands and that most of the sensitive ecosystems
12 that are mapped in Saanich parks now are becoming
13 more and more degraded, and without significant
14 resources they will continue along that track.
15 And just some of the importance of large areas of
16 biodiversity have more impact than small
17 pocket-sized areas, especially for if you are
18 trying to enhance or maintain species at risk.

19 Saanich parks has many historical locations
20 of species at risk but is making no attempt to
21 restore them or place them back into those areas
22 to try to maintain those species over time. And
23 the actual species that do occur are -- people
24 can walk on them, people can pick them. They
25 can -- there is very -- to me it's very poorly

1 done and has many opportunities for improvement.

2 Q All right. Over the page, tab 11, have you
3 finished with that document, sir?

4 A Yes.

5 Q Over the page, tab 11. Possibly before you start
6 there is this document and maybe one other and we
7 can sort of finish a section and maybe then the
8 break? I'm in the panel's --

9 THE CHAIR: Yes, I would like to take a break within
10 15 minutes.

11 MR. HANMAN: Sure, that will work well.

12 A Should be able to get through that. So halfway
13 down the page.

14 MR. HANMAN:

15 Q So first of all, what is this document?

16 A So this document was a presentation and
17 submission to Saanich council for a recommended
18 -- recommending a stewardship program, a private
19 lands stewardship program to look at all private
20 land in Saanich. The --

21 THE CHAIR: Sorry, what tab is it? Which tab?

22 MR. HANMAN: Tab 11, very next document, sorry.

23 THE CHAIR: Yeah. Okay.

24 A So the EDPA covers about 2,200 properties of 40-
25 or 50,000 properties in Saanich. This proposal

1 was intended to try to get as many individuals,
2 property owners, to try to enhance biodiversity
3 on their properties. So this was put forward by
4 SCRES. I was involved in writing this document
5 and in the background was a group of registered
6 professional biologists, landscape architects,
7 planners, and an urban forester. So the intent
8 was try to look far more comprehensively at
9 private lands in Saanich and how can Saanich, the
10 District of Saanich, improve biodiversity on
11 private properties.

12 The group I was working with, the scientific
13 group I was working with in the background,
14 presented a program called Creeks in Communities
15 that supposedly is a highly successful program
16 from the USA. I think it's the Department of
17 Agriculture down there. And it looks at working
18 with people on their properties to improve
19 riparian systems. This was more comprehensive
20 because it would be looking at all private lands.

21 So the summary on the second page is:

22 "To create an all-encompassing program to
23 encourage action and volunteerism to
24 maintain and improve biodiversity in
25 Saanich by landowners and residents."

1 And then contributing to biodiversity.
2 And then at the bottom what benefits, so
3 the -- what benefits would be provided to society
4 and the environment, so "improve ecosystem,"
5 "services," "infrastructure," "residents buy in,"
6 this would be a volunteer program, "increased
7 willingness to plant native species," and
8 "encouraging people to plant trees so that the
9 urban forest is maintained in Saanich," and then,
10 "improve funding," and "put emphasis on
11 maintenance and restoration in Saanich parks,"
12 "significant awareness," and "the need to manage
13 invasive species." And then last bullet,
14 "restoration, maintenance, population
15 supplementation for species at risk."

16 I believe that many private individual
17 landowners would be quite willing to try to
18 support a species at risk population so they --
19 that if they had something special on their
20 property, they knew they had something special,
21 and they had support, encouragement, and
22 education, they would find that something
23 exciting for them to support.

24 The next document --

25 MR. HANMAN:

1 Q One moment, sir. So before we go to the
2 document, so it will be tab 14, sir. The
3 question, Mr. Lea, is was SCRES alone in
4 advancing propositions with respect to the bylaw?

5 A No, not at all. The -- there were many
6 organizations, community associations, other
7 individuals, other scientists that were providing
8 input to Saanich council for what they believed
9 changes needed to occur to the EDPA bylaw and
10 these other issues that SCRES has recognized,
11 tried to push forward. So they are -- I could
12 take you to one of those if that's helpful?

13 Q Next tab, tab 14?

14 A 14? So tab 14 is a letter to mayor and council
15 dated January 15th, 2015, from the Quadra Cedar
16 Hill Community Association. To my knowledge
17 there was four or five other community
18 associations that wrote to council with very
19 similar concerns. So just quickly through, one,
20 there needs to be a vision, two, complete bylaw
21 needs to be clearly, fully and succinctly
22 communicated, three, about EDPA and the noxious
23 weed bylaw and its link, four, ESAs that fall
24 within parks and natural areas should be governed
25 by the same regulations as those faced by home

1 owners, and five, community needs to be
2 meaningfully engaged in decision-making, and six,
3 consider revisions to the Environment and Natural
4 Areas Committee to deal with these issues.
5 Seven, mapping inaccuracies need to be corrected,
6 and eight, if not already the case, Saanich
7 should be accepting consulting biologists reports
8 from any recognized consulting biologist. Nine,
9 and goes along with the stewardship program we
10 recommended, that SCRES recommended was carrots
11 rather than sticks. Perhaps including serious
12 incentives for ecologically virtuous behaviour by
13 property owners.

14 Q And Mr. Lea, if we go to, and this will be the
15 last in this section, if we go to volume 7,
16 tab 146. Volume 7, tab 146. Sir, same question,
17 other organizations put forward questions and
18 memorandum?

19 A Yes. So this is a -- this was sent to mayor and
20 council from a group called Saanich Action For
21 the Environment, SAFE. And similarly they were
22 -- they indicated the rationale for keeping the
23 EDPA bylaw. And that they proposed improvements,
24 clearly defined the permitted and non-permitted
25 activities, develop policy and standards for

1 ESAs, improving the EDPA atlas, developing
2 education and communication initiatives, and
3 strengthen, protection, mitigation and
4 restoration on public lands, and then have a
5 dispute resolution. I think there is one more
6 document we were going to go to.

7 Q Well, that's -- the panel will be pleased that's
8 the last one that I have.

9 A So one more briefly. So it will be tab 11,
10 Volume 1.

11 Q We already dealt with this.

12 A We did?

13 THE CHAIR: Yes.

14 A Oh, we did. Maybe it was tab 12.

15 MR. HANMAN: Somebody throw some water on the witness.

16 A Okay. I'm sorry, maybe we don't need to. Let's
17 do 13.

18 MR. UNDERHILL: Tab 13, sorry?

19 A Yes.

20 MR. HANMAN: Mr. Chair, can I suggest we take the break now
21 and we can close off.

22 THE CHAIR: I would be happy with that.

23 MR. HANMAN: Very good, sir. Thank you.

24 THE CHAIR: So the hearing will adjourn and we will take a
25 15-minute break returning at 11:15.

1 **(WITNESS STOOD DOWN)**
2 **(PROCEEDINGS RECESSED AT 11:00 A.M.)**
3 **(PROCEEDINGS RECOMMENCED AT 11:17 A.M.)**
4 **TED LEA, the Respondent,**
5 **recalled**
6 THE CHAIR: The hearing now reconvenes. Please continue,
7 Mr. Hanman.
8 MR. HANMAN: Yes, sir, just by way of guidance to the panel
9 as to where we are, I was just talking to my
10 friend. So we will be through Citation 1, the
11 evidence (b) and (c) by lunch for sure. And the
12 idea then has been suggested that if we have a
13 lunch break at 1:00 o'clock and -- or whenever we
14 get out of here, but finish the evidence and then
15 do the video at 1:00 if we have a one-hour break
16 at lunch.
17 MR. UNDERHILL: Finish by 12:00 you mean.
18 MR. HANMAN: Sorry, finish by 12:00 and after the lunch break
19 do -- so just -- does that work? And the video
20 is, my friend says is 10 minutes long.
21 MR. UNDERHILL: Well, the extracts of course are quite short
22 you saw from the size of the statements, so we
23 just need to make sure we watch the few minutes
24 where those extracts are, so shouldn't take more
25 than ten -- five or ten minutes.

1 MR. HANMAN: Which gets us done before the 2:00 o'clock.

2 THE CHAIR: Right.

3 **EXAMINATION IN CHIEF BY MR. HANMAN (Continued):**

4 Q Now, sir, Citation 1(b)?

5 A Excuse me, can I finish off 1(a)?

6 Q Okay, you are risking the good will, but go
7 ahead.

8 A So I want to conclude, no documents, want to
9 conclude with two comments about 1(a), is the
10 SCRES group was never against the bylaw and was
11 putting forward recommendations to improve, make
12 improvements to the bylaw and to a greater
13 biodiversity impact enhancement in Saanich. And
14 the second statement is I myself have never been
15 against the bylaw. I actually support ecosystems
16 at risk, species at risk legislation. I have
17 written articles on ecosystems at risk
18 legislation, and I think they have been severely
19 neglected by provincial government, federal
20 government.

21 Q The articles or the --

22 A Scientific articles, but yes, that was neglected
23 too. So both myself and SCRES have not been
24 opposed to the EDPA. I think that's a really
25 important final statement to make on that item.

1 Q All right. 1(b), Mr. Lea, 1(b) relates to your
2 ownership of private property in Saanich?

3 A Yes, I do.

4 Q And it's not the same property as I understand it
5 as you owned back in Alberg days, that would be
6 2013?

7 A No, we actually moved last -- end of last May to
8 a different location in Saanich.

9 Q Right. So you have already given evidence that
10 you owned a property that was in proximity to the
11 Alberg property?

12 A Yes.

13 Q All right. And so in dealing with Patrick Lucey
14 who you have given evidence came to you or spoke
15 with you about giving an opinion on the Alberg
16 property, what can you advise the panel as to
17 your position or engagement at that time? So
18 this is, what, spring of 2013?

19 A Yes. This would have been April of 2013. When
20 we first discussed my involvement in doing
21 assessment on the property, I raised the issue of
22 a potential for being perceived as having a
23 conflict of interest by working close by in the
24 neighbourhood. He gave me the impression that
25 that was not a concern. So we moved on and

1 started dealing with the assessment of the
2 property. But I raised that with him immediately
3 just being that there might be some perception by
4 somebody.

5 Q All right. In the spring?

6 A In the spring, in April 2013.

7 Q All right. And in the fall, so after your report
8 was done, we have been through the report?

9 A Yes.

10 Q So we are now sometime September --

11 A Early September.

12 Q -- early September, same year, 2013?

13 A Yes.

14 Q Tell us what happened. Right? Something
15 occurred that prompted some action by you?

16 A I had a meeting with Mr. Lucey and he raised a
17 concern that he had talked to Ms. Adriane Pollard
18 about -- about somehow, I do not know how, that
19 the issue for potential conflict of interest was
20 raised about me having done work on a property
21 adjacent or near our property. It was a full lot
22 removed or so. So from my understanding,
23 Mr. Lucey told me that I -- that he had met with
24 Adriane Pollard and that she would be satisfied
25 if I were to write a letter to Saanich indicating

1 that I was aware of the issue and that I did not
2 believe I was in conflict -- we'll get to the
3 letter so maybe that's best to wait to walk
4 through that.

5 Q All right. So tab 15 of Volume 1, I think. So
6 this -- tell the panel what this is?

7 A So this is a letter from myself to Adriane
8 Pollard entitled "Potential Conflict of
9 Interest." It was -- I wrote it in conjunction
10 with Mr. Lucey, and it was vetted by a lawyer,
11 John Waddell, to assure that it had dealt with
12 the issue appropriately.

13 So I will read it all the way through --

14 Q Well, no, no. No.

15 A Or parts of.

16 Q No. We are not going to read the whole letter.

17 A Okay.

18 Q So the letter deals with a number of bullet
19 points; right?

20 A Yes.

21 Q And so if you can simply comment on those in
22 terms of why are they there or how did they come
23 up or why are they relevant?

24 A So the first one is that I had discussed the
25 matter with Mr. Lucey when I initially was

1 involved in the project and that the history of
2 the property and long-standing expectation for it
3 to be developed as a residential subdivision it
4 was I think since 1980 that it had been indicated
5 that it should be rezoned and could be -- have
6 housing put in there. It was surrounded by
7 residential properties.

8 Q This is the property with the cows?

9 A This is. This is the Alberg property that we are
10 talking about, so, yes.

11 Q Right.

12 A And there had been neighbour meetings which
13 Mr. Lucey, myself, and others -- and I had made a
14 verbal declaration to neighbours indicating that
15 was I was providing services to the Albergs and
16 was a neighbour, that I have no financial
17 interest in this project nor any other form of
18 interest that would result in any benefit to me
19 personally. The issue of real estate value
20 having been lost on adjacent properties as a
21 result of the farming practices, likelihood that
22 value would be restored should a subdivision be
23 approved has been raised. It has been suggested
24 the same scenario may apply to my property and
25 would be construed as a financial benefit. While

1 some real estate values have been reduced on
2 properties directly adjacent to the farm, there
3 does not appear to have been any change in
4 property value at our location which is one lot
5 away from the farm.

6 Nearby homes have recently been sold with no
7 apparent change in value, thus there is no
8 apparent financial benefit to me.

9 And then finally:

10 "Based on legal advice received I have
11 elected to write to you indicating that I
12 am aware of this concern and hereby
13 acknowledge the concern and have taken
14 steps to review the matter with you,
15 Ms. Pollard, in part by submitting the
16 letter indicating that we are aware of the
17 concern, have discussed it with you as
18 well as with neighbours."

19 Q All right. And so you have never in preparation
20 for this letter or in undertaking this letter,
21 Adriane Pollard had never -- or anyone at Saanich
22 had ever raised an issue with you or your
23 involvement in the Alberg reports?

24 A No, not directly at all. And I never met with
25 Ms. Pollard about that issue or any other staff

1 member.

2 Q Right. And so over the page, the second page,
3 you close off:

4 "Thank you for your willingness to discuss
5 this matter. Should you have any
6 questions..."

7 Were there ever any discussions after this
8 letter?

9 A Not with me.

10 Q All right. So none that you were aware of
11 anyway?

12 A No.

13 Q All right.

14 A None that I was aware of.

15 Q Now, sir, this was an obliquely I guess the
16 subject of this, the issue around whether your
17 realtor had any role to play in this. And again,
18 I understand that at some point you had
19 discussions with him?

20 A Yes, that's correct. My realtor Gordon Dovey who
21 also lived in the neighbourhood, I had approached
22 him and discussed to see if he thought there
23 would be any impact to the value of our property,
24 the location of where our property was, and his
25 opinion was that there would be no concern.

1 MR. UNDERHILL: Maybe Mr. Hanman can clarify his intent to
2 rely on the truth of that hearsay evidence or
3 not?

4 MR. HANMAN: Not for the fact, no. Just the fact that he
5 undertook the review.

6 A So, yes, I did discuss it with him.

7 MR. HANMAN:

8 Q All right.

9 A So I think part of the issue why this was brought
10 up is because it shows that I had performed due
11 diligence in an issue that could have been a
12 concern, not -- again I'm not sure where the
13 issue was raised, but I tried to deal with it
14 directly and all through the process.

15 Q All right. So --

16 MR. UNDERHILL: Are you moving on to a new --

17 MR. HANMAN: Yes.

18 MR. UNDERHILL: Before my friend leaves this document I need
19 some clarification because it sounds like from
20 the witness's last answer, and perhaps Mr. Hanman
21 can clarify this, is Mr. Lea relying on the
22 legal, due diligence receiving legal advice as a
23 defence here, that he exercised due diligence and
24 sought legal advice on this matter?

25 MR. HANMAN: Is he relying on the fact that he got legal

1 advice on this matter? Well, to tell you
2 counsel, I still don't know if this is the
3 conflict issue. I keep asking the same question.
4 My impression after my last exchange was that
5 it's not. And so I have tendered this evidence,
6 and I've said this already, to show his
7 forthrightness. Not because I thought this was
8 directly the subject of the citation. So if I
9 have again misunderstood, maybe you can help us.

10 **[SUBMISSIONS REGARDING LEGAL ADVICE - OMITTED]**

11 THE CHAIR: So it's suggested that we adjourn for lunch at
12 this point and reconvene at 1:00 o'clock which
13 would give you an hour and 20 minutes to make
14 further inquiries if you need to, read the case,
15 make some phone calls and then return with any
16 further submission on this point before we
17 adjourn to deliberate on Mr. Underhill's
18 objection.

19 MR. HANMAN: Yes. All right.

20 THE CHAIR: Thank you. So then we will adjourn the hearing
21 until 1:00 P.M.

22 **(WITNESS STOOD DOWN)**

23 **(PROCEEDINGS RECESSED AT 11:42 A.M.)**

24 **(PROCEEDINGS RECOMMENCED AT 1:02 P.M.)**

25 THE CHAIR: The hearing now reconvenes.

1 The panel has decided that we should view
2 the video of the meeting first. So the plan is
3 to move over to the other room. We will have to
4 give Lori, the court reporter, some time to get
5 organized there and here. We will view the video
6 and then come back and continue.

7 MR. UNDERHILL: Before we do that, Mr. Chair, I also as I
8 said, provided a copy to my friend. What I did
9 was I cut and pasted the written -- the written
10 sort of statements, obviously which will include
11 what we are about to see, into a stand-alone
12 document. We can probably mark that as an
13 exhibit at the appropriate time. But if that
14 would be helpful rather than having to refer to
15 our statement of points.

16 **(PROCEEDINGS RECESSED AT 1:03 P.M.)**

17 **(PROCEEDINGS RECOMMENCED AT 1:20 P.M.)**

18 MS. FONG: Can you tell us what time frame we are starting
19 at?

20 MR. POLLITT: 37 minutes and 10 seconds.

21 MR. UNDERHILL: So if you -- did the panel bring the -- it
22 might be helpful, bring your copy of the
23 statements with you. Yeah, so if you just look
24 at just before we launch in, if you see, if you
25 go to the first statement which is under the

1 heading -- I just -- paragraph number because I
2 wanted to preserve the footnotes. Each of these
3 excerpts you will see has a footnote at where it
4 starts in the video. So we are going to start --
5 so the first extract if you would is at 37:50,
6 then we'll move to a little bit later and then
7 the last one is actually fairly far along, so.

8 (VIDEO PLAYED)

9 MR. POLLITT: And the next one at 42?

10 MR. UNDERHILL: Yeah, 42:25, thereabouts. Start at 42 if you
11 want.

12 (VIDEO PLAYED)

13 MR. UNDERHILL: Start about 1:24 if you can.

14 MR. POLLITT: 1:24?

15 MR. UNDERHILL: Yeah.

16 (VIDEO PLAYED)

17 MR. UNDERHILL: Does the panel want to back up to the
18 beginning of that question so you see the --
19 maybe see the whole question? I bet it would be
20 helpful.

21 MS. BEEDLE: Can I -- who is the lady standing up there?

22 MR. UNDERHILL: Mr. Lea, do you know who that --

23 A That's Anita Bull.

24 MS. BEEDLE: Okay. Because I didn't know how she related to
25 this.

1 MR. POLLITT: So I think I got the start.

2 (VIDEO PLAYED)

3 MR. UNDERHILL: That's good.

4 MR. HANMAN: So was I the only one who caught some missed
5 words in the first piece?

6 MR. UNDERHILL: I have some missed words in the third piece.
7 There are -- to be fair there are dots.

8 MR. HANMAN: The dots were a question I think that was left
9 out.

10 MR. UNDERHILL: No, there were some words from Mr. -- for
11 example the first set of dots about six lines up
12 from the bottom of that last paragraph, after
13 "but most of them don't take much time to do."
14 Maybe the transcriber couldn't catch it, he said,
15 "No, it's real quick," or words to that effect.

16 THE CHAIR: Yes.

17 MR. UNDERHILL: And then you'll see later down there is
18 another set of dots. "So talk to me afterwards
19 if you want," and then he said, "and I'll gladly
20 come by," is in there.

21 And then at the end of after, "It's just the
22 reality of it now," at the very end of that quote
23 he also added, "but talk to me later if you
24 want." I didn't catch anything, Ted, that --

25 MR. HANMAN: Up in this paragraph here I thought I got

Viewing of video clips

1 somewhere and no dots, "maintain and restore the
2 special areas," and I thought the words were,
3 "they are out there."

4 THE CHAIR: I heard, "those are out there."

5 MR. HANMAN: Those are out there.

6 THE CHAIR: Yeah.

7 MR. UNDERHILL: After special areas?

8 THE CHAIR: Yes.

9 MR. UNDERHILL: Okay. I didn't catch that one.

10 THE CHAIR: And I believe it's in the first sentence of the
11 second paragraph he said, "Saanich staff won't
12 remove it necessarily."

13 MR. UNDERHILL: Yes.

14 THE CHAIR: Right?

15 MR. UNDERHILL: Yes, that's exactly right, yes, I caught that
16 too.

17 MR. HANMAN: I'm sorry, where is that one?

18 THE CHAIR: First line of the second paragraph, "won't remove
19 it," it's "necessarily" rather than "necessary."

20 MR. HANMAN: Oh, I see. Right.

21 MR. UNDERHILL: That's right. Did anyone else catch anything
22 else?

23 MR. HANMAN: So was I correct, and I'm asking here, where the
24 dots are you just said there were some words that
25 went in there?

Viewing of video clips

1 MR. UNDERHILL: Yes.

2 MR. HANMAN: But there was a long question in there from the
3 gentleman in the audience.

4 MR. UNDERHILL: Right.

5 MR. HANMAN: And then -- so that happened and then Ted speaks
6 and the quote goes back "Saanich staff could do
7 that."

8 MR. UNDERHILL: Yes.

9 MR. HANMAN: I couldn't make out what the guy was saying in
10 the question as to what could Saanich staff do.
11 But --

12 MR. STEVENTON: Make a quick visit to the nos and immediately
13 take those out.

14 MR. UNDERHILL: That was the import of the question.

15 MR. HANMAN: I'm sorry, the import was which?

16 MR. UNDERHILL: That Saanich staff could come by and quickly
17 say, "Oh, that should be out."

18 MR. HANMAN: Oh, I see, okay. All right.

19 MS. FONG: Could we go through those together again and just
20 make sure --

21 MR. UNDERHILL: Sure.

22 MS. FONG: -- we have the same --

23 MR. UNDERHILL: Yes.

24 MS. FONG: -- additions?

25 MR. UNDERHILL: So I didn't catch this, the first one I got

1 is in the second paragraph, and we have about
2 four lines up, five lines up, "...and we need to
3 find ways to protect, maintain and restore the
4 special area," and I think followed by "...those
5 are out there." Or words to that effect?

6 THE CHAIR: That's what I heard.

7 MR. UNDERHILL: Then in the third paragraph the first
8 sentence is changing the word "necessary" to
9 "necessarily."

10 MS. FONG: M'mm-hmm.

11 MR. UNDERHILL: And then in the first set of dot, dot, dots,
12 one, two, three, four, five, six lines up after
13 "...take much time to do," if you have that, I
14 didn't catch all the words but one phrase for
15 sure is, "No is real quick." There was actually
16 a couple more words there but --

17 THE CHAIR: I thought I heard him say, "They don't take much
18 time to do, no. No is real quick."

19 MR. UNDERHILL: Yeah, that -- okay. Yeah. "...no, no is real
20 quick."

21 THE CHAIR: M'mm.

22 MR. UNDERHILL: Yeah. That's right. And then in the second
23 set of dots, three lines up just at the beginning
24 there after the word "want," I had, "And I will
25 gladly come by." Before then, the question, Ted,

1 again, which the import of that question just so
2 we have a note of that, was could Saanich staff
3 come by and very quickly say the property is out
4 or something along those lines. That's the
5 nature of the question.

6 And then at the end after, "It's just the
7 reality of it now," I had, "but talk to me later
8 if you want."

9 MS. FONG: And so paragraph 29, there is no video of that?

10 MR. UNDERHILL: That is correct.

11 MS. FONG: That's just the statement?

12 MR. UNDERHILL: That's right.

13 THE CHAIR: Is it appropriate to ask what the source of the
14 statement was?

15 MR. UNDERHILL: It's actually an email exchange arising post
16 meeting if I recall correctly. That email
17 exchange is in the material. I don't have the --
18 oh, maybe it's, yeah, so there is the our
19 Document 1.23.

20 THE CHAIR: Right.

21 MR. UNDERHILL: Now, I don't know if that's actually -- is
22 that in our book of documents? I'll go check
23 that. But I don't understand Mr. Lea to contest
24 these words. But I'll --

25 MR. HANMAN: No.

1 MR. UNDERHILL: Yeah. But I'll -- but we should probably
2 have that extract for you. But again it's from
3 an email of somebody saying these are the words
4 as opposed to a transcript or anything formal.

5 THE CHAIR: Anything else from the panel that we need at this
6 point?

7 MR. STEVENTON: No.

8 THE CHAIR: Okay. We can return to the other room.

9 **(DISCUSSION OFF THE RECORD)**

10 MR. UNDERHILL: So first, Mr. Chair, in terms of where the --
11 actually, you know what, I'll do that first.
12 Let's mark the document, Mr. Chair, Ted Lea
13 statements as the next exhibit, please.

14 MS. FONG: I don't think the court reporter has a copy and
15 we'll need it with the --

16 MR. UNDERHILL: My fault entirely.

17 THE REPORTER: I can go photocopy that.

18 MR. UNDERHILL: And Mr. Chair, would it be -- my suggestion
19 would be we maybe add those words to the exhibit
20 perhaps with everyone's agreement.

21 THE CHAIR: Of course.

22 MR. UNDERHILL: My handwriting is very poor. I am in your
23 hands.

24 THE CHAIR: We could do that.

25 MS. FONG: Yeah. I suggest that we put this together and

1 Lori can make a copy of it and then the two of
2 you if you could agree on the revision and then
3 we are all working off the same copy.

4 MR. UNDERHILL: And then the panel can have one set of
5 common --

6 **EXHIBIT 7: Ted Lea statements**

7 MR. UNDERHILL: So we have now marked, Mr. Chair, just for
8 the record the Ted Lea statements which I just
9 want to make clear are extracted or cut and paste
10 from the College's Statement of Points with the
11 appropriate references. And then the next order
12 of business then is to get on the record that the
13 extract of the comments at the May 25th, 2015,
14 Saanich meeting, which is the last extract in
15 Exhibit 7. It's got a paragraph 29 in front of
16 it. That is taken from the very last -- not the
17 very last I suppose the second to last -- sorry,
18 one moment. From the second page of tab 73, in
19 Volume 3 of Exhibit 6.

20 MS. BEEDLE: Will you repeat that again?

21 MR. UNDERHILL: Sorry?

22 MS. BEEDLE: Would you repeat that again?

23 MR. UNDERHILL: Yes. The quote -- the second quote from the
24 May 25th, 2015 Saanich council meeting, which is
25 found in Exhibit 7 at the very last paragraph,

1 that is taken from an email exchange found at
2 tab 73 of Exhibit 6, Volume 3, and it's on the
3 bottom of the second page as I understand it in
4 an email from Andy Laidlaw who is the chief
5 administrative officer of the District of
6 Saanich.

7 MS. BEEDLE: That was Exhibit 7?

8 MR. UNDERHILL: That is -- sorry. That is -- the email is
9 tab 73 of Exhibit 6 being the eight-volume set.
10 Yeah. Exhibit 7 is now the Ted Lea statements.

11 MS. BEEDLE: Yes, that's what I wanted to know.

12 MR. UNDERHILL: Yes. I'm sorry.

13 MR. HANMAN: So when we say Exhibit 7 is the Ted Lea
14 statements, that's the cut and paste one you
15 pulled out of your points, it's not one that
16 we've talked about amended. Nobody has
17 handwritten things --

18 MR. UNDERHILL: Yes, just for the record we have not yet
19 amended it to reflect the additional words that
20 all of us saw on the video that was just viewed.
21 And so independent counsel's good suggestion is
22 that Mr. Hanman and I agree on the additions to
23 the wording. Somebody with good handwriting,
24 that is not me, would need to add that in and
25 then we will all have copies of the modified

1 Exhibit 7 to use going forward. And we will try
2 to do that at the next convenient break.

3 THE CHAIR: Okay. We are back on the record.

4 Before the break, Mr. Hanman, you were given
5 an opportunity to review Mr. Underhill's case and
6 make additional inquiries. Do you have any
7 further information to provide us?

8 MR. HANMAN: Yes. So I spoke with Mr. Waddell, and he has no
9 recollection of the discussions. He is making
10 inquiries of his office to see if there is any
11 file. Because of what I understand to be the
12 exchanges here which you heard me allude to
13 earlier, Patrick Lucey would be the client. He
14 is the only one who can waive any privilege. And
15 so if there is a file and if there is any
16 documents, then it would have to come via that
17 route if you will. So maybe at the end of the
18 day I will have some further word on that. But
19 again just by way of information, it sounds to me
20 like what happened here was Mr. Lucey spoke by
21 phone with Mr. Waddell regarding what the content
22 of a letter would look like that was trying to be
23 helpful on conflict issues. That resulted in
24 this letter.

25 So the advice such as it is I think only

1 relates to the issue of the letter; right? In
2 other words I'm not trying to split a hair here,
3 I'm just trying to be clear that my impression is
4 there is no discussion about whether Ted Lea's
5 factual circumstances put him in a conflict or
6 not. It was simply advice regarding what a
7 letter might deal with. And the letter is
8 self-explanatory; right? It says, you know, as
9 drafted it says what it says.

10 So I think -- I certainly don't want to
11 leave the impression with the panel that we are
12 trying to hide something here or shy away from
13 something. By the same token I don't want to
14 waste a bunch of time arguing about a legal issue
15 which I don't think is caught by my friend's
16 case. I understand fully that principle. I
17 don't think it's caught by the position I'm
18 taking on this document.

19 So my suggestion is that you leave it with
20 me for the rest of the day. Tomorrow morning I
21 will see what I can find out about a file or any
22 documents or something like that. And, you know,
23 we can maybe revisit this in the morning; right?
24 I don't think this is going to advance our
25 knowledge base or inquiry very far.

1 THE CHAIR: Mr. Underhill, do you have a response to that?

2 MR. UNDERHILL: Yeah, well, where it sounds like it is going
3 is that Mr. Lea will not be taking the position
4 that he exercised due diligence and sought legal
5 advice directly or indirectly, that is through
6 Mr. Lucey or otherwise, about his own whether he
7 was in a conflict of interest or not in working
8 on, in that case, the Alberg property.

9 If that's going to be the position, that is
10 they are not taking that position, then my, you
11 know, I don't -- my motion doesn't need to be
12 brought if I can call it that. In other words,
13 if that defence is not being offered, then there
14 is no need to have the document -- if it's just
15 legal advice on what a letter should look like,
16 then I don't think we need to waste the panel's
17 time arguing about this anymore.

18 But I had understood, and that's why I
19 clarified it, that Mr. Hanman had said, no, we
20 are taking, you know, we are saying that he had
21 legal advice and had exercised due diligence on
22 the conflict of interest issue. And so that
23 doesn't look like it's the case actually. In
24 which case the College is certainly -- if that
25 defence is not being put forward, then there is

1 no need to obtain the legal advice.

2 MS. FONG: Is that correct?

3 MR. HANMAN: I thought I have said several times now that the
4 purpose of this letter was to show his due
5 diligence, not to hold up as a shield, as a legal
6 shield or a factual shield that there was no
7 conflict in fact in law shall we say. Only that
8 there was a process -- it's part of the history;
9 right? It's a fact. He did this. He -- it's
10 disclosed in the letter. And it goes -- that's
11 basically where I am at simply saying he took
12 those steps, factual steps. I have never
13 suggested or if I have, I have not spoken very
14 well, that it would go beyond that.

15 But I think the answer to this is that if
16 there is a file and some paper I'll try to get
17 it. I'm not trying to hide anything. I don't
18 want to leave the impression with the panel that
19 there is some hidden agenda here. And that's why
20 I don't want to get into an argument about
21 whether it's admissible or not or what any of
22 that -- let me just do my diligence here.

23 If I had known about this before, I could
24 have answered it before. So if you give me until
25 tomorrow morning, I will be able to inform you as

1 whether there is a file; right? And whether
2 that's refreshed Mr. Waddell's memory at all.
3 And then we can have at this one more time and if
4 I can satisfy my friend that he is not being
5 prejudiced in some way, maybe it goes away.

6 THE CHAIR: Then we will allow the parties to deal with this
7 tomorrow morning without prejudice as to what's
8 transpired today and move on to other issues this
9 afternoon.

10 MR. HANMAN: All right.

11 THE CHAIR: All right. Please proceed.

12 **TED LEA, the Respondent,**
13 **recalled**

14 **EXAMINATION IN CHIEF BY MR. HANMAN:**

15 Q All right. Mr Chair, panel, I think we had got
16 to the point where Mr. Lea had explained that he
17 had spoken with the realtor Mr. Dovey, and my
18 friend had then sought clarification on that.
19 And a letter was the exhibit immediately prior to
20 that I think, 15, tab 15.

21 So I think we can move forward to, Mr. Lea,
22 on Citation item 1(c), which -- the words of
23 which are:

24 "Have authored reports for multiple
25 landowners that have consistently

1 recommended the exemption of properties
2 from the EDPA bylaw."
3 Do you recall that?
4 A Yes.
5 Q I wonder if you could, if the panel could go to
6 volume, bear with me, Volume 5, please.
7 A Are we going to 18 first?
8 Q Pardon me?
9 A Are we going to 18 first?
10 Q Oh, yeah, we'll touch on -- yeah. You should
11 have Volume 5 and it's tab 105. Possibly it
12 would be useful for the witness to -- and so you
13 can maybe grab this one too it's tab -- sorry,
14 Volume 1, tab 18. Do you have that, Mr. Lea?
15 A I do. I just wanted to make sure --
16 Q All right. So this is a document that the panel
17 is familiar with and is the removal document, if
18 I can call it that.
19 A Yes.
20 Q And this is the document pursuant to which your
21 reports that are under review in Citation 3 are
22 related to?
23 A That's correct.
24 Q All right.
25 A So you look at the second paragraph, again it's a

1 reminder that the March 16th, 2016 committee of
2 the whole Saanich council reaffirmed their
3 commitment to hear individual requests for
4 removal from the EDPA. These were removals or
5 partial removals that were to be allowed. There
6 was to my knowledge no ability to add properties
7 to the EDPA or add areas to the EDPA, although in
8 one circumstance I had recommended to add an ESA
9 area to one property but removing other parts of
10 the property. So that was the one that we will
11 come to where the ESA actually existed.

12 I mainly want to focus on the types of
13 properties to start with. So I think we should
14 go to Volume 5, 105.

15 So there was two kinds of properties that I
16 dealt with through this removal process. I was
17 invited by landowners to write reports on their
18 properties and help them do a submission to
19 Saanich council. So these ones to start with are
20 in the Braefoot area and this is actually one
21 that was mentioned on the video you just watched.
22 So there is 28 properties in the EDPA in that map
23 unit. If you start at 105, I'm not sure where we
24 are stopping, but if you just --

25 Q So you sort of, just -- I'm sorry. I just want

1 to make sure because I know the panel were moving
2 documents around. You had talked -- you
3 initially said there is two types of properties?

4 A Yes. So there is two types of properties: One
5 is the lawn and garden piece which we'll start
6 off with, and then the second type of properties
7 are the poor ecological condition units similar
8 to Alberg property or the Tudor properties that
9 we have talked about already. So I want to walk
10 through some examples of each of these and then
11 continue on to explain what I had done.

12 So if you just leaf through the photos, the
13 first ones are lawn.

14 Q Mr. Lea, you can't just leaf through the photos.

15 A Okay. So --

16 Q You have to -- you have to tell us.

17 A We are in 105, there is two photos there. So
18 these are lawn and garden under Garry oak trees
19 that are mapped within the EDPA as woodland
20 ecosystems. What the standards information I
21 went through yesterday and the description of the
22 woodland ecosystem from the SEI conservation
23 manual, these do not meet the standard of being
24 relatively unmodified. So if you go to 106, it's
25 another property. And there is a few photos

1 there. And then --

2 Q Is 106 the same property or a different property?

3 A These are -- these are all different -- each tab
4 is a different property.

5 Q Can you identify the properties?

6 A Not by number, but they might be in the -- just a
7 sec.

8 MR. UNDERHILL: If it helps the witness, the addresses are
9 listed in the index.

10 A Yes, thank you. So we go back to 105 is
11 400 [sic] Malton, 106 is 40110 [sic] Malton, 107
12 is 4012 Malton. So on 107, the second photo,
13 this is a combination of lawn and garden and then
14 it goes into --

15 MR. HANMAN:

16 Q Mr. Lea, can we please make sure that everyone is
17 looking at the same photo so that they are
18 marking it or making -- taking any attention to
19 it. So the picture I'm looking at has got a lawn
20 on it with a --

21 A That's -- that's the one, yes.

22 Q So 2 at that tab.

23 A And so that second photo has lawn and garden in
24 the foreground. In the background is a dense
25 cover of orchard grass which is an invasive

1 grass. And the next photo after that shows
2 similar vegetation.

3 So to 108, which is 4024 Malton Avenue.
4 This is an area that was only mapped as a buffer
5 to another property next door that was also a
6 lawn and garden area.

7 And 109 is 4032 Malton, which was the area
8 creating the buffer on the previous property.
9 Again it's a lawn and garden under oak trees and
10 no sign of a sensitive ecosystem on the
11 properties.

12 110 is 4033 Braefoot. So backyard is lawn
13 and garden, vegetable gardens. This -- the trees
14 in this one were in the tree covenant but the
15 understory was non-existent for a native
16 ecosystem.

17 I just have to count here. So the fifth
18 photo along in this property, so under 110, would
19 be St. John's Wort in the bottom. Yellow flower.

20 MR. UNDERHILL: Which tab are we at?

21 A Looks like this.

22 MR. UNDERHILL: Which tab?

23 A We're still in the same, 110.

24 MR. UNDERHILL: Oh, we are still in 110?

25 A Yes.

1 So this photo shows a piece of the property
2 on 4033 Braefoot that was in a natural state
3 covenant, native species had been salvaged from
4 other parts of this property when it was
5 developed and placed into this area. It still
6 was completely dominated by invasive species. So
7 St. John's Wort, most of the tall grass in the
8 background is orchard grass which is very
9 invasive and very difficult to deal with. And
10 the lower part, the next photo is the lower part
11 of the same natural state covenant.

12 MR. HANMAN:

13 Q Can I see -- excuse me Mr. Lea and the panel, my
14 apologies, can I see your next photo to make sure
15 I'm looking at the --

16 A Next photo looks like this. And so this is the
17 bottom part of the covenant which is dominated by
18 the native snowberry with a very dense grass
19 cover again of orchard grass.

20 So to tab 111. So this property at
21 4015 Braefoot was a farm similar to the Albergs'.
22 It had had sort of five cattle over time
23 according to the landowners for multiple years.
24 And it had two different areas on it that I
25 described in the report as being the farm

1 portion, which was composed of agronomic and
2 invasive grasses mainly, so it was acting as an
3 agricultural field similar to the Alberg
4 property.

5 And then there was another area, sorry, lost
6 count, sorry. There is a lot of photos taken on
7 this property. I want to make sure I have
8 covered it. I think -- so we are looking at
9 these 15 in, we are looking for this photo. It
10 has flowers on the -- sorry, these aren't
11 numbered.

12 MS. BEEDLE: Got it.

13 MR. UNDERHILL: About 20-some-odd.

14 A About 20 in?

15 MR. UNDERHILL: 20 in. There you go, 22.

16 A Okay. So this is the second part of this
17 property, and it is the typical this was just
18 mowed lawn, gardens and some shed buildings on
19 the property. So all of this property was mapped
20 as a sensitive ecosystem. And again in following
21 the letter that -- the last letter from the
22 Alberg property that the federal and provincial
23 government experts indicated that there was no
24 Environmentally Significant Area due to
25 condition, this whole property fits that. And

1 that was a statement that allowed for removal of
2 the EDPA from that property.

3 So next photos?

4 MR. HANMAN:

5 Q Yes.

6 A Just have a few more photos to go through. I'm
7 not going to go through a whole bunch more. I'm
8 sorry there were so many in that 4015 Braefoot.

9 Q 98 to 99?

10 A So 98, the first photo, this is from 4740 Treetop
11 Heights, north Mount Douglas Park. Looking at
12 the photo -- has everyone got this one? Looking
13 at the photo this is a dominant cover of invasive
14 brome grass species, so rigid brome and barren
15 brome. They -- that species is an annual
16 species, and it germinates in usually late
17 November and December when the fall rains begin.
18 So at any point in time that you walk these
19 properties in the spring you can see how dominant
20 a cover it is on this property. At any point in
21 the spring that you would walk these properties
22 it would be the dominant cover. Again I found
23 very few native species and very -- very few
24 individuals of native species on this property
25 when I attended the property. So again these are

1 very similar to the Tudor properties, so same
2 species combinations of dominating the property
3 all year round.

4 So the next one is 99. And this is
5 4757 Cordova Bay Road. And on this property the
6 brome, alien brome grasses are in the understory
7 underneath what is a sort of moderate cover of
8 Scotch broom, the invasive Scotch broom. So some
9 of these properties in this area had this
10 mixture; others were fairly pure brome grass so
11 again did not meet the SEI definition of being
12 relatively unmodified.

13 I think that demonstrates those ones fairly
14 well. You will see more in the Tudor properties
15 when we go back to those.

16 Q All right. Now, sir, the suggestion seems to be
17 that you have identified these situations where
18 there is these two groups, if you will, of
19 properties?

20 A Yes.

21 Q And were there properties that you came to where
22 there was sensitive ecosystems to be identified?

23 A There was a couple of properties like that.
24 First of all most of the EDPA and areas that I
25 dealt with were areas of properties that have

1 been developed for 50 to 100 years. Most of them
2 had been cleared, and as you have seen for lawn
3 and garden areas or the invasive species took
4 over. The smaller ones were fully developed
5 properties but there was still a tree canopy on
6 it so the Sensitive Ecosystem Inventory caught
7 it.

8 Back to Mr. Hanman's question is I'm very
9 aware that the rural areas of Saanich still have
10 natural ecosystems. They still have
11 Environmentally Significant Areas, sensitive
12 ecosystems. Mostly there it is an Arbutus,
13 Douglas fir woodland rather than the Garry oak
14 woodlands. Most of the Garry oak woodlands are
15 within where the suburbs and urban areas occur.
16 So one of the properties, have you got numbers,
17 please?

18 Q Yes, I'm sorry, at tab 38, which is Volume 2.

19 A So this is another report that I did with Patrick
20 Lucey at Aqua-Tex, and it's quite recent. It was
21 September of 2016. My part of the report is on
22 page 6 and 7. So within the property there was a
23 Garry oak woodland area mapped. It was
24 completely dominated by invasive species, many
25 shrubs, and as well as invasive grasses and

1 things like Daphne, blackberries, lots of orchard
2 grass throughout.

3 On page 7, the bottom part, there was a
4 small stand of trembling aspen at the south end
5 of what was presently 931 Beckwith Avenue. This
6 area was not identified by the original Sensitive
7 Ecosystem Inventory but was clearly a trembling
8 aspen woodland sensitive ecosystem. So we
9 recommended to protect that area and deal with it
10 through the development.

11 So the next page there is a map. And if you
12 look at 4 at the bottom middle there is an area
13 outlined, small shape at the bottom and that's
14 where this aspen stand occurred. So that was an
15 addition that I did to a mapping project.

16 If we go to tab 37, so at 37, and I will
17 show you the report in a second. So the bottom
18 portion or if you turn it so you can read the
19 words straight up so that would be the left
20 portion, everyone's got theirs -- so, yes, put
21 the words so you are reading them directly. So
22 the map on the left -- has everyone got this?
23 The map on the left shows the original SEI
24 boundary plus buffer that covers the right side
25 of the property.

1 The map on the right has four areas defined.
2 Area 1 was the house and driveway and other fully
3 developed structures and things. Area 3 was
4 mostly dominated by invasive species. And Area 4
5 at the top there was an addition to the left of
6 the original. I don't know if that's clear to
7 everybody. But there is an addition towards the
8 left of where the original boundary and buffer
9 were. So covers the buffer and then beyond that.

10 So this was a -- again it was an Arbutus,
11 Douglas fir woodland Environmentally Significant
12 Area.

13 Q And sir, in order to assess that, what steps
14 would you have taken when you were on the site
15 looking at it?

16 A I walked the whole property and was -- I took
17 notes. And if you go to the report on tab 36 it
18 shows the details of the four areas. So I walked
19 the properties, had field notes of each of the
20 areas. And so the actual Area 4 was what I would
21 call obviously a sensitive ecosystem. So again
22 did not need a lot of detail. But it was clearly
23 native species dominated with salal and trailing
24 blackberry, snowberry, honeysuckle and Pacific
25 sanicle. So it clearly met -- there is beside

1 the description that I showed you for Garry oak
2 woodlands there is an Arbutus, Douglas fir
3 woodland description in the conservation manual,
4 and this fit that. Does that answer --

5 Q Yes. All right.

6 A So again I was following the same standards,
7 documents of what I have done for all of these
8 properties.

9 Again, as I have been trying to point out
10 through this and it's why I have gone to fairly
11 shorter reports that cover the what I call an
12 identification of ecosystems, we have got areas
13 out this way that are clearly not sensitive
14 ecosystems, so the lawn and garden, the areas
15 that are completely dominated by invasive
16 species, and then there is areas on the far side
17 of that that are clearly woodland or some other
18 sensitive ecosystem. And when you are on those
19 edges it does not take a lot of time to identify
20 that it is one or the other. Lawn and garden
21 very quick. The invasive grasses, you have to
22 walk the whole property to make sure that there
23 are not areas that are still sensitive
24 ecosystems.

25 When you get closer to the middle, then you

1 have to look at the criteria for what separates
2 the various ecological condition classes. So in
3 the Ecosystems At Risk manual and in the SEI
4 assessment guidelines from Saanich, there are
5 categories that give percent covers for invasive
6 species for the condition classes. So when you
7 are there, and I didn't find properties like
8 that, I'm sure there is some out there -- when
9 you are there you have to do more detailed
10 sampling. You have to determine the percent
11 covers, and you need to do if it's a fairly large
12 property, you will as Mr. Page said yesterday,
13 you do have to do samples all around the property
14 to determine what category, what condition class
15 these will be -- will be in. And then you can
16 determine whether it fits sensitive ecosystem,
17 ecosystem at risk. But the ones on the outsides
18 don't need a lot of time. They are clear to
19 someone that has been doing this kind of thing
20 for many years.

21 Q All right, sir. Just a couple more points then
22 on this. So in terms of dealing with these
23 multiple reports, have you in dealing with these
24 on-site inspections and subsequently writing
25 reports, leaving aside Aqua-Tex and Pat Lucey for

1 a moment, leaving him aside, have you charged
2 these owners fees?

3 A I have not.

4 Q All right.

5 A The reason for that is I believe that Saanich has
6 the ability to go out on these properties, look
7 at the lawn and gardens and say this is not a
8 sensitive ecosystem. And they can make
9 recommendations to council to remove them, free
10 of charge, to the landowners. So I didn't feel
11 it was proper to charge people for this.

12 Q All right. Have you -- are you aware, directly
13 or indirectly, sir, of any other financial
14 advantage you might have gained or taken or your
15 family might have gotten by being engaged or
16 writing reports or dealing with any matters with
17 Patrick Lucey or otherwise?

18 A Absolutely not.

19 Q Other than the Alberg property and your letter to
20 Adriane Pollard that was written, has any other
21 statement been made to you at any point by anyone
22 that there is a conflict issue, other than the
23 citation of course?

24 A Not that I'm aware of.

25 Q All right. Mr. Chair, I'm just going to launch

1 into Citation 2 here, and I wonder if I could
2 have just a short break to get myself organized
3 with the witness in order to deal with the
4 screening we have seen and how to deal with the
5 evidentiary matters?

6 THE CHAIR: Certainly. How much time do you think you would
7 need?

8 MR. HANMAN: Ten minutes.

9 MR. UNDERHILL: Mr. Chair, I don't know if my friend -- I
10 appreciate my friend has got to work with his
11 witness. We also need an opportunity if we are
12 going to move into Citation 2 to properly mark
13 Exhibit 7.

14 MR. HANMAN: Right.

15 MR. UNDERHILL: Maybe Ms. Fong and I can deal with that and
16 then bring it to you --

17 MR. HANMAN: Sure.

18 MR. UNDERHILL: -- because I appreciate you have got a busier
19 calendar.

20 THE CHAIR: Shall we make it a 15-minute break then to allow
21 time for that?

22 MR. UNDERHILL: I think that's wise. Yeah. Thank you.

23 THE CHAIR: All right. The hearing is adjourned. We will
24 reconvene at 2:30.

25 **(WITNESS STOOD DOWN)**

1 (PROCEEDINGS RECESSED AT 2:15 P.M.)

2 (PROCEEDINGS RECOMMENCED AT 2:42 P.M.)

3 TED LEA, the Respondent,
4 recalled

5 THE CHAIR: The hearing now reconvenes.

6 MR. UNDERHILL: Mr. Chair, before Mr. Hanman continues with
7 the witness I just thought I would note that
8 Exhibit 7 has now been modified with the language
9 that I think the panel and the parties agreed on.
10 And both Mr. Hanman and I have had opportunity to
11 view this and have agreed that it was accurate.

12 The only thing I wanted to add for the
13 record at this point because it was too awkward
14 to put in, but I think everybody acknowledges
15 that there was a question posed in the middle of
16 the third paragraph after -- I believe it's after
17 "...take much time to do," and someone correct me
18 if I am in the wrong place. But there was a
19 question to the effect of -- sorry, no, it is
20 after. I did indeed misspeak. The question is
21 after the sentence, "So talk to me afterwards if
22 you want," and we have the addition, "and I will
23 gladly come by."

24 And I want to just note that in fact, well,
25 not noted in the document there was a question

1 before Mr. Lea carried on with the next sentence,
2 beginning with, "Saanich staff could do that."
3 And that question I think we all agreed was to
4 the effect of Saanich -- he was asked whether
5 Saanich staff could come out and just do a quick
6 assessment yay or nay or words to that effect.
7 And then Mr. Lea's answer to that question
8 follows. So I can get that on the record.

9 THE CHAIR: Thank you.

10 Mr. Hanman, please continue.

11 **EXAMINATION IN CHIEF BY MR. HANMAN (Continued):**

12 Q My hearing not being the best I take my friend
13 was being correct on the question that was posed
14 but I would like to just simply have this put to
15 Mr. Lea and ask him if he concurs and agrees with
16 the language that's in Exhibit 7. So Mr. Lea,
17 you can see that this is the document you are
18 familiar with from previous exchanges?

19 A Yes.

20 Q And you can see that there is some written-in
21 margin notes that are legible I think. And I
22 take it the panel got copies of this same
23 document?

24 THE CHAIR: We did.

25 MR. HANMAN:

1 Q Yeah, so Mr. Lea, my question would be do you
2 acknowledge at the initial meeting which I
3 believe is identified a couple of different
4 times, but I think it's actually April 28th; is
5 that not the right date?

6 A Yes, it is.

7 Q Yeah? April 28th.

8 A It has it at the top.

9 Q And so the language that's extracted there, do
10 you agree from the language having been reviewed
11 and having watched the screening and so on that
12 those words are an accurate transcription of --

13 A Yes, I do.

14 Q -- what was said?

15 A Yes, I do.

16 Q All right. And although it's not documented in a
17 format that is visible, I don't know if it's on a
18 transcript anywhere or not, you acknowledge the
19 short extract of language that is from the
20 Saanich council meeting, May 25th, 2015?

21 A I do, yes.

22 Q All right. And do you have any knowledge as to
23 where those -- I know we have seen it in an
24 email -- do you have any idea where that, what
25 that choice of words would have come from? I

1 mean, I didn't know whether there was actually
2 someone had a recording or otherwise?

3 A My assumption is it was recorded by Saanich staff
4 and it came to me in an email from the acting
5 interim CAO, Mr. Andy Laidlaw.

6 Q All right.

7 A In an email.

8 MR. UNDERHILL: This is to assist counsel, that's tab 73 in
9 Volume 3.

10 MR. HANMAN:

11 Q So, sir, with respect to the initial meeting, the
12 April 28th meeting, can you assist the panel as
13 to the -- okay, so this is April 2015?

14 A Yes, it is.

15 Q And so by this point you've dealt with the
16 Rainbow property sometime prior to Christmas or
17 around Christmas starting in October I think?

18 A In October, yes.

19 Q All right. And you have already taken the panel
20 through that evidence. And so the spring
21 meeting, the spring meeting of the association I
22 guess you could call it, SCRES, is that what this
23 is?

24 A Yes, it is.

25 Q And I have seen it referred to as the citadel

1 meeting I think it is? Where does that word come
2 from?

3 A It was at the Salvation Army citadel --

4 Q Oh, okay.

5 A -- up on the highway by Mackenzie.

6 Q And who organized that meeting to your knowledge?

7 A The meeting was organized by SCRES. I assume
8 Anita Bull was the main organizer of that
9 meeting. I was invited to be -- to present to
10 talk about issues around my expertise of mapping
11 and sensitive ecosystem standards, ecosystems at
12 risk standards, and my dealings with the
13 application of the bylaw on at that time in the
14 Alberg property, the Rainbow -- two Rainbow
15 properties.

16 I had also dealt with a property on Gordon
17 Head Road at that point that was a coastal bluff
18 sensitive ecosystem. And I had been to other
19 properties at the request of the landowners to
20 attend and see what my opinion was of whether
21 their properties would be sensitive ecosystems.
22 Again most of these were lawn and garden.

23 I had viewed other properties. I state in
24 this document that I viewed hundreds. I had
25 actually walked some of the Saanich parks and to

1 what was mapped adjacent to parks and that sort
2 of thing just to see what the mapping had
3 captured. I --

4 Q How many reports if you can say? We had Alberg
5 by this point. You have already referenced the
6 Rainbow properties.

7 A Yes, so there was those three. I had done a
8 report for Gordon Head Road, but it had not been
9 submitted at this point.

10 Q All right.

11 A So in the dealings with the projects that I had
12 dealt with with Alberg and Rainbow and some of
13 the information I provided, like the meeting at
14 the Environment and Natural Areas Committee
15 meeting that I talked about earlier this morning,
16 where issues were brought up about mapping and
17 what staff's expectations of mapping were, those
18 were part of my background of why I made these
19 statements to these people.

20 I was -- there was about 200 people in the
21 audience. I assume mostly with properties in the
22 EDPA. I believe that I was there to provide my
23 scientific expertise and understanding of both
24 what the mapping, the sensitive ecosystem mapping
25 and the EDPA mapping was covering. And some of

1 the experiences that I had had with Saanich back
2 and forth about what -- what was being accepted
3 as sensitive ecosystems or being kept for other
4 reasons.

5 So all that background I have gone over, all
6 the methodologies, this was some of the
7 information I was trying to portray at that
8 meeting. Some in response to questions, some in
9 presentations.

10 Q Can you comment on the, let's see here, third
11 main paragraph I guess of the extracted language
12 where it says you can go on most properties that
13 are lawn and garden and take ten seconds, et
14 cetera. Do you see that?

15 A Yes.

16 Q Can you assist the panel with what you are
17 referring to there?

18 A So the ten second comment, and I sort of brought
19 it up when I was talking about the two edges of
20 ecosystem classification areas that I had been
21 dealing with is that the areas that are lawn and
22 garden or completely covered in invasive species
23 often took a very short time to be able to say
24 this does not meet the standard of a sensitive
25 ecosystem. Or if it clearly meets the standard

1 of a sensitive ecosystem, it's a very quick
2 assessment. And getting to maybe is also a quick
3 assessment but to figure out what maybe
4 becomes -- takes more detailed sampling and
5 possible delineation of different units on a map
6 area.

7 The outsides don't need a lot of time. The
8 insides, a quick response to say, yes, I need to
9 do more work on this property. That's basically
10 what I was trying to get across.

11 Should I walk through from the top to
12 bottom?

13 Q No.

14 A Just to get a sense --

15 Q No, I don't think --

16 A Okay.

17 Q I don't think we want to go through the whole
18 exchange.

19 Now, sir, the -- buried in here in a couple
20 of spots is you identify a number of questions.
21 So right at the beginning it says, "So I said
22 mapping errors." Do you see that?

23 A Yes.

24 Q Right. "If the original mapper had checked
25 these, they would have removed these mapped

1 areas." Do you see that?

2 A Yes, I do.

3 Q And that is your, I'm asking, is that your
4 classification of in or out that you are just
5 identifying? The easy one?

6 A Yes. And it also, it goes back to I think I
7 showed you what Jan Kirkby had said about what
8 she thought about lawn and garden areas that,
9 that if the original mapper had gone on
10 properties, they would have removed lawn and
11 garden areas from the inventory that was a clear
12 unit that was not lawn and garden. So I think of
13 the Rainbow properties or those properties I
14 showed you on Malton and Braefoot, those are not
15 sensitive ecosystems. And since mappers usually
16 don't get to go on a lot of private land because
17 it is a lot of work to get landowners to say yes.
18 So usually those aren't checked. But these are
19 clearly mapping areas -- errors, according to the
20 federal expert, and clearly do not meet the
21 relatively unmodified criteria of the sensitive
22 ecosystem mapping.

23 Q All right. If you go down to the bottom of that
24 first main paragraph, you see where you use the
25 word "conclusions"?

1 A Yes.

2 Q "There is no scientific justification." Do you
3 see that?

4 A Yes.

5 Q In all of your dealings with Saanich staff or
6 anyone for that matter, had you been provided
7 with any responsive material that argued the
8 scientific issues that you felt were in play?

9 A I did not believe that I ever received scientific
10 justification for whether there was a sensitive
11 ecosystem or not on a property. It was -- it
12 seemed it was always deflected to other issues
13 such as restoration potential, tree canopy
14 corridors, rather than answering whether there
15 actually was a reason for -- scientific reason
16 for indicating that a sensitive ecosystem
17 occurred on a property. We never received that
18 in working with Patrick Lucey or working on the
19 Rainbow properties and certainly many others
20 since.

21 Q All right. And sort of partway down in that
22 third main paragraph, you see the words:

23 "They are not following their own
24 standards that they provide to ecologists
25 and homeowners."

1 What standards are you referring to?

2 A So I probably should have said guidelines, but
3 it's the guidelines that lead to the standards.
4 So it was the guidelines, the assessment,
5 sensitive ecosystem assessment guideline document
6 that I ran through yesterday that leads to --
7 points to the standards of the Ecosystems At Risk
8 manual and the Sensitive Ecosystem Conservation
9 manual and other -- the methods manual. Those
10 are the standards that I was referring to. So it
11 would be all three of those.

12 Q All right. So then and now, what is your
13 position with respect to the accuracy or
14 inaccuracy of those statements?

15 A So I believed these statements then, and I still
16 believe those statements that this was the way
17 the implementation of the Sensitive Ecosystem
18 Inventory was being dealt with by staff.

19 Q All right. And at this point either in this
20 meeting or in this exchange did you at any time
21 name Saanich staff by name, by person?

22 A I don't believe so. Certainly not through
23 this -- these passages. I'm aware that -- and
24 letters were shown from Sharon Hvozdzanski, the
25 director of planning, this morning that she was

1 also part of the results -- she was the one that
2 sent the letter to Roger Tinney with the map on
3 it with what the original sensitive ecosystem was
4 on the Alberg property and then what they were
5 recommending for. So it wasn't just Adriane
6 Pollard, it was other staff were involved in
7 this.

8 Q All right. So there wasn't just one person that
9 you were -- had in mind or you weren't directing
10 this; is that what you are saying?

11 A Yes. But I mean most of the contact had been
12 with Adriane Pollard, there is no doubt about
13 that.

14 Q Right.

15 A But it was other staff members as well.

16 Q Now, you described in great detail in your
17 evidence the process you had gone through to come
18 to your assessment, if I can call it that, of the
19 provincial information, the guideline document,
20 the bylaw?

21 A Yes.

22 Q Is there anything that you did not canvass that
23 you can think of today that would have more
24 informed your judgment? Is there anything, any
25 other information that's come to your attention

1 today that has expanded your knowledge or
2 understanding of the bylaw or the guidelines?

3 A Nothing major I can think of, just the
4 implementation piece I have seen more properties
5 now compared to this point in time. So that has
6 broadened the perspective of what is actually in
7 the EDPA because -- because of seeing more. Is
8 that what you are --

9 Q Sorry, yes.

10 A Is that what you are implying?

11 Q So sir, in the citation, the language of the
12 citation is to the effect that you acted out of
13 malice or negligence. What do you say to that?

14 A I definitely meant no malice. I had no malicious
15 comments in this statement towards Ms. Pollard or
16 other staff. Negligence, I think I was very
17 clear about the truth that I was providing, which
18 I still believe to be true. I was dealing with,
19 as I said, 200 landowners. I believed that my
20 job, my role as an R.P. Bio and to provide these
21 people with information was to provide them with
22 honest, forthright information and that's what I
23 believe I was doing.

24 Q All right. Let's spend a few minutes on 2(b)
25 which is the second extract. Citation 2(b) I

1 mean.

2 A Yes.

3 Q And so you agree it was a Saanich meeting. What
4 kind of a council meeting was it?

5 A I cannot recall exactly. But Ms. Bull was making
6 a delegation presentation to Saanich council and
7 I did -- and she did it as a member of SCRES, or
8 a leader of SCRES. I also made short comments
9 about the standards, and I'm not exactly sure
10 what I said but I believe I talked about the
11 implementation of the bylaw.

12 Q All right. And this is, I take it, an open mic,
13 is it?

14 A Yes, it's an open mic at the start of certain
15 council meetings are allowed and I was asked to
16 attend by Ms. Bull.

17 Q All right. And so again the context in terms of
18 the comment, what had preceded your, what I
19 understand is your second attendance at the
20 microphone if you will?

21 A There was I think an exchange of council with
22 Ms. Bull talking about open houses and
23 possibility of town halls. And I think the talk
24 was having open houses that landowners would have
25 access, direct access to Ms. Bull -- sorry, to

1 Ms. Pollard.

2 Q Do you recall her being named or was it just
3 Saanich staff?

4 A Pretty sure it would be just Saanich staff
5 because it would be an open house with multiple
6 individuals providing information to landowners
7 and others.

8 Q You are saying this was being proposed or at
9 least --

10 A It was being proposed.

11 Q -- referenced?

12 A It was being proposed at that time, exactly.

13 Q Right. Okay. And you then took the opportunity
14 to attend at the microphone a second time, is
15 that what I understand?

16 A I did, yes.

17 Q And what prompted that?

18 A I was concerned about knowing that there was
19 upset landowners with how they believe they had
20 been treated by an implementation of the EDPA.
21 And I was concerned that she, Ms. Pollard not be
22 exposed to multiple landowners at once.

23 So it was concern for Ms. Pollard, certainly
24 not anything where I was attempting to indicate
25 that people will abuse her there or should abuse

1 her there. There was no intent of that at all.
2 It was a protective comment.

3 Q All right. And I think my friend has already --
4 sorry, go on?

5 THE CHAIR: Pause for a moment. I just want to finish my
6 notes on this. Just please pause for a moment
7 while I finish my notes.

8 MR. HANMAN: Yes, certainly. That's fine.

9 THE CHAIR: Okay. Thank you.

10 MR. HANMAN: Sorry about that.

11 A So I had to leave after I made this statement, I
12 had to go to an event. When I got back home, I
13 had talked to Ms. Bull about the meeting and how
14 things had gone that evening, and it was
15 indicated to me by her that Councillor Derman had
16 made a comment about -- a comment that was made
17 about abusing staff. And I probably could not
18 recall the words I used at that time. But I was
19 concerned that I had said something that was
20 either poorly chosen or the such.

21 So I sent an email the next morning to
22 Councillor Derman.

23 MR. HANMAN:

24 Q All right. So if we could just stop there. So

25 --

- 1 A Sure.
- 2 Q -- I think this is for reference the panel might
3 want to go to, it's Volume 3, tab 73, I think is
4 where we end up. So at this point, sir, I mean,
5 you have indicated how you went up to the
6 microphone and spoke. And you have adopted the
7 language. Did you go up with any prepared notes
8 or anything like that?
- 9 A No. No, it was off the cuff because I saw an
10 issue of concern.
- 11 Q All right. And the next day did you have from
12 any source any sort of a transcript or repetition
13 of what was attributed to you like we have here
14 today?
- 15 A Not -- not until after the comments I made to
16 Councillor Derman.
- 17 Q All right. So tell the panel about that. What
18 are we looking at at tab 73?
- 19 A So halfway down it says, "my email this morning,"
20 which is part of an apology to Ms. Pollard. So:
21 "Councillor Derman, I would like to
22 clarify the comment I made regarding staff
23 at the council meeting Monday night before
24 I had to rush off. I am concerned about
25 exposing an individual staff member to a

1 large number of private landowners who are
2 quite upset about the EDPA bylaw and the
3 impacts on their properties. All I was
4 trying to say to council and to senior
5 staff at the council meeting is that you
6 may wish to consider how you might make a
7 safe environment at an open house for
8 staff. I was certainly not promoting or
9 suggesting any abuse to any member of
10 staff and never would."

11 And I finished by saying:

12 "I think we all need to work together in a
13 respectful way to accomplish goals to make
14 a successful bylaw that protects
15 high-value environmental features as well
16 as protecting individual property rights."

17 Q So within this package, I'm not reading the email
18 chain very well probably, but this one that
19 starts "my email this morning." Do you see that,
20 toward the bottom of the page?

21 A Yes, what I just read?

22 Q That you just went through?

23 A Yes.

24 Q Is that to your recollection your first comment?
25 Is there anything that preceded that other than

1 your discussion with Anita Bull?

2 A No. This is what I sent to Councillor Derman in
3 the morning. And partway through the day I
4 received an email from Andy Laidlaw, the chief
5 administrative officer. And that's on the second
6 page.

7 Q All right. And so where does that -- what
8 constitutes that email?

9 A So he put the wording that is in Exhibit 7,
10 second page, at the bottom of his email he said
11 he would decline to offer to meet with me, this
12 is in the second paragraph, until I provide an
13 apology to Ms. Pollard and himself. So that was
14 what I responded to when I wrote an apology
15 letter to Ms. Pollard and Andy Laidlaw.

16 Q All right. And -- all right. So his email then
17 to you starts off with the word "Ted"?

18 A Yes.

19 Q And goes to the bottom of the page?

20 A Yes.

21 Q And then what about the language, where do I go
22 next in terms of 1, 2, 3, 4 in terms of the
23 exchange here? Do I go to the first exchange
24 where it says, "Adriane, Andy, I had no intent"?

25 A Yes, that was the next email. So I had no intent

1 of saying it in those terms. I apologize fully
2 to Adriane. My intent at the time was to
3 indicate that I did not think she should be
4 exposed to upset landowners in an open house
5 situation.

6 As I stated in my -- this morning in my
7 email to Vic Derman and I attached that email
8 that I had sent to Vic Derman.

9 Q That's the one below?

10 A Yes.

11 Q All right.

12 A

13 "When I went to the microphone I had no
14 intent to say anything disparaging about
15 Ms. Pollard. I was mostly concerned with
16 staff and council exposing her. Please
17 accept my full apology."

18 Q Right. And so if you go to the very tail end of
19 this document, the email exchange?

20 A Yes.

21 Q There's the one that starts "Andy, thank you for
22 your role," et cetera?

23 A Yes.

24 Q Where does that fit into this?

25 A I think that was sent the morning of the -- yeah,

1 it was the morning after the meeting just asking
2 if we could meet, Anita Bull and I could meet
3 with him about some of the issues with the EDPA
4 and sensitive ecosystems and other issues.

5 Q So this is after the apology email or
6 communication?

7 A No, I think it was before. So if the date is
8 right at the top of the third page it's
9 5/26/2015, that would have been the next day.
10 The meeting was the 25th. This -- yes, so the
11 meeting was the 25th. The email from myself to
12 Andy Laidlaw was the 26th. I don't actually have
13 the email with Councillor Derman but it indicates
14 that it was on the 27th, so that would have been
15 two days after the meeting. So that morning --
16 the morning -- so the Wednesday morning I sent
17 the email to Councillor Derman and then in the
18 afternoon I sent the apology letter.

19 Q Having seen Mr. Laidlaw's note?

20 A Yes.

21 Q All right. Were there any other communications,
22 or -- that you had or put forward in terms of a
23 written document or anything of those natures?

24 A In terms --

25 Q A written document or anything of that nature

1 other than the email I mean?

2 A No. But I did have a subsequent meeting with
3 Mr. Laidlaw.

4 Q Right.

5 A So it was a meeting with Mr. Laidlaw; Sharon
6 Hvozdanski, the director of planning; and Anita
7 Bull. And the first issue that came up was this
8 issue. I again apologized for the wording I
9 used. I had no intent of providing wording that
10 would be considered trying to -- anything that
11 was disparaging. Try not -- indicated that that
12 was not my intent at all. And that I actually
13 brought up an example is I used to supervise a
14 group of 14 people when I was in provincial
15 government. And I stated to him that if it was
16 one of my staff that I was concerned about that I
17 would not want to put that member into a
18 situation where they could be exposed to angry
19 people. So it would be a controlled situation.
20 That's -- again I indicate that I was concerned
21 for Ms. Pollard. There certainly was no
22 malicious intent at all.

23 Q All right. And had there been any occasions
24 where you had had any conflict issues that you
25 were aware of with any of the Saanich staff,

- 1 conflict in the sense of raised voices or
2 otherwise that would have preceded this incident?
- 3 A I don't remember anything like that. I don't
4 think there was any -- any meetings that I had
5 with Saanich staff certainly with Ms. Pollard it
6 was usually with Patrick Lucey or Patrick Lucey
7 and Roger Tinney for the Alberg property. I was
8 not the lead so I rarely said much. I was quiet
9 in the background, asked the odd question. But
10 and also there was meetings with her that had
11 other Saanich staff involved as well. But it was
12 always very respectful.
- 13 Q All right. Again in terms of the language other
14 than the words "pissed off" possibly, is there
15 anything in there that today you feel is
16 inaccurate or malicious or --
- 17 A Certainly not malicious at all. I'm not sure
18 what you are meaning by "inaccurate." The words
19 were probably what I said. But --
- 20 Q Inaccurate in the sense that you -- that you were
21 not concerned about people interacting with
22 Saanich staff? Was it a genuinely held belief?
- 23 A That I was concerned for her?
- 24 Q Yes?
- 25 A Yes. Oh, definitely. Yeah. There was

1 definitely no malice at all.

2 Q After this exchange or after this meeting did you
3 have occasion to continue to meet with Saanich
4 staff?

5 A As I said, we met with Mr. Laidlaw I think maybe
6 a couple times after that. But nothing --
7 nothing comes to mind.

8 Q Was there anything ever raised about this --
9 until the citation was there anything ever raised
10 about this once the email exchange went back and
11 forth? With you personally I mean? By anyone?

12 A Was there -- sorry?

13 Q Any issue raised about it, was there any
14 questions raised about it ever again in terms of
15 concern or outrage or --

16 A Not after that initial meeting with Mr. Laidlaw.
17 It was never brought up again.

18 Q All right. So Mr. Chair and to the panel. So I
19 understand that we under the amended citation we
20 are not dealing with 3(a)?

21 THE CHAIR: That's correct.

22 MR. HANMAN: Right. So what I propose to do, then, is to
23 proceed into 3(b) which of course is directly
24 impacted by the Page evidence, by Mr. Page's
25 report. And take the witness through his

1 response or position with respect to that. And

2 --

3 A Mr. Chair, may we have a ten-minute break? Were
4 you planning a break? And then I think there is
5 enough time to get through this item.

6 THE CHAIR: I guess if you feel you need a break at this
7 point, we can do that.

8 MR. HANMAN: You are running out of gas, Mr. Lea?

9 A Yeah.

10 THE CHAIR: All right. The hearing is adjourned. We will
11 reconvene. It's now 3:25. We will reconvene at
12 3:35.

13 MR. UNDERHILL: Before the panel leaves, Mr. Hanman and I had
14 a discussion about timing. It sounds now like
15 Mr. Hanman is more confident that he will get
16 through Mr. Lea's direct evidence by the end of
17 today. You know, I'm in your hands. If you
18 would like me to get started with the cross, I
19 can get started. That's not a problem. Or, you
20 know, if it's a long day and Mr. Lea feels like
21 he wants to come at it fresh in the morning, I'm
22 also prepared to do that. But I will leave it in
23 your hands.

24 THE CHAIR: We will decide that once we see how late we go
25 with the direct.

1 MR. UNDERHILL: Fair enough. Thank you.

2 THE CHAIR: Thank you for that.

3 MR. HANMAN: Yes, and counsel is correct. We managed to
4 download and remove a lot of the questions and
5 material in that break that you gave us. So we
6 have tried to dial it up here a little bit.

7 (WITNESS STOOD DOWN)

8 (PROCEEDINGS RECESSED AT 3:25 P.M.)

9 (PROCEEDINGS RECOMMENCED AT 3:46 P.M.)

10 TED LEA, the Respondent,
11 recalled

12 THE CHAIR: Right. The hearing has reconvened.

13 MR. HANMAN: Thank you, Mr. Chair. Thank you for the break
14 for the witness.

15 EXAMINATION IN CHIEF BY MR. HANMAN (Continued):

16 Q So Mr. Lea, I'm going to take you to
17 Citation 3(b). And without reading the entry
18 language, it says:

19 "By virtue of the fact that you, (b)
20 failed to undertake proper due diligence
21 and groundwork with respect to the
22 preparation of reports on certain
23 properties."

24 Do you understand that?

25 A Yes.

- 1 Q So, Chair and panel members, probably Volumes 6
2 and 7 are the most useful two. Sir, if you could
3 go to tab 124, volume 6. Do you have that?
- 4 A Yes, I do.
- 5 Q Got to keep your voice up.
- 6 A Yes.
- 7 Q So before you talk about the map, can you
8 acquaint the panel with the nature of these
9 properties that we are dealing with here in
10 general terms? I mean, they --
- 11 A And the process I went through to --
- 12 Q Well, we are going to come to that; right?
13 Obviously we are going to come through that. All
14 I'm asking for is we have got one, two, three
15 properties -- sorry, one, two properties at
16 cedar -- sorry, at Seaview, and we have six I
17 think it is, one, two, three, four, five, six,
18 yeah, at Tudor.
- 19 A Correct.
- 20 Q So can you describe the two sets of properties,
21 what relationship they have to each other in
22 general terms?
- 23 A In terms of the ecological conditions on the
24 properties?
- 25 Q No, no, just where they are situated?

- 1 A So these properties are all situated on Ten Mile
2 Point in Saanich. They are raised above the
3 ocean. The south side of Seaview is on the
4 ocean; the north side goes into these properties.
- 5 Q All right. And are they generally contiguous or
6 are they touching each other or are they nearby
7 to each other?
- 8 A I'm not sure what you are asking there?
- 9 Q Well, I'm just talking location, they are in Ten
10 Mile Point?
- 11 A Yes, yes. They're -- yeah, most of them are side
12 by side. There is a path in between some of
13 them, and then there is one I think that was
14 separated from the rest. So they are mostly
15 lined up one after the other and then north to
16 south on each other.
- 17 Q All right. North to south. All right. So at
18 tab 124 that I just asked you to go to, what are
19 we looking at? What do you have there?
- 20 A So this is the mapped terrestrial herbaceous
21 sensitive ecosystem map on Saanich GIS, including
22 buffer, that was originally mapped by the
23 Sensitive Ecosystem Inventory for Vancouver
24 Island. It was subsequently mapped or maintained
25 in the coastal Douglas fir terrestrial ecosystem

1 mapping project that was done by Madrone
2 Consultants. So that exists in that mapping
3 which I had looked at throughout Saanich when I
4 was doing assessments.

5 Q All right. And there is a series of maps here.
6 What do they display?

7 A So the other two maps are just sort of an east
8 and west, more detail of the properties where
9 this SEI polygon occurs. Just shows a little
10 more detail from above. That's all they are.

11 Q And how did it come about that you were assessing
12 these properties?

13 A I was requested by the landowners in the area to
14 attend these properties and assess whether a
15 sensitive ecosystem ESA still remained on the
16 properties. So multiple landowners had asked me.

17 Q All right. And after they had requested for your
18 assistance, what steps did you undertake?

19 A So following my standard practice I got
20 information such as these maps from above. I
21 looked to see what characteristics of the mapping
22 and possible other reasons for the EDPA on
23 properties nearby. As you can see there is a
24 round circle at 2770 Seaview on the second map --
25 first map, sorry. It's also on the third map.

1 So I looked that up and it was a twisted oak moss
2 that occurred on one tree on that property and
3 then there was a buffer around that tree to
4 protect it and that would also be in the EDPA.

5 I had attended the property at 2770 but had
6 not -- I did an assessment but I had not
7 submitted it with this group of properties. So
8 it -- I did mention that moss species in that
9 report.

10 THE CHAIR: Excuse me for a moment.

11 MS. BEEDLE: I need you to go back. You went to something on
12 a map, and I completely wasn't clear. Sorry.

13 MR. HANMAN: No, not at all. No, absolutely. Please orient
14 yourself.

15 A So the third map.

16 MS. BEEDLE: Yeah, because you were on two maps there and I
17 obviously wasn't on the right one.

18 A There's --

19 MS. BEEDLE: Third map.

20 A Third map, there is a circle in the mid left of
21 the property that is 2770. Do you see that?

22 MS. BEEDLE: Okay.

23 A The lower street? Okay. So that is the twisted
24 oak moss location.

25 MS. BEEDLE: Okay. Thank you.

1 A And that property I had not -- had not been
2 submitted by the landowner for removal.

3 So this was part of the process that council
4 had requested for allowing properties to be
5 removed from the EDPA if they did not meet the
6 bylaw requirements.

7 MR. HANMAN:

8 Q This wasn't a development permit application?

9 A This was not a development permit application,
10 so. Should I go through the procedure for the
11 whole project and what I was doing?

12 Q Yes, yeah, we need you to review what you were
13 doing.

14 A Okay. So again it was first of all looking at
15 background information. I attended the
16 properties. I collected the field notes that
17 Mr. Page ran you through yesterday. I took
18 photographs on the ground. Those were the ones
19 that Mr. Page did not have an opportunity to see.
20 But so I did that on the ground, collected
21 information, and I will go through that in a
22 second.

23 And the next process was, using that
24 information, was to write a report for each
25 property for each individual landowner. The

1 reports were submitted by the landowners to
2 Saanich. And before there was a council date
3 there was a staff report created. I did a
4 response to the staff report which I will walk
5 through.

6 And I think six councillors attended on site
7 to view these properties. And I walked them
8 around. There was landowners on some of the
9 properties I attended. But we walked throughout
10 all of the properties, and I was trying to point
11 out the attributes on the ground for them to
12 consider and the standards, what the bylaw said
13 and basically the SEI assessment guidelines that
14 Saanich staff had created.

15 I had the description of the sensitive
16 ecosystem for terrestrial herbaceous that shows
17 all the species that are expected on those
18 properties, the native species, and it's a longer
19 list than the woodland description in the SEI
20 conservation manual.

21 Again I was doing what I considered to be an
22 identification of action to determine whether
23 there was a sensitive ecosystem or not on the
24 property and if there was areas that were --
25 could be separated, one being sensitive

1 ecosystem, one being no longer meeting the
2 criteria of sensitive ecosystem. So I walked
3 each property carefully to do that. But Saanich
4 councillors came to the properties and then there
5 was a council meeting and then a public hearing
6 process and their final decision was made.

7 Q Where did the PowerPoint fit into there?

8 A The PowerPoints were made to the council
9 meetings. So one was done for each meeting.

10 Q Meeting of the whole and the --

11 A Yeah, I think committee of the whole was the
12 first and then the second one was a public
13 hearing.

14 Q All right.

15 A Which has full public input to it.

16 Q So tab 126 are your field notes?

17 A Correct. So I collected these field notes in a
18 manner that I have done for multiple projects in
19 the past or in terrestrial ecosystem mapping.
20 And these are field notes for me for going back
21 and writing a report in a situation. And what I
22 did in the past it would be for mappings, it
23 would be at this location this is the vegetation,
24 and when I am doing my mapping I would say that
25 this would be this ecosystem type, this site

1 series, or whatever.

2 And in this case it was the information I
3 needed, and it would be used in conjunction with
4 the photographs which I will go to next to write
5 my reports to determine for sure that there was
6 no sensitive ecosystems on these properties.
7 They are all highly degraded. They are not
8 somewhere in the middle. They are on the far
9 side of being relatively -- sorry, yeah, far side
10 of being relatively undisturbed. These are
11 significantly modified areas. They are not
12 natural ecosystems. They would not meet the
13 ecosystems at risk definition of being ecosystems
14 at risk.

15 So these field notes, and you can just go
16 through them, they look sparse, but they gave me
17 all the information I needed to assess these
18 properties.

19 Q All right.

20 A So to Volume 7, tab 128.

21 Q So you are jumping to the next volume, 128?

22 A Yes.

23 Q All right. And so this is the report and the
24 attached photographs relevant to that report?

25 A That's correct.

1 Q But to be clear, and we talked about this the
2 other day, when the report was given to council
3 as I understand it, well, you tell me; were the
4 photographs attached to it or not?

5 A The photographs were not attached to it. I
6 collected all of these photographs. I used some
7 in the PowerPoints to council, but I did not
8 attach them to the report because I knew I would
9 be showing photographs to council at council
10 meetings and that they would -- significant
11 numbers would attend on a property so they would
12 be able to see the attributes on the property.
13 This is a -- to me it was a decision-making tool
14 for councillors to decide whether I had met the
15 criteria for them to think about removal of the
16 properties.

17 So the report talks about first of all when
18 I was on the site. And this was late May and
19 early June. I did not put the dates down because
20 different properties I was there -- but they are
21 all close together within I think a week's time.

22 The next paragraph is a description of the
23 overall map unit that occurs on between Tudor
24 Avenue and Seaview. And indicate that it's
25 fairly consistent in vegetative cover overall,

1 has individual differences by property. And I
2 talk a bit about the physical attributes of
3 gently sloping shallow to very shallow. And then
4 I talk about the overall map unit in terms of
5 vegetation species cover. So dominant invasive
6 species included a dense cover of annual bromes,
7 orchard grass, Scotch broom, and dense patches of
8 blackberry, periwinkle, English ivy. Some of the
9 landowners had removed broom and blackberry and
10 ivy, others had not.

11 There was a few scattered individuals of
12 native species on each property that I saw. Some
13 not any at all. And they included things like
14 camas, Hooker's onion, blue wild rye as I said in
15 very small amounts.

16 As Mr. Page pointed out there was some small
17 areas with a dense native moss cover on them.
18 But these -- most of the moss areas had invasive
19 grasses covering all up through the moss and so a
20 dominant grass, invasive grass cover over the
21 moss.

22 And then I talked a bit about if it was left
23 alone with no invasive shrub removal it would
24 quickly become dominated by a dense cover of
25 invasive shrubs. Restoration would be very

1 difficult. Restoration is a very expensive
2 proposition when you are dealing with invasive
3 grasses and sites that have very few native
4 species on them. It would require significant
5 amounts of native plant material to be brought in
6 and planted after removing the invasive grasses.

7 As I said earlier, invasive grasses in
8 Saanich parks are not being dealt with. It is a
9 huge issue and a very difficult restoration
10 piece.

11 So the next piece is a description of this
12 property, so 2785 Tudor Avenue. And talks about
13 whether it matches the overall unit description
14 or there is significant differences. So these
15 are very similar to the overall description. And
16 I will go to the first photo to show you what it
17 is like.

18 So similar to the photos I showed this
19 morning on Treetop, this is dominated by a cover
20 of the annual brome grasses. So the brownish
21 colour, very dense cover of the species. And
22 there is a fair amount of broom around the edges
23 of this photo. To go back to the bromes, what I
24 was talking about this morning is that these
25 species germinate in late wint- -- in early

1 winter, November, December, when the rains begin.
2 And if you came back to these sites any time
3 after that point you would see this is the
4 dominant cover on the property. So these grasses
5 will be there all through the spring period.
6 They dominate. There is very little space for
7 native species. Throughout this whole area as I
8 said there was very few individuals of native
9 plants.

10 I just want to take you to tab 132. So the
11 description of the individual property at the
12 bottom of the page describes quite a different
13 vegetation than most of the other properties and
14 different than what's in the overall unit. So
15 this property is actually a very heavily infested
16 area of invasive shrubs rather than invasive
17 grasses. So blackberry, ivy, Scotch broom,
18 hawthorne, golden chain, laurel, periwinkle. So
19 if you look at the first photograph of this
20 property, you can see that basically a dense
21 tangle of invasive shrub species. Again does --
22 certainly doesn't meet the criteria for being a
23 terrestrial herbaceous sensitive ecosystem
24 dominated by shrubs.

25 I don't think I will take you through any

1 more photos, but they are mostly similar to the
2 first photo I showed you and dominated by
3 invasive grasses and Scotch broom.

4 So I will take you to tab 135 just briefly
5 to show you that there is the staff report
6 written. And it is to Saanich council from the
7 director of planning. I think the important
8 things to point out on this is that my report's
9 recommendations were all rejected by Saanich
10 staff in this. And it goes on to give multiple
11 reasons which I will walk through in my response
12 to the staff report.

13 After page 11 -- sorry, there is two pieces
14 after page 11. So there is a letter by
15 Dr. Richard Hebda indicating that he believes
16 that this is a sensitive ecosystem area with
17 restoration potential. And I will come back to
18 that in the staff report maybe. In response I
19 do.

20 So the next piece is the Moraia Grau report
21 called "Visual Assessment of Sensitive Ecosystem
22 Inventory - Herbaceous Terrestrial." Has
23 everyone got that? So right after the Dr. Hebda
24 letter. So this report, and it was pointed out
25 yesterday and put in front of Mr. Page that it

1 was used to refute my findings. As pointed out
2 it was done from a trail between the properties
3 in -- inventoried in September 27th of 2016 and
4 Ms. Grau did not walk the properties. She did
5 not attend on the properties. Did not do plots.
6 Did not do species lists.

7 I will go to 137.

8 MS. BEEDLE: Wait a second. What number?

9 A Tab 37.

10 MS. BEEDLE: Okay. Thank you.

11 A So this is my detailed response to the Saanich
12 staff report which I sent to mayor and council
13 before the first meeting regarding these
14 properties. Unfortunately not in colour because
15 black is staff report and green is my response.
16 But there is a difference in shade if -- as you
17 go along you should be able to pick that up. So
18 the last paragraph there is a staff report
19 indicates the staff biologists do not agree.

20 So I will start in the paragraph above that
21 I have followed the assessment, SEI assessment,
22 guidelines that Saanich staff have provided to
23 landowners. And that I was following the
24 provincial standards for Ecosystems At Risk in
25 how they relate to the legal document, the EDPA

1 bylaw.

2 The staff report, last paragraph, indicates
3 that staff biologists do not agree with my report
4 due to the inappropriate time of year that the
5 work was completed. The focus of the presence of
6 invasive plants, the lack of assessment of
7 habitat, the lack of a complete inventory --
8 complete inventory and lack of acknowledgment of
9 the rare, known rare species in the mapped areas.
10 Goes on to say that annual brome grasses are
11 stated to dominate throughout the area in your
12 report but they are not identified to show if
13 any -- that they are native or invasive.

14 So I am going to walk through some of this.
15 The next page, page 2, the staff report. So at
16 the top the staff report indicates the staff
17 biologists do not agree with my report due to the
18 inappropriate time of year that the work was
19 completed. I viewed these properties in May and
20 June. Many of the wildflower species typically
21 associated with these kinds of ecosystems were
22 flowering at that time. However, very few of
23 these species were seen on each property.

24 Ms. Grau's report provides information on
25 the right of way from April 2012 and then -- and

1 then her role at that time was not to assess
2 adjacent properties during the site visit but
3 rather to assess the right of way.

4 As I pointed out when I was talking about
5 the photos is the annual invasive brome species
6 germinate in late fall with the rains and they
7 are -- the way they are dominating in May they
8 are dominant like that throughout. I have seen
9 that in many other areas in the greater Victoria
10 area.

11 Staff report indicates that staff biologists
12 do not agree with my report on the focus,
13 presence of invasive species. According to the
14 SEI standards, the methods manual, SEI sensitive
15 ecosystems trying to -- are -- the criteria is
16 that they are relatively unmodified. The
17 dominance of invasive species as I said makes
18 them significantly modified. And the Ecosystems
19 At Risk manual to determine whether there is an
20 ecosystem at risk indicates invasive species as
21 being very important in evaluation of ecosystems
22 and sensitive ecosystem -- sorry, if invasive
23 species dominate an area, then they would not be
24 considered an occurrence of an ecosystem at risk.

25 The staff report indicates that staff

1 biologists do not agree with my report due to the
2 assessment of habitat. The guidelines were not
3 clear on what "habitat" actually was, whether it
4 was for all species, all animal species, all
5 birds and snakes and whatever. It was not --
6 not. And as well it's not in the EDPA bylaw.
7 This was about whether there is a sensitive
8 ecosystem or not on these properties.

9 There as I say here, said before, habitat
10 occurs on all properties in Saanich and
11 everywhere else. But that's not one of the ESAs
12 in the bylaw.

13 The staff report indicates the staff
14 biologists do not agree with my report due to a
15 lack of a complete inventory. I don't think
16 anywhere has stated that would be a complete
17 inventory to be done and there certainly was no
18 indication of what that would include. As I
19 pointed out with my data, that was unnecessary
20 for me to do an identification of whether there
21 was a sensitive ecosystem remaining on these
22 properties. The sites are clearly in poor
23 ecological condition.

24 So staff report indicates staff biologists
25 do not agree with my report and lack of

1 acknowledgment of known rare species in the
2 mapped area. I spoke to this before regarding
3 the map is that it was one of the properties that
4 I had assessed I indicated in that report that
5 the species occurred on one tree with -- on the
6 property. But that report was not submitted to
7 staff at that point.

8 I will pass by the annual brome comment
9 because I clearly stated that they were invasive
10 species.

11 And I pass on the biogeoclimatic comment.

12 So page 4 in the middle says the staff
13 report indicates that staff biologists do not
14 agree with my report saying that the inventory
15 methods are not consistent with the best
16 management practices for Garry oak and associated
17 ecosystems. The inventory methods for -- from
18 this manual have never been a requirement for
19 doing ecosystem inventory or in the sensitive
20 ecosystem guidelines or anywhere else.

21 It does however -- it does define what Garry
22 oak ecosystems are, and the definition is that
23 it's a naturally occurring -- in this case Garry
24 oak woodland -- naturally occurring Garry oak
25 trees and some semblance of the ecological

1 process and communities that prevailed before
2 European settlement. These properties clearly
3 did not meet that definition.

4 Then goes on to say:

5 "Mr. Lea's report generalizes about the
6 map unit but he has not visited all the
7 properties."

8 I actually viewed all of the properties either on
9 attending on the properties or from the
10 perspective of trying to determine whether there
11 would be buffer requirements that came from other
12 properties. So I did see all properties on -- in
13 this map unit.

14 Page 5 at the top, Staff Report Summary:

15 "Staff biologists believe that the core of
16 the ecosystem is intact and providing
17 habitat. The same area was evaluated as
18 in fair to good condition in 2012."

19 Response:

20 "Unclear what is meant by core of the
21 ecosystems. As mentioned earlier all
22 properties in Saanich provide habitat. It
23 is not an EDPA requirement. The same area
24 was not evaluated in 2012 by Ms. Grau.
25 She did not do evaluations of the adjacent

1 to her trail through the properties.

2 She definitely did not indicate that
3 either the trail allowance or the adjacent
4 properties were in fair to good condition.
5 Ms. Grau implied the ecological condition
6 on the trail was fair condition which was
7 40 to 75 percent invasive species."

8 From the staff report:

9 "Staff observed that terrestrial
10 herbaceous ecosystem definitely does
11 exist."

12 My response:

13 "It is unclear at what time of year that
14 staff viewed the property. I assume it
15 was after the application date for these
16 properties. Despite indicating that the
17 date that I did my assessment was
18 inappropriate, staff did not indicate the
19 date that they made this observation. In
20 conclusion may have been inappropriate."

21 So from the staff report, and this refers to the
22 Richard Hebda email:

23 "Peer-reviewed biologist report confirms
24 that the area meets the criteria of
25 Sensitive Ecosystem Inventory and is a

1 terrestrial herbaceous ecosystem."

2 Now, my response was:

3 "Ms. Grau's report provides information
4 for the right of way from April 2012. She
5 did not assess the adjacent properties at
6 the time. She did, however, make some
7 comments about adjacent properties. She
8 did assess the adjacent properties in
9 September 27th, 2016. Although my visit
10 on these properties in May and June was
11 not considered appropriate, but Ms. Grau's
12 visits and assessments in September were
13 not indicated in staff reports being
14 inappropriate.

15 Dr. Hebda's short email cannot be
16 considered a peer review and I would be
17 surprised if he would consider it to be
18 one. It appears that neither Ms. Grau or
19 Dr. Hebda have been on any of the subject
20 properties at the appropriate time of
21 year."

22 I talked about, in page 6 I have already talked
23 about Ms. Grau's report, and Mr. Page responded
24 to some questions about that yesterday, that it
25 would not meet this four criteria for a report.

1 Page 8, the last sentence, this is a really
2 important comment that I think Ms. Grau ended her
3 report with. She made some recommendations at
4 the end and stated that she recommends that:

5 "... the District of Saanich provide help
6 to property owners to preserve these
7 valuable SEI sites through covenants, tax
8 relief, and/or grants to help with
9 restoration maintenance cost."

10 And it goes on to say that the District of
11 Saanich needs to act by saying that:

12 "It is recommended that the District of
13 Saanich consistently uses natural
14 restoration practices in areas under the
15 District's jurisdiction and that these
16 restoration activities should be used to
17 promote the involvement of neighbouring
18 property owners in the project."

19 So I brought this up this morning in talking
20 about SCRES, but this to me is a critical
21 component that's needed beyond the EDPA bylaw.
22 Although these sites are not sensitive ecosystems
23 by the criteria, they could be worked on, but
24 they need -- if they are private properties, they
25 need -- Saanich needs to work with land owners to

1 improve these properties, help them with plant
2 materials and knowledge and understanding.

3 So tab 138 is just a short speech I made to
4 council. And talking about use of standards,
5 staff guidelines and provincial standards.

6 And on the second page, 138, the second page
7 these are items that Saanich staff has tried to
8 use to protect areas within the EDPA restoration
9 potential, space, pervious surfaces, wildlife
10 habitat, these are not considered ESAs in the
11 existing bylaw. Almost all properties in Saanich
12 have restoration potential and have habitat for
13 wildlife. However the current EDPA bylaw is
14 silent on these issues.

15 So the only relevant question in the next
16 paragraph becomes is there a terrestrial
17 herbaceous sensitive ecosystem, ESA, on these
18 eight properties. This can only be determined by
19 following the staff guidelines that have been
20 provided to consulting biologists and obviously
21 that meet the requirements in the Saanich EDPA
22 bylaw.

23 So 139. So this is I believe my first
24 PowerPoint to council, committee of the whole I
25 believe, for application for removal for the

1 eight property owners of these properties.
2 The -- so the first photo, unfortunately you
3 can't see it, but it's a beautiful camas meadow
4 on Knockan Hill. It is a terrestrial herbaceous
5 ecosystem. It's glorious in the spring. And
6 that's what would be considered relatively
7 unmodified although invasive grasses are slowly
8 taking over this area even. So over time it's
9 becoming more and more degraded.

10 I show -- if you just leaf through the front
11 page, there is a GIS map that we saw before. And
12 then a sort of an introduction that there is 24
13 properties in total, 7 of these are buffers only,
14 and that I viewed all 24 either being on the
15 property viewing or to assess buffers, viewed in
16 the spring, May and June. And I won't go over
17 the next one that says "Overall Map Unit."

18 Are you there, Brian?

19 THE CHAIR: M'mm-hmm.

20 A Because it's -- I went over that with the first
21 couple of reports that I showed you. So it
22 describes what I was describing there and
23 continues onto the next page and talks about
24 native species and some of the moss areas.

25 Then I went through some of the details on

1 classification, there is no page numbers on this,
2 but what is a sensitive ecosystem. Are you
3 there?

4 THE CHAIR: M'mm-hmm.

5 A So sensitive ecosystems are well-defined
6 entities -- they are well-defined entities in
7 British Columbia and have been used for about two
8 decades. I'm not sure if I brought that issue
9 up. But they are specifically identified and
10 well used around the province.

11 And then some of the definitions about
12 relatively unmodified.

13 There was the excerpt from the book that
14 Mr. Page went through yesterday just talks about
15 sheep being on Ten Mile Point. I don't know for
16 sure that they were on this property. But it
17 would be an ideal property. It would be the type
18 of area that sheep would use. In talking to many
19 landowners at Ten Mile Point agriculture was very
20 common out in that area. And the photo of the
21 sheep is not from Ten Mile Point but it just
22 shows you the kind of devastation that sheep
23 create. This is in the Victoria area.

24 The next is from the staff guidelines
25 document. I won't go over this. I went over

1 that in detail yesterday. And same with the next
2 couple of pages, number 1, standard for mapping
3 ecosystems at risk, won't go there. Talked about
4 Moraia Grau report. I have talked about that.
5 And then conclusion.

6 So in my professional opinion there is no
7 sensitive ecosystem, ESA, on these eight
8 properties and the whole map unit -- by viewing
9 the whole map unit. And then there is photos of
10 all the properties, the other ones were better
11 because they are colour, bigger.

12 I think that's it for that one. The next
13 tab, 140 is very similar information so I'm not
14 going to go through that. Yes.

15 MR. HANMAN:

16 Q Sir, if I bring you back to the citation
17 language, you have done a lot here with what
18 information you delivered, how you delivered it,
19 on and off the area, at the council meeting, and
20 the report; right?

21 A Yes.

22 Q So you have multiple venues if I can call it
23 that?

24 A Exactly, yes.

25 Q Where you are delivering information. So the

1 citation is:

2 "Failed to undertake proper due diligence
3 in groundwork with respect to the
4 preparation of the reports."

5 A Yes.

6 Q Right? So you have talked about the drive-by.
7 You have talked about the relative ease in some
8 cases versus the gray to black discussion. You
9 have talked about all the background you have
10 done on Alberg and, you know, the legal
11 assessment, the informational assessment. You
12 have talked about all that. On the ground on
13 these properties, keeping in mind Mr. Page's
14 comments about you should have put plots down or
15 words like that, what, if anything, could you --
16 would you, should you have done further, if
17 anything, in terms of due diligence and
18 groundwork?

19 A So I believe in the standard practice that I have
20 gotten used to over my many years of doing
21 ecosystem mapping. I understand the
22 classification. So I don't need to do detailed
23 plots. On the ground the plot itself was the
24 property boundary. So I did not need to create
25 plots. If I saw something that wasn't clearly a

1 sensitive ecosystem or somewhere in the middle
2 that I have talked about, I would have to have
3 put in detailed plots to separate that area from
4 degraded areas.

5 But the data I collected on the ground as I
6 said is for me. It's for me to go back later and
7 determine what is going into the report. And I
8 used the photos at the same time as I was looking
9 at that data. I don't need detailed data when
10 the entity is so obvious. It might be a nice to
11 have, but I don't see it as a requirement. It is
12 -- it is something that I didn't have to do on
13 each stop that I did while I was mapping in a
14 project. So once you get to that latter stages
15 of a project, you already know the mapping
16 entities. It is usually very quick, unless you
17 see something new and different, it is a quick
18 assessment to say this is this site series, this
19 is this ecosystem type, this is...

20 I was doing range condition mapping in the
21 south Okanagan for all the grassland areas that
22 we mapped. This is poor condition, this is fair
23 condition, this is good condition. That's
24 basically what I was doing on these properties is
25 first of all looking for condition. Is this in

1 excellent condition, relatively unmodified, or
2 somewhere below that, good, fair, or poor which
3 is in these cases, these properties, poor
4 condition is obvious. I don't need full plots.
5 I don't need a lot more data. If I had been
6 there earlier in the spring there might be one or
7 two other species that I had not seen at that
8 period in time. But as I said with the ecology
9 of the species that were there, the invasive
10 brome species and the broom, they are obvious as
11 soon as the fall rains start right up to the
12 period that I was there and beyond.

13 So there is -- I don't consider the need for
14 doing detailed plots in that situation. This was
15 a process that was for Saanich council to make a
16 decision on. And I don't think I needed to
17 provide them with detailed plot data because the
18 conditions were so obvious. And many biologists
19 I have talked to have --

20 Q No.

21 A Sorry. Anyways --

22 Q Don't be repeating.

23 A -- I found that very -- there are obvious sites
24 to -- and again bring up the identification
25 issue. I look at these as much of an

1 identification issue as a botanist would look at
2 I have this species, this is this species, I know
3 it's this species because it has these
4 attributes, or a wildlife biologist looks at a
5 certain species of frog and goes, "I know this
6 species. I identify it because it has these
7 attributes."

8 I am looking at ecosystems and I have enough
9 experience with Garry oak ecosystems and other
10 areas of the province where I can go this is this
11 ecosystem and this is not. And these sites at
12 Tudor, Seaview are not sensitive ecosystems. So
13 again it's an identification issue rather than a
14 full assessment of all the details of what's on
15 the property.

16 MR. HANMAN: So Mr. Chair, we are getting pretty close to
17 trying to close this up here and if you could
18 give me a few minutes with this witness. We have
19 been at it for another hour. You know, I'm doing
20 my best to tighten this up a little bit. So if
21 you could give us maybe until 5:00 or maybe even
22 a little less than that, 10 minutes or so, we
23 could cover off what, identify what needs to be
24 done and what's surplusage.

25 THE CHAIR: We would appreciate that certainly. So the

1 hearing is adjourned and we will return at 5:00
2 but we will check back before that to see if we
3 could start a little earlier.

4 **(WITNESS STOOD DOWN)**

5 **(PROCEEDINGS RECESSED AT 4:45 P.M.)**

6 **(PROCEEDINGS RECOMMENCED AT 5:04 P.M.)**

7 **TED LEA, the Respondent,**
8 **recalled**

9 THE CHAIR: The hearing will reconvene. Please proceed.

10 MR. HANMAN: Thank you, sir.

11 **EXAMINATION IN CHIEF BY MR. HANMAN (Continued):**

12 Q So Mr. Lea, we are now going to turn to citation
13 item 3(c) and I am just going to read you the
14 pertinent part of it.

15 "By virtue of the fact that you, (c)
16 failed to properly apply applicable
17 guidelines prepared by the District of
18 Saanich in the aforementioned reports."

19 Do you understand that?

20 A Yes, I do.

21 Q And so what guideline document had you referenced
22 and dealt with throughout this?

23 A The guidelines document is the one provided by
24 Saanich for Sensitive Ecosystem Assessment
25 guidelines. It's at tab 117. And I believe I

1 followed this guidelines document --

2 Q Hold on. Let's just get it out so we are all
3 familiar. 117.

4 MR. UNDERHILL: Which volume is that in?

5 MS. FONG: Six.

6 MR. POLLITT: Volume 6.

7 MR. HANMAN:

8 Q All right. So this is the document that you have
9 described as the one that was provided to
10 landowners?

11 A Correct.

12 Q And I think you first -- where did you first see
13 it?

14 A I saw this on the Alberg property. It was given
15 to Patrick Lucey to follow.

16 Q Right.

17 A So I have followed this guidelines document and
18 how it fits the intent of the Saanich EDPA bylaw.
19 So in assessing whether there is sensitive
20 ecosystems on the property, I have followed this
21 and the standards that are within the standards
22 of mapping ecosystems at risk and the Sensitive
23 Ecosystem Inventory standards.

24 Q Those are the lengthy documents you took us
25 through at the outset?

1 A Yes, correct. So yes, I went over this document
2 in detail yesterday and have brought it up many
3 times since that point.

4 Q All right. Nothing more to say we will move on
5 to 3(d). 3(d):

6 "By virtue of the fact that you, (d)
7 applied incorrect criteria ecosystems at
8 risk for assessing sensitive ecosystems in
9 the aforementioned reports."

10 What do you say about that?

11 A I believe I understand what that means. I --

12 Q This is tab 122?

13 A Yes.

14 Q Volume 6 again?

15 A So the full document is at 119, but I will go
16 through 122 very briefly because I walked you
17 through this yesterday. This is the standard for
18 mapping ecosystems at risk in British Columbia.
19 So what I pointed out is that I followed the
20 definition that was in the glossary and walked
21 through what ecosystems at risk are, what
22 classification is used, which is the BEC
23 classification, and about what is required to
24 meet the standard. So it must fall within
25 expected range of a defined plant association

1 before it's considered an occurrence.

2 And so second page just stop quickly, but so
3 second sentence on the second page said that this
4 statement is very similar to SEI standards that
5 talk about sensitive ecosystems being relatively
6 unmodified. So I have followed the intent of
7 this document, the ecosystems at risk standard,
8 as it relates to the bylaw and the sensitive
9 ecosystem standards that are part of the EDPA
10 bylaw.

11 MR. HANMAN: I have no further questions of this witness.

12 THE CHAIR: Thank you. We note that we have approximately
13 50 minutes remaining until our intended time of
14 adjournment but also recognize Mr. Lea that you
15 have been on the hot seat for quite a few hours.
16 So we would like to know how you are feeling.
17 Are you --

18 A Tired. Very.

19 THE CHAIR: Yes. Okay. The other option would be to start a
20 little earlier tomorrow morning if that's
21 possible recognizing again we may want to go as
22 late as 6:00 o'clock. But we could perhaps start
23 at 9:00 o'clock. I think the panel could do
24 that. Mr. Hanman and Mr. Lea?

25 MR. HANMAN: I have got to check and make sure Mr. Meidinger

1 can do that. I will have to look into that.

2 THE CHAIR: We will have the cross-examination.

3 MR. HANMAN: Oh, cross-examination, I'm sorry. Well, have at
4 him, then.

5 MR. UNDERHILL: We should make sure Mr. Meidinger is
6 available because I won't be -- I certainly won't
7 take up the whole morning. So we will be able to
8 move into Mr. Meidinger in the morning.

9 MR. HANMAN: Oh, you will?

10 MR. UNDERHILL: Yes. I won't take up the whole morning. And
11 so we should be ready to go with Mr. Meidinger.
12 So he should be on standby in the morning. I
13 don't know much else we can do other than that.
14 If you don't think you will be that long --
15 sorry, for the record Mr. Hanman doesn't think he
16 will be that long with Mr. Meidinger. We might
17 want to think about whether there is another
18 witness that can go tomorrow.

19 MR. HANMAN: I will see what I can do to get that clarified
20 this evening, lined up so we are not... Yeah,
21 but, I mean, given the way this is going, I mean,
22 we're -- I think I'm tightening up on the
23 evidence here enough that we could be confident
24 that we will be able to get out of here Friday
25 afternoon. So I don't -- for the sake of my

1 friend I don't think you need to drive the start
2 up if he is only going to take the better part of
3 the morning in cross. I don't think you need to
4 drive it to 9:00.

5 MS. FONG: Then 9:30 start?

6 THE CHAIR: Yes, alright. So we will begin again at 9:30
7 tomorrow morning. So the hearing is adjourned.
8 And if there is any other housekeeping items that
9 we need to deal with we can do that, otherwise we
10 will reconvene at 9:30.

11 (WITNESS STOOD DOWN)

12 (PROCEEDINGS ADJOURNED AT 5:14 P.M.)

13

14 **REPORTER CERTIFICATION**

15 I, Lori D. Stocco, RCR, Official Reporter in
16 the Province of British Columbia, Canada, BCSRA
No. 581, do hereby certify:

17 That the proceedings were taken down by me
18 in shorthand at the time and place herein set
19 forth and thereafter transcribed, and the same is
20 a true and correct and complete transcript of
said proceedings to the best of my skill and
ability.

21 IN WITNESS WHEREOF, I have hereunto
22 subscribed my name this 24th day of June, 2018.

23

24

25

Lori D. Stocco, RCR
Official Reporter