

1	LAND USE COMMISSION	
2	STATE OF HAWAI'I	
3	ACTION (continued)	PAGE
4	A10-789 A&B PROPERTIES, INC.)	5
	(Wai'ale))	
5	HEARING AND ACTION)	
6	A96-717 C. EARL STONER, JR.)	12
	on behalf of S&F LAND COMPANY, INC.)	
7	(Maui))	
8	_____)	

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10 TRANSCRIPT OF PROCEEDINGS

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12 The above-entitled matters came on for a Public
 13 Hearing at the Molokini Room, Makena Beach and Golf
 14 and Resort, 5400 Makena Alanui, Makena, Maui, Hawai'i,
 15 commencing at 9:00 a.m. on November 4, 2011, pursuant
 16 to Notice.

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21 REPORTED BY: HOLLY M. HACKETT, CSR #130, RPR
 Certified Shorthand Reporter

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1 A P P E A R A N C E S

2 COMMISSIONERS:

3 RONALD HELLER
4 LISA M. JUDGE (Presiding Officer)
5 CHAD McDONALD
6 JAYE NAPUA MAKUA
7 ERNEST MATSUMURA

8 EXECUTIVE OFFICER: ORLANDO DAVIDSON
9 ACTING CHIEF CLERK: RILEY HAKODA
10 STAFF PLANNERS: BERT SARUWATARI, SCOTT DERRICKSON

11 DEPUTY ATTORNEY GENERAL: DIANE ERICKSON, ESQ.

12 AUDIO TECHNICIAN: WALTER MENCHING

13 Docket No. A10-789 A&B PROPERTIES, INC. (Wai'ale) Maui

14 For the Petitioner: BENJAMIN MATSUBARA, ESQ.
15 CURTIS TABATA, ESQ.

16 For the County: MICHAEL HOPPER, ESQ.
17 Deputy Corporation Counsel
18 WILLIAM SPENCE, County DP

19 For the State: BRYAN YEE, ESQ.
20 Deputy Attorney General
21 JESSE SOUKI
22 Director Office of Planning

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1 A P P E A R A N C E S (cont'd)

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3 Docket No. A96-717 C. EARL STONER, JR. on behalf of

4 S&F LAND COMPANY, INC. (Maui)

5

6 For the Petitioner: WILLIAM CROCKETT, ESQ.
EARL STONER, JR.
7 ROBERT STONER

8 For the County: MICHAEL HOPPER, ESQ.

9 Deputy Corporation Counsel

10 WILL SPENCE, County DP

11 For the State: BRYAN YEE, ESQ.
Deputy Attorney General
12 JESSE SOUKI
Director Office of Planning
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1 PRESIDING OFFICER JUDGE: (Gavel) Good
2 morning. This is a continuation of docket A10-789 A&B
3 Properties, Inc. to consider the acceptance of A&B
4 Properties, Inc. Final Environmental Impact Statement.
5 I believe we're going to restart this morning with the
6 staff report. Bert.

7 MR. SARUWATARI: Okay. There were 41
8 comment letters received on the Draft EIS. Some of
9 the concerns raised, as were expressed yesterday, were
10 the areas of historical, cultural resources,
11 traditional and customary rights, traffic impacts,
12 wastewater treatment, student population generated by
13 the project, stormwater management, water supply and
14 impacts, water quality and noise and air quality.

15 Based on the adequacy of Petitioner's
16 responses and statutory and administrative
17 requirements for Draft EIS's and Final EIS's, staff
18 believes that Petitioner has generally met the content
19 requirements for an EIS -- for a Final EIS, and
20 therefore recommends that the document be accepted
21 pursuant to chapter 343 HRS and chapter 11-200 HAR.
22 That concludes my staff report.

23 PRESIDING OFFICER JUDGE: Thank you. Any
24 questions for Bert? Okay. Thank you, Bert. Good
25 morning, Mr. Matsubara. Would you like to make your

1 presentation?

2 MR. MATSUBARA: Yes. Good morning, Chair
3 Judge. Ben Matsubara and Curtis Tabata representing
4 Petitioner. With me is Vice President Grant Chun and
5 Dan Yasui, director of development.

6 I'd like to thank the Commission for the
7 courtesy of extending these proceedings to today so I
8 was able to attend and address you all on this matter.
9 Thank you.

10 I thank the staff for their comprehensive
11 analysis and review of the 343 EIS documents we have
12 filed with them to date. And thank them for the
13 recommendation to adopt and accept the EIS.

14 I'd just like to reference that the standard
15 regarding the test on the sufficiency of an EIS is
16 reflected in the Hawai'i Supreme Court decision of
17 Price vs. Obayashi.

18 In Price the Court held that the sufficiency
19 of an EIS is a question of law. And the only question
20 is whether the EIS complies with the Hawaii Revised
21 Statutes chapter 343 and the Rules under chapter 200.
22 Whether the parties disagree or there is a conflict,
23 it's not the yardstick to measuring the sufficiency of
24 an EIS.

25 The standard to be applied is the Rule of

1 Reason. An EIS need not be exhaustive to the point of
2 discussing all possible details so long as the EIS has
3 complied in good faith and sets forth sufficient
4 information to enable the decision-maker to consider
5 the impacts of the project and mitigation and to
6 balance the same.

7 In the event the Commission accepts our EIS
8 we will have to proceed through the contested case
9 hearing, at which time witnesses will be provided by
10 us and other parties to this proceeding that will
11 further delve into the details relating to this
12 particular project.

13 Based upon the EIS and compliance with the
14 requirements of the applicable statutes and rules, and
15 staff's analysis and concurrence of the same, I would
16 ask that the Commission accept the Final EIS we have
17 submitted.

18 I would, however, like to just provide a few
19 comments relating to the public testimony received
20 yesterday more as a road map in regard to where
21 matters raised yesterday can be found in our
22 submittals to the Commission in the EIS and other
23 documentation.

24 As it relates to potable water we are
25 pursuing several water source opportunities which

1 include a surface water treatment facility as well as
2 new well sources in the Central Maui region.

3 These are addressed in section 3.5, 3.6 and
4 4.8.1 of the FEIS.

5 In regard to archaeological resources, an
6 Archaeological Inventory Survey of the entire property
7 has been completed and accepted by the Department of
8 Land and Natural Resources, State Historic
9 Preservation Division. You will find that in Appendix
10 E and F to the FEIS.

11 To address burials identified at the site, a
12 Burial Preservation Plan was prepared and reviewed by
13 the Maui/Lana'i Islands Burial Council and
14 subsequently accepted by DLNR SHPD. Appendix G and H
15 to the FEIS contain that documentation.

16 The comment raised related to Blackburn's
17 Sphinx Moth. The Applicant has been working
18 cooperatively with U.S. Fish and Wildlife Services and
19 will develop an appropriate mitigation plan for the
20 Blackburn's Sphinx Moth at the property.

21 Fish and Wildlife has been consulted and
22 offered its assistance in the development of a
23 mitigation plan and we'll continue to work with them
24 in that regard.

25 The mitigation plan will not require a

1 federal permit, not involve the use of federal funds,
2 nor involve properties on the National Register of
3 Historic Places. Accordingly, section 106 of the
4 National Historic Preservations Act is not applicable.

5 In regard to wastewater, the FEIS discusses
6 alternatives for the treatment of wastewater including
7 the construction of an onsite wastewater treatment
8 plant. As part of the engineering design process the
9 Applicant and its engineering design consultants will
10 have ongoing consultation with the County Department
11 of Environmental Management.

12 Should it be confirmed that a treatment
13 plant is required, the design of the plant will be
14 undertaken. This is discussed in section 4.8.2 of the
15 FEIS.

16 I believe that the statutory and the
17 regulatory requirements relating to what must be done
18 in order to provide you with this FEIS has been
19 complied with. And I would ask for its approval.
20 Thank you.

21 PRESIDING OFFICER JUDGE: Thank you,
22 Mr. Matsubara. Mr. Hopper, would you like to give the
23 Commission the comments of the Maui County Planning
24 Department.

25 MR. HOPPER: Just at this time that the

1 Department of Planning has no objections to your
2 acceptance of the Draft EIS.

3 PRESIDING OFFICER JUDGE: Thank you.
4 Mr. Yee, would you like to give the Commission the
5 comments of the State Office of Planning.

6 MR. YEE: The Office of Planning has no
7 objection to the acceptance of the Final Environmental
8 Impact Statement in this case.

9 Although we acknowledge that there are going
10 to be a number of issues that will need to be dealt
11 with at the contested case hearing, including
12 archaeology, water, consistency with Community Plans,
13 et cetera, at this time we believe the EIS contains an
14 adequate discussion to meet the statutory requirements
15 including, in part, because it includes items such as
16 the Archaeological Inventory Survey, the Cultural
17 Impact Assessment and other documents that are
18 relevant or necessary in the EIS. That's it.

19 PRESIDING OFFICER JUDGE: Thank you.
20 Commissioners, what's your pleasure on this?
21 Commissioner McDonald.

22 COMMISSIONER McDONALD: I move to accept the
23 EIS.

24 COMMISSIONER HELLER: Second.

25 PRESIDING OFFICER JUDGE: We had a motion by

1 Commissioner McDonald, second by Commissioner Heller.

2 Is there any discussion? Okay. Dan, would you like
3 to take the vote.

4 MR. DAVIDSON: Motion to accept.

5 Commissioner McDonald.

6 COMMISSIONER McDONALD: Yes.

7 MR. DAVIDSON: Commissioner Heller?

8 COMMISSIONER HELLER: Yes.

9 MR. DAVIDSON: Commissioner Matsumura?

10 COMMISSIONER MATSUMURA: Aye.

11 MR. DAVIDSON: Commissioner Makua?

12 COMMISSIONER MAKUA: Aye.

13 MR. DAVIDSON: Chair Judge?

14 PRESIDING OFFICER JUDGE: Yes.

15 MR. DAVIDSON: Motion passes 5-0, Chair.

16 PRESIDING OFFICER JUDGE: Thank you. We'll
17 take a short 5-minute recess to set up for the next
18 docket.

19 MR. MATSUBARA: Thank you very much.

20 (Recess was held 9:10)

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1 A96-717 C. Earl Stoner, Jr.

2 PRESIDING OFFICER JUDGE: The next docket is
3 a hearing and action meeting for Docket No. A96-717 C.
4 Earl Stoner, Jr. on behalf of S&F Land Company, Inc.
5 to consider Petitioner's Motion to Release Conditions
6 Imposed by the LUC's Decision and Order dated
7 November 3, 1996 filed on February 12, 2009.

8 Will the parties please introduce
9 themselves.

10 MR. CROCKETT: Thank you. Good morning.
11 I'm William Crockett. I represent the
12 Movant/Petitioner S&F Land. And we're also
13 represented by Mr. Stoner.

14 MR. STONER: Good morning. I'm Earl
15 Stoner. I'm a resident of Kahului. And I'm
16 representing S&F Land Company as well.

17 ROBERT STONER: I'm Robert Stoner
18 assisting.

19 MR. HOPPER: Michael Hopper with the County
20 of Maui Department of Planning. With me is Will
21 Spence the planning director.

22 MR. YEE: Good morning. Deputy Attorney
23 General Bryan Yee on behalf of Office of Planning.
24 With me is Jesse Souki, director of the Office of
25 Planning.

1 State Office of Planning's Response to Petitioner's
2 Motion to Release Conditions.

3 On April 5th, 2011 the Commission received
4 Petitioner's Revised Request for Release of
5 Conditions.

6 On April 20, 2011 the Commission received
7 Petitioner's resubmitted materials in support of the
8 Motion.

9 On August 1, 2011 the Commission received
10 Maui County's Response to Petitioner's Motion to
11 Release Conditions.

12 On October 13, 2011 the Commission received
13 OP's Supplemental Response supporting in part and
14 opposing in part Petitioner's Motion to Release
15 Conditions and Exhibit A.

16 On October 21, 2011 the Commission received
17 Petitioner C. Earl Stoner of S&F Land Company, Inc's
18 Reply Memorandum In Support of Motion to Release
19 Conditions.

20 On October 24, 2011 the Commission received
21 Maui County Planning Department's Executed Stipulation
22 for Deletion of Certain Conditions Regarding Motion By
23 S&F Land Company to Release Conditions.

24 On October 26, 2011, the Commission received
25 State Office of Planning's Executed Stipulation for

1 Deletion of Certain Conditions Regarding Motion by S&F
2 Land Co., to Release Conditions.

3 On October 31, 2011 the Commission received
4 a copy of Petitioner's Stipulation for Deletion of
5 Certain Conditions via e-mail.

6 Mr. Crockett, has our staff informed you of
7 the Commission's policy regarding the reimbursement of
8 hearing expenses?

9 MR. CROCKETT: Yes.

10 PRESIDING OFFICER JUDGE: And if so could
11 you please state your client's position with respect
12 to this policy.

13 MR. STONER: We're agreeable.

14 PRESIDING OFFICER JUDGE: Thank you. Let me
15 briefly describe our procedure for today. First, I
16 will call for those individuals desiring to provide
17 public testimony for the public hearing portion of the
18 proceedings to identify themselves. All such
19 individuals will be called to our witness box where
20 they will be sworn in prior to their testimony.

21 After completion of the public testimony
22 we'll have a short staff map orientation. And
23 afterwards the Petitioner will make its presentation
24 followed by the Maui County Planning Department and
25 the State Office of Planning.

1 Once they are completed with their
2 presentations the Commission will then deliberate on
3 this matter. Are there any individuals desiring to
4 provide public testimony today?

5 MR. DAVIDSON: No signups.

6 PRESIDING OFFICER JUDGE: Seeing none, we
7 will proceed directly to the staff orientation.
8 Scott.

9 MR. DERRICKSON: Aloha, Commissioners. The
10 motion area comprises approximately 51.9 acres. It's
11 situated here. It's basically the southeast junction
12 between Mokulele Highway, which runs north/south and
13 Waiko Road which runs east/west in Central Maui.

14 Another piece for you is Pulehu Gulch which
15 is mentioned in several of the conditions, lies
16 adjacent to and behind the Petition Area and drains
17 down towards Kealia Pond south.

18 PRESIDING OFFICER JUDGE: Thank you, Scott.
19 Okay, Mr. Crockett, would you like to present your
20 case please.

21 MR. CROCKETT: Yes. I think that the most
22 efficient way for us to proceed, certainly the most
23 expeditious way for us to proceed, would be simply to
24 have Mr. Stoner, who's quite familiar with the
25 project, obviously because he's the developer/owner of

1 the project, describe the Project Area; the conditions
2 that still remain to be, we hope, released and discuss
3 with you the issues that he sees in regard to the
4 release of his remaining conditions. I think that
5 would be much more efficient, much more expeditious
6 than for me to make a prolonged legal discussion of
7 the matter.

8 I would like to point out that this goes
9 back a long time. And faithfully in accordance with
10 the requirements of the conditions the Petitioner has
11 been filing the reports that were required originally
12 when the Boundary Order came down.

13 And Mr. Stoner can explain to you exactly
14 what information has been given to the Commission by
15 these reports and explain the status of the property
16 today.

17 And without going on any further for me I
18 would like to have you listen to Mr. Stoner.

19 PRESIDING OFFICER JUDGE: That would be
20 fine. We just need to swear you in, Mr. Stoner. You
21 can stay where you are.

22 C. EARL STONER, JR.
23 being first duly sworn to tell the truth, was examined
24 and testified as follows:

25 MR. STONER: I do.

1 PRESIDING OFFICER JUDGE: Thank you.

2 MR. DAVIDSON: Excuse me, sir. Could you
3 push one of the mics over.

4 MR. STONER: I'm a pretty loud talker but
5 I'll give it a shot here. Rather than reading you
6 directly eleven pages here, I'm going to try to hit
7 the points that I think are noteworthy here.

8 And if there are questions from the
9 Commission as we move along or others I'll be happy to
10 respond to them.

11 I think two of the most important items that
12 have to do first would be Condition No. 2, which
13 required that we do a certain amount of testing of the
14 EPA cleared site that was occupied by Maui Wood
15 Treating. I'd like to give you a timeline because I
16 think it's most important.

17 We moved onto this property in 1983. At
18 that time Maui Wood Treating was comfortably operating
19 at their location and we had no idea that there was
20 any problem with that site. It did not come to light
21 until several years later in 1985 or -- 6 that Beazer
22 Industries responsible for closing that site. The
23 closure activity was continuing underway in 1996 when
24 our docket came up.

25 I foolishly agreed to an item that said we

1 needed to do offsite testing of the area that was
2 clean closed by Beazer Industries on behalf of Coppers
3 Corporation which was the parent of Maui Wood
4 Treating.

5 Essentially we've been operating at the
6 Petition date for 13 years with Maui Wood Treating as
7 a neighbor. Subsequently, they did a clean closure
8 report with EPA, which was provided to us in 1998 by
9 our lessor A&B which we accepted as satisfaction that
10 the condition that we'd agreed to had, in effect, been
11 approved. We were not party to a copy of that
12 agreement until very recently.

13 However, we felt that what had been done was
14 satisfactory. We never had any complaints from the
15 two adjacent lessees or Maui Electric which has the
16 substation adjacent to and south of that property.

17 So in addition to the written testimony that
18 I provided for this, essentially we felt that this
19 matter had been put to rest by the EPA. And we did
20 not do offsite testing because there was -- there was
21 some testing that was done by the EPA, but admittedly
22 it was on offsite testing as well.

23 We continued to operate this property for
24 additional 15 years. We have had no problems with any
25 notices of any problems there. We have drilled a well

1 on the site which was tested extensive and showed no
2 problems.

3 So our feeling is that we have essentially
4 complied with item No. 2 or Condition No. 2.

5 The next, Condition No. 7, provided for the
6 minimizing of spills, as did essentially control
7 operating in a clean manner at the baseyard. We have
8 submitted a copy of our former lease which provides
9 very stringent requirements and is pretty much a copy
10 of our master lease with A&B requiring all tenants to
11 operate in accordance with the conditions set forth as
12 Conditions No. 7 and 8 essentially. And we believe
13 that matter has been satisfied by our lease.

14 I would point out that our lease, which was
15 complete -- our current lease which was completed
16 after the end of our period of, five year special use
17 permits that we operated under from 1983 to 2000, that
18 lease is a 35-year lease. It has rental reopenings in
19 2025 and 30. However, we're not off the hook until
20 2035.

21 I kind of doubt that I'm going to be around
22 at that time 'cause I'm 74 years old. But I did bring
23 my son today to give you evidence that somebody from
24 S&F Land Company will be overseeing that property for
25 a long time to come.

1 I would further point out that we have
2 completed all improvements to the site which include
3 paved roads, fencing, dust palliatives or paving on
4 every lot in the entire 53 acres that we occupy.
5 Consequently, I believe that we not only are meeting
6 but have met the requirements of the Conditions 7 and
7 8 very well.

8 As to Condition No. 10 and Condition No. 12,
9 these provide for non-disturbance of the adjacent
10 stream bed area of Pulehu Stream. I did point out in
11 my written testimony that we've installed a fence on
12 the entire perimeter of the stream.

13 PRESIDING OFFICER JUDGE: Mr. Stoner, take
14 that microphone with you. (approaching map)

15 MR. STONER: Sure. I'll talk loud. This is
16 the south perimeter which is on Pulehu Stream. With
17 the exception of a very small area on a lot here that
18 was flooded last year, the fence was removed by the
19 flooding from the stream.

20 This entire perimeter is fenced. This area
21 here has 12-foot high lumber storage racks on it which
22 also block access to Pulehu Stream. And all of the
23 tenants that front on Pulehu Stream have additional
24 fencing and security gates on their other side of
25 their properties.

1 Consequently, we really have double control
2 on anybody accessing the stream. We've not seen
3 anybody in the 30 years that we've been out there that
4 number one, wanted to go in and cut kiawe, wanted to
5 remove the bird habitat, or in any way disturb the
6 stream bed. And we certainly don't have any desire to
7 do so.

8 So I think the protection that we provided,
9 as I pointed out in my written testimony, is the only
10 area on the entire stream from Kula down to Ma'alaea
11 that's fenced off and the public kept from.

12 People could drive the cane haul roads on
13 A&B's property, and HC&S's property. They can walk
14 into the stream bed throughout the Kula region without
15 any problems. So we've done what I think we were
16 asked to do. And I think we've completely protected
17 the stream and the stream bed.

18 Condition 13 provided for the, that we
19 should fund and construct adequate civil defense
20 measures, as they may be required by the state civil
21 defense and county civil defense agencies.

22 We've run into a situation with these two
23 agencies where first they give us two different
24 proposals. One wanted us to install a siren at the
25 site, which is a cost of about \$80,000. I would point

1 out that our site is at 135 feet above sea level and
2 2 miles in the case of Kahului, 5 miles in the case of
3 Kihei, from any potential inundation area, both of
4 which inundation areas are blocked off by the police
5 immediately and during any civil defense emergency.
6 So those are the only outlets from Central Maui
7 Baseyard.

8 The County Civil Defense suggested that we
9 install a couple of radio units that they use for
10 civil defense notices in areas where sirens are
11 nonexistent or other means of warning the public or
12 not case. We tested those radio units in August and
13 September of this year, found that they worked
14 flawlessly.

15 And we have -- we are presently constructing
16 signs that can be placed at the single ingress/egress
17 to Central Maui Baseyard warning any drivers going in
18 and out of the baseyard, particularly those going out,
19 that there is a civil defense emergency in effect. We
20 like it because it's a cheaper solution to the
21 problem.

22 And secondarily we feel that installation of
23 a siren at this location is sort of non-productive.
24 And while State Civil Defense wanted us to do this or
25 in discussions that we had with them, we asked them to

1 write us and tell us exactly what they wanted, which
2 they never did. They told us they had to talk to
3 County Civil Defense. We spoke to county civil
4 defense at length. And they have come up with this
5 solution of the radios which we thought was great.

6 We subsequently were told by a
7 representative of the Office of Planning that they had
8 talked to the state and the state wanted a siren but
9 we have never received any written testimony. One of
10 the difficulties that occurs with situations like this
11 conditions, like this, is that if a state agency
12 doesn't actually have to take action on an item it's
13 very difficult for them to write letters. I should
14 say that of all governmental agencies. It's a
15 non-activity item for them. They just won't do it.

16 Essentially we have proceeded with the
17 radios and signs. If at some point in the future
18 we need to put a siren at that site I suppose we would
19 do it. We are going to probably be appearing before
20 this Commission. Hopefully I'll still be alive for
21 that appearance sometime in the future.

22 We have a hundred acres in the General Plan
23 here that we would expand the baseyard to, if at such
24 time the economy, et cetera, allows us to proceed with
25 that. And if at that time it really appears that a

1 siren is necessary for then projected population of
2 the baseyard I think we'd do that. But as I say we'd
3 accept a similar condition in the future if, in fact,
4 we do proceed with the expansion.

5 I believe Condition 13 -- Condition 16 is
6 the next one you had. Let me go to 16 and I'll come
7 back to 13. Condition 16 requires that we ensure that
8 the proposed project would not negatively impact on
9 the use of cane haul roads, irrigation ditches or
10 otherwise interfere with continued agricultural
11 operations.

12 And I would couple that with Condition 18
13 which provides that we implement effective soil
14 erosion and dust control methods during and after
15 construction in compliance with rules and regulations
16 of the state. I'm sorry. Condition 19, which
17 requires that we inform perspective tenants, all
18 tenants' license agreements, language informing
19 tenants of possible odor, noise and dust pollution.
20 We have submitted a copy of our form lease.

21 We've also provided a letter from HC&S who
22 is our -- a subsidiary of our master lessor which
23 clearly states that we have been in compliance with
24 all of their requirements and that we have worked
25 closely with HC&S to assure that both our tenants and

1 any other operators in our area are in compliance with
2 the fact that sugarcane operations surround our
3 project and they're in no way authorized to take any
4 action against those operations.

5 This is in our leases. It pretty much
6 parrots our master lease with A&B. And again every
7 tenant in the baseyard is required to comply with that
8 situation.

9 I feel that we've complied very well with
10 this. In fact we have constructed improvements in the
11 baseyard that make HC&S's facilities more easily
12 accessed such as the auwai that runs through the
13 baseyard. We've constructed facilities throughout
14 that provide access.

15 And also we've installed facilities in the
16 auwai that allow for simple cleaning of it because we
17 have experienced from time to time tenants that have
18 had materials that have blown into the auwai. And
19 they could cause a stoppage or an overflow of the
20 auwai if they're not taken care of.

21 So we installed a substantial grate
22 installation and made improvements that allow us both
23 to clean it and also automatically clean the auwai
24 until materials can be removed from it.

25 The access roads throughout the baseyard are

1 freely accessible to A&B. They have keys and cards to
2 all of our access routes which actually make it easier
3 to get into the surrounding lands that are in
4 sugarcane cultivation. So I believe we have complied
5 adequately for both of these situations.

6 As to the question of Condition 18, soil
7 erosion and dust control. As I mentioned earlier we
8 have throughout the baseyard full weather surface
9 roads, all paved with asphalt.

10 We have concrete, asphalt or dust
11 palliatives such as crushed and compacted rock on
12 every lot within the baseyard. There's no open soil
13 anyplace in the baseyard. The only place I would
14 anticipate that we would have anything like that would
15 be if an individual tenant, who leased from us,
16 submitted a request for a building permit and had to
17 install footings for construction of the building.

18 If that were the case, the Building
19 Department County of Maui comes into effect as the
20 enforcing entity and pretty much any time there's
21 excavation on a site that has a dust potential
22 problem, they require those fences be installed during
23 the time such improvements are underway.

24 We feel that their enforcement of that gives
25 us a secondary support situation in that regard.

1 I think that No. 13 had to do with
2 stormwater drainage and collection. And I'm sorry I
3 want to go back to that. We elected approximately
4 eight years ago to install drainage facilities which
5 would hold all onsite drain waters on site rather than
6 letting them go off site. Even though -- one of the
7 reasons for this is the county construction of
8 Mokulele -- excuse me, the state construction by DOT
9 of the Mokulele Highway installed drainage facilities
10 under the highway which were highly inadequate to get
11 rid of drainage. We immediately had flooding after
12 the highway was installed.

13 Essentially they created the Central Maui
14 Dam when they built Mokulele Highway in our location.
15 We had substantial flooding because the drainage
16 facilities under the highway were inadequate both at
17 baseyard road and also at two other locations along
18 the highway.

19 For that reason we elected to retain all
20 storm drainage waters onsite. We've constructed two
21 major sumps on our site, several smaller sumps which
22 catch and drain into those sumps starting with the
23 smaller sumps draining into 4-inch pipes. The major
24 sumps are serviced by 10 to 8-inch pipes throughout.

25 Since that time we have had virtually no

1 flooding in the baseyard. The water goes to an
2 approximately 10-acre foot storm sump area in the
3 middle of the baseyard and is held there 'til it seeps
4 into the groundwater. So we have done what we can to
5 provide for storm drainage collection. And we are not
6 draining any water from Central Maui Baseyard off our
7 site.

8 Item No. 23 and -- 23 requires that we
9 provide annual reports which we've done faithfully for
10 the past 15 years. And I hope we don't have to do it
11 any longer. And Condition 26 requires that you may
12 fully or partially release these conditions. And we
13 hope that you will fully release them. Thank you.

14 PRESIDING OFFICER JUDGE: Mr. Hopper, would
15 you like to offer any comments?

16 MR. HOPPER: Thank you, Madam Chair. I'm
17 not going to go beyond what the county discussed in
18 its response to Petitioner's motion. You have that
19 document. It sets forth the county's position. I
20 would note that the county did enter into a
21 stipulation for the release of certain conditions that
22 the county did not object to releasing. But the
23 conditions that the county still has concerns with are
24 Conditions 7, 8, 10, 12, 13 and 23 and 26. We do
25 realize the state has additional concerns with other

1 conditions.

2 Basically, and I think the basic point is
3 that several of these conditions deal with ongoing
4 obligations rather than obligations that would be
5 satisfied upon a certain date.

6 For example, a condition of obtaining a
7 change of zoning or community plan amendment is a
8 condition that can be satisfied by obtaining those
9 entitlements.

10 And the county believes that several of the
11 conditions deal with ongoing obligations that look
12 like they were meant to be applied as the property
13 continues to be used.

14 Included in those conditions are both
15 Conditions 7 and 8 that requires that the Applicant
16 maintain protections and utilize Best Management
17 Practices and require that their tenants have
18 protection and utilize Best Management Practices to
19 minimize the impacts of any hazardous materials
20 onsite.

21 And the county doesn't make any claims that
22 this condition has been violated, just that this is a
23 condition that it looks like it has been in compliance
24 and should continue to be in compliance as we go
25 forward.

1 It does realize that there's a lease
2 document but the condition would dictate the terms of
3 that lease and believes that that condition, if it was
4 taken off, it wouldn't have that same protection. And
5 there wouldn't be that ongoing obligation of the
6 landowner to make sure that its tenants basically keep
7 the property free of hazardous material.

8 Condition No. 10, again, in the same nature
9 requires limitation of the disturbance of the Pulehu
10 Gulch and to contact the Army Corps of Engineers if
11 activity is proposed that would impact the gulch. The
12 county does not see any reason why this condition
13 should be stricken at this point because it, again,
14 represents an ongoing obligation in the event the
15 gulch is disturbed and requires mitigation of any
16 disturbance.

17 And also Condition No. 12 requires the
18 maintenance of a buffer -- it actually does use the
19 word "maintenance". So I believe that suggests that
20 the intent of the Commission was to have this as an
21 ongoing obligation of the tenant to maintain a buffer
22 for the protection of the native bird habitat in the
23 area. And so maintenance of this buffer we believe
24 would be an ongoing obligation of the landowner.

25 Condition 13 dealing with the state and

1 county civil defense issues. Because those have not
2 been resolved yet, the county believes that that's
3 again still an ongoing obligation to satisfy the
4 requirements of either the state or the county
5 agencies.

6 It sounds like there may be miscommunication
7 or problems working with those agencies. But based on
8 the Commission's condition it does appear that this
9 was an important requirement. So the county believes,
10 you know -- and this is partially with a state issue
11 as well, that both agencies should be satisfied before
12 this condition would be released.

13 And "finally" Conditions 23 and 26. Those
14 deal with ongoing annual reports. The county would
15 like to continue to receive ongoing annual reports
16 obviously on the conditions that -- if you do decide
17 to retain conditions on those conditions that
18 retained. On the conditions that have been complied
19 with and that the county has no objection to
20 releasing, we would not need to see annual reports on
21 those conditions.

22 So, again, the county has submitted a
23 stipulation that the state has signed as well. We
24 would ask that you maintain the conditions that the
25 county is interested in and has no objections to the

1 conditions other than, again, 7, 8, 10, 12, 13, 23 and
2 26. Thank you.

3 PRESIDING OFFICER JUDGE: Thank you,
4 Mr. Hopper. Just one clarification on that. Do I
5 understand you to say, then, the county has no
6 objection to the release of Nos. 2, 16, 18, and 19?

7 MR. HOPPER: That's correct. Although we do
8 understand that some of them may involve either state
9 obligations or the state has objections to those
10 conditions as well.

11 PRESIDING OFFICER JUDGE: Understood. Thank
12 you. Mr. Yee, would you offer us your comments
13 please.

14 MR. YEE: Thank you. The Office of Planning
15 is opposed to the release of the following conditions
16 because they relate to ongoing obligations of the
17 Petitioner. These conditions are 7, 8, 10, 12, 16,
18 18, 19 and 26. I won't go over these conditions
19 specifically, but the idea obviously is that if in
20 year one you're not supposed to block the drainage to
21 the gulch does not mean that you can then block the
22 drainage in year two. It's an ongoing obligation.
23 You have to continually ensure that the drainage
24 remains free.

25 If you delete the condition and there is no

1 longer a requirement, and the Petitioner would then be
2 allowed in one particular case, to block the drainage.
3 So those conditions we think need to be kept in and
4 should not be released. The fact that they have not
5 violated those conditions in prior years does not mean
6 that the condition should then be released for future
7 years.

8 Let me then talk about a couple of the other
9 conditions that are a little more relevant or a little
10 more controversial. The first is Condition 13
11 relating to the civil defense siren. In a letter
12 dated January 11, 2011, which was enclosed in one of
13 the documents submitted by Mr. Stoner, it's a letter
14 from Mr. Stoner to the state civil defense in which he
15 says he basically is offering to provide the civil
16 defense siren within five years.

17 He notes he may be submitting a land use
18 urbanization request but whether that request is
19 denied or whether the request is delayed he says,
20 "We'll go ahead and build the civil defense siren in
21 five years."

22 As we have noted in our response or
23 supplemental response, the Office of Civil Defense has
24 stated, told us they have no objection to that. No
25 one is trying to tell them they have to do it right

1 away. So there's no enforcement action before you.
2 And the condition itself says that he is to do those
3 civil defense mitigations as required by both the
4 state civil defense as well as county civil defense.

5 So you do require, pursuant to the
6 condition, approval of both state agencies. He does
7 not have approval of the both agencies. He offered to
8 build a civil defense siren within five years. There
9 is no basis to release that condition at this time.

10 Condition No. 23 is simply the annual
11 reports. This is something that perhaps could be
12 revisited after the Conditions 2 and 13 are resolved
13 so that if all you have left are ongoing obligations,
14 perhaps you can then eliminate the annual reports.
15 But until then he has not yet fulfilled at least
16 Conditions 2 and 13. So an annual report requirement
17 is a logical and reasonable requirement.

18 The second condition is one I'm going to get
19 back to. That involves the testing to ensure that the
20 hazardous waste has not migrated from the wood
21 treatment facility. He refers to it as offsite
22 testing. To be clear, the Petition Area is composed
23 of portions of parcels 1, 19, 22 and 38. The wood
24 treatment facility was on the portion of parcel 22. So
25 it's just on a portion of the Petition Area. The RCRA

1 testing that was done and submitted both in our
2 documents as well as theirs, indicates that there was
3 a single, I think it was ten by 30-foot area which was
4 tested. And then there was another 10 by 30-foot
5 tested for background and then they compared the two.
6 That is not a testing for migration.

7 There's a picture of it on Page 14. I'd
8 show it to you but you couldn't see it. But it's a
9 relatively small part of the parcel 22 and is not
10 composed of the -- does not tell you whether or not
11 migration has occurred onto other areas of the
12 Petition Area.

13 So first we want to be clear when he says
14 "offsite" he means outside of portion 22 but still
15 within the Petition Area.

16 And second the testing that was done and he
17 has shown to you does not demonstrate migration. It
18 just doesn't tell you anything about migration which
19 is specifically listed in Condition 2. Condition 2
20 says "adjoining areas" to demonstrate that there's
21 been no migration.

22 We simply don't see that test. So based
23 upon that, you know, it's a condition that was imposed
24 it's a condition that's before you. And all the
25 Office of Planning can report to you is in our view

1 that condition has not been satisfied so we cannot
2 recommend that Condition 2 be released.

3 If you have any particular questions
4 regarding the ongoing obligations or any of these
5 other factual issues I'd be happy to answer them but
6 otherwise I'll rest on that.

7 PRESIDING OFFICER JUDGE: Mr. Stoner,
8 Mr. Crockett would you like to respond to anything
9 you've heard?

10 MR. STONER: I would like to respond to
11 primarily, I think, the two questions that we
12 experienced with respect to Item 2. Our timeline
13 situation puts us in sort of an unusual situation.

14 We assumed the testing that was done by
15 Beazer Industries who closed copper plants throughout
16 the nation, certainly provided a satisfactory clean
17 closure -- would provide a satisfactory clean closure
18 situation when we agreed to Condition 2 in 1996.

19 We were not privy to that testing. We
20 weren't responsible for getting it. It was between
21 A&B and Beazer. And lot 22 did not become part of our
22 operation until after the 1998 letter was approved.
23 In fact not until 2000.

24 So we were kind of caught in a bind here.
25 We're being asked to actually go beyond what Coppers

1 Corporation, Beazer Industries, was to do to provide
2 assurance that the adjoining areas were not impacted
3 by this operation. Frankly, I think it goes to the
4 wording of this situation. Without having the ability
5 to then look at Copper's situation before it is
6 approved in 1998, we agreed to the docket situation in
7 1996. Consequently we're stuck with that situation.

8 In the case of the civil defense question we
9 obviously have a situation where maybe we created a
10 problem where we went -- after we were told that the
11 state needed to talk to the county, we went to county
12 civil defense and said, "What would you like us to
13 do?" And they said, "Here's these radios. Test them.
14 If they work at the site they're fine with us."

15 Subsequently when we tried to contact the
16 county agency we got no response. We have not had any
17 response from the state. I've called both the state
18 chair of that entity as well as other staff members
19 there and have received no response from them either
20 with respect to returned telephone calls or anything
21 else.

22 So my point is this: I believe in
23 efficiency here. I'm not trying to save \$80,000 just
24 for the pure sheer joy of it. I just feel like
25 \$80,000 to put a siren in at that location is a

1 ridiculous expenditure. I would far rather put that
2 money to work someplace where it was efficiently spent
3 either through the state or the county rather than
4 that. Consequently I would like to get that item
5 removed.

6 However, if at some time in the future we
7 have to do something with the civil defense people
8 we'll do it. I'd like them to respond to us and
9 they've not done that for now ten months. So I don't
10 know. I'm stuck on this one.

11 How do we get a condition off if we can't
12 get a response from a state agency that we've been
13 told to go to and get information? Thank you for your
14 consideration on that.

15 Otherwise I think, I think our lease and our
16 operation for 30 years out there with no problems in
17 that entire 30 year period or almost 29, 28 years if
18 we're going to be exact. I think that speaks very
19 highly to our intent.

20 Furthermore, we have to give annual reports
21 to A&B every year. They're not gonna keep our lease
22 intact if we do something that's outrageously wrong
23 with respect to almost virtually every condition here.
24 That is No. 1. We do not want to lose that lease for
25 obvious reasons. We are in a situation that we're

1 responsible for that lease until 2035. For me to do
2 something that an enforcement entity of the county or
3 the state can come down on, even though these agencies
4 do not have enforcement, we're reviewed frequently by
5 County Building Department, both county and state
6 health and any number of other agencies that are
7 involved just on site dealing with our tenants
8 day-to-day.

9 We have -- we now have -- we're back up to
10 101 tenants. We've dropped down -- we had 98 -- from
11 103 down to about 96. And we're back up at that level
12 again. And there are frequent visits by state and
13 county agencies both for maintenance of their
14 equipment and things like that as well as simply
15 coming out to the site to do things.

16 I think we're a very visible site. And I
17 don't feel we're doing anything that in any way has
18 the potential of creating problems for the conditions
19 that are still in question. Thank you.

20 PRESIDING OFFICER JUDGE: Mr. Crockett,
21 could you use the microphone please.

22 MR. CROCKETT: I started out by saying that
23 I didn't think you wanted to hear any lawyer-type
24 argument. And I still feel that's probably what you
25 don't want to hear. Nevertheless I feel compelled to

1 read and ask that you read the words in Condition No.
2 2. There are two parts to the Condition No. 2, two
3 sentences. And it would seem to me that if you really
4 read the words in Condition No. 2 the first sentence
5 says, "Petitioner shall cause to be verified..." And
6 it would seem to me that the EPA soil closure report
7 that was given to you constitutes sufficient
8 verification that the areas that are described here
9 are free of soil contamination.

10 And it says "due to migration of
11 contaminates from wood treatment activities." I would
12 think that language means that migration that had
13 existed at that time. And it would certainly to me in
14 reading that sentence that the closure report
15 satisfied the requirements laid down by that sentence.

16 Then if you look at the second sentence it
17 says, "Petitioner or landowner shall ensure that
18 future use of the wood treatment facility site
19 complies with the hazardous waste facility closure,
20 forced closure report plan for the site as approved by
21 the state." Well, you have a closure report that says
22 it's okay, the site's okay.

23 So, again, it would certainly seem to me if
24 you read the words in the second sentence Mr. Stoner,
25 in reliance upon the closure report that he got or he

1 didn't have at that time but certainly the information
2 he has, he now has the closure report -- he had some
3 difficulty getting it, but he certainly complied with
4 the second sentence, the requirements that are
5 contained in the second sentence. So if you -- I'm
6 just struck by the words that are actually used here.

7 And it would certainly seem to me that these
8 words indicate conditions which have already been
9 satisfied by the closure report that was given by the
10 EPA unknown to him at that time, but certainly since
11 that time because of the trying to comply with these
12 conditions. He got a copy of the report and he's now
13 presented it to you, made it part of their record.

14 PRESIDING OFFICER JUDGE: Thank you.
15 Commissioners, are there any questions? Commissioner
16 Heller.

17 COMMISSIONER HELLER: Yes. This is
18 basically a question for the county and for OP. I
19 understand the distinctions you're drawing between
20 conditions that can be satisfied by some one-time
21 event versus conditions that represent an ongoing
22 obligation of the Petitioner.

23 And with respect to that distinction my
24 question has to do with the stipulation involving
25 Conditions 11 and 15. Both of those appear, at least

1 to me, as if they could be construed as ongoing type
2 obligations. And I'd like to hear from the county and
3 OP as to why those two are covered by the stipulation,
4 and other ongoing type obligations are not.

5 MR. HOPPER: That was 11 and did you say 15?

6 COMMISSIONER HELLER: Yes.

7 MR. HOPPER: For 11 and 15 the county felt
8 that this was a state obligation in both cases. One
9 was for the Department of Health and OP had no
10 objection to release so the county had no objection in
11 Condition 15.

12 Condition 11 was the same issue because it
13 involved the Department of Health in both cases. But
14 that's why the Department of Planning didn't have any
15 objections in that case. They saw those as primarily
16 Department of Health issues.

17 MR. YEE: The Office of Planning's been
18 working with Mr. Stoner for sometime now. Aside from
19 this hearing we've been having various meetings with
20 him in exchanging correspondence and telephone calls.
21 So Condition 11 we felt was really basically covered
22 by existing law. So since there's an existing law
23 that takes care of it, we didn't feel it was necessary
24 to keep it into a LUC condition.

25 And Condition 15 involving air quality

1 monitoring programs, again, it's similar in that same
2 vein. And, quite frankly, the Department of Health
3 has really never availed itself of that condition in
4 this case or actually in any case that I can recall.

5 So we were willing in the spirit of
6 cooperation to try to find those conditions that we
7 could find agreement on and agreed to stipulate to
8 those two conditions.

9 COMMISSIONER HELLER: Thank you. Those are
10 all my questions.

11 PRESIDING OFFICER JUDGE: Thank you. I have
12 a few questions. Mr. Yee, just following up on what
13 you just said that conditions were covered by state
14 law. Wouldn't that be the case for 18 and 19 as well;
15 that they are already covered by state law and the
16 Petitioner's required to comply with them as well?

17 MR. YEE: Well, 18, I think, at the time
18 that we were looking at this parcel 1C, if I can
19 remember this correctly, was still in construction.
20 And so, frankly, dust control and soil erosion is sort
21 of a constant issue.

22 So we sort of felt since they were engaged
23 in changes to parcel 1C, at the time I think that the
24 motion was filed we were not comfortable deleting it
25 at that time because it was sort of an ongoing

1 existing issue.

2 I don't think -- I think it's fair to say I
3 believe they finished maybe at this point. I just
4 didn't look back at 18. So if they have completed
5 their expansion I don't think we would have an
6 objection to 18. I'm sorry, we just didn't note that.
7 Nineteen, however, is a requirement for information
8 for their tenants. So that's an ongoing obligation.

9 So 19 it's sort of a continuing education
10 requirement for their new tenants, existing tenants,
11 changing tenants. So 19 we think is a continuing
12 obligation.

13 PRESIDING OFFICER JUDGE: Okay. Let me just
14 go to Mr. Stoner at this point. Can you confirm on
15 the 1C? I guess I want to ask you that -- is there
16 any more -- you stated you're basically complete with
17 construction.

18 MR. STONER: That is correct. I think that
19 Bryan is probably correct. There was still cane on 1C
20 when this matter came before the Commission in '96.
21 And we were not finished with any of the grading or
22 any of the work on that site at that time.

23 Presently the site is completely developed
24 as far as we take it which is to provide dust
25 palliatives, access, utilities, et cetera, to each of

1 the lots.

2 Obviously we do have, unfortunately, some
3 vacancies at the baseyard. So we do have large areas
4 that have been sitting vacant for a while. But
5 nonetheless our work is complete: Roads, utilities,
6 dust palliatives, landscaping, everything is in place
7 ready for tenants.

8 PRESIDING OFFICER JUDGE: So there are no
9 further ground-disturbing activity or grading that
10 will occur on --

11 MR. STONER: None whatsoever. Unless, as I
12 think I pointed out earlier with respect to dust
13 question, if some -- if one of our tenants filed a
14 building permit and was going to excavate footings for
15 the building or do other work which involved a
16 building slab or related underground utilities, the
17 building department county of Maui would probably put
18 a requirement on it to install dust fencing at that
19 specific lot. But that is not our responsibility. It
20 would be the responsibility of the third-party tenant.
21 That's county law. As far as I know, and I'm a
22 general contractor, that's enforced in every county in
23 the state at this time.

24 PRESIDING OFFICER JUDGE: Okay. Let me go
25 to No. 2. Mr. Yee, you've heard the arguments by the

1 Petitioner. And what I'm struggling with myself is I
2 wasn't there in 1996, you know, at these hearings.
3 The way I read the condition and the way Mr. Stoner
4 has explained it it seems that there was an
5 understanding that they had some obligation to work
6 with the adjoining neighbor to make sure they had a
7 clean closure.

8 But to the extent that this is ongoing now
9 that it's closed, the EPA has filed their clean
10 closure, it seems to me it's been complied with. So
11 I'm not -- the spirit of it I can't see that it has to
12 go on and on. I'm not understanding the state's
13 continuing obligation here.

14 MR. YEE: The condition requires that the
15 areas adjoining the former wood treatment facility are
16 free of soil contamination due to migration. So if
17 you look at the particular testing that was done, they
18 did not test the adjoining areas and they did not
19 determine even within the wood treatment facility
20 whether there was migration.

21 The only thing they tested was the area
22 directly under the storage area where the chemicals
23 were kept because the chemicals had spilled, and a
24 background area to determine, frankly, you know sort
25 of like if the area under the storage facility had

1 higher amounts than the background area. That's how
2 you can tell whether or not hazardous waste has been
3 spilled.

4 For purposes of RCRA site closure they were
5 able to get their clean closure report because RCRA
6 has a narrower view. I think, as Mr. Stoner has
7 testified, he said, well, they didn't really see the
8 report; they weren't really keeping track of what
9 Beazer was doing. So Beazer apparently did what they
10 need to do in RCRA, but Mr. Stoner was not checking to
11 see that Beazer did what they were required to do
12 pursuant to Condition 2.

13 So there was no testing of areas adjoining
14 the facility. There was no testing to determine
15 whether migration occurred. So Condition 2 was not
16 complied with.

17 The condition does not say "obtaining site
18 closure report."

19 PRESIDING OFFICER JUDGE: Let's take the
20 second sentence alone. "The Petitioner and/or lender
21 shall insure that the future use of the wood treatment
22 facility site complies with the hazardous waste
23 facility closure and post-closure plans for the site
24 as approved by the State Department of Health or other
25 such agencies."

1 Would you agree that that's been complied
2 with?

3 MR. YEE: Well, you know, you can make an
4 argument, I think, that that is an ongoing obligation.
5 But having said that, I think you could also make the
6 argument, and I think we would agree that it is
7 covered by RCRA Law. So we wouldn't necessarily
8 object to deleting that sentence because they're
9 required by RCRA to comply.

10 PRESIDING OFFICER JUDGE: Could I just ask,
11 we're going to take a five minute break in place.
12 Thanks. (recess in place)

13 PRESIDING OFFICER JUDGE: Thank you. Before
14 proceeding I think we are going to give you,
15 Mr. Stoner or Mr. Crockett, one last chance to respond
16 to what Mr. Yee's answer was to my question, if you
17 have anything further to say.

18 MR. STONER: I think the timeline speaks for
19 itself. We accepted a condition in 1996 that we felt
20 was going to be met by a procedure that was underway
21 and had been underway at that time for eight years and
22 was subsequently resolved two and-a-half years later,
23 a situation that we had absolutely no control over
24 whatsoever.

25 The relationship was between Koppers

1 Corporation, Beazer Industries, and Alexander &
2 Baldwin not us. We were given the EPA letter. Given
3 the fact that my view of the EPA is that they're a
4 pretty extensive testing organization if they do a
5 clean closure on a site.

6 I have acquired and sold gasoline station
7 sites and other sites that had potential situations
8 like this. We did not anticipate that we were going
9 to have a problem as far as migration was concerned at
10 that location because we had already been operating
11 there for 13 years.

12 This was not -- and when we acquired the
13 original lease on the property this was not a problem
14 situation.

15 So -- and when we agreed to the condition
16 this was not a problem situation. It only became a
17 problem, I guess, in the eyes of the agency that
18 presented this requirement. So I think we're stuck in
19 a timeline situation here.

20 All I can say is if it really is necessary
21 for us to do some adjacent offsite testing, I wouldn't
22 object to doing it. But I just think that we're
23 gilding the lily here to a certain extent.

24 The fact that we have operated there as long
25 as we have and we haven't had any indication of any

1 problems on adjacent properties or any other things --
2 and I would point out one other thing. That with the
3 exception of some small area of the paving, which is
4 mentioned in the report, where they felt that there
5 had been in minor migration of materials on site, that
6 every facility in the Coppers operation was in a
7 concrete lined storage basin, so that the liquids they
8 were working with were either encompassed in a
9 concrete area or otherwise controlled in tanks and
10 related things.

11 And I don't think they were subject -- had
12 there been a 10,000 gallon leak on site which is often
13 the case with fueling facilities and stuff like that,
14 then I can say yes we have a problem. I think the EPA
15 would have easily picked that up with the testing they
16 did do on site and the visual review they did on site.

17 We have submitted two reports from the EPA,
18 one the final closure report, the other a preliminary
19 report. They're both 140 pages long. Takes a lot of
20 reading. I can't state verbatim that they did
21 everything that the Office of State Planning would
22 hope that we would do in this particular case. But,
23 frankly, I think those reports speak for themselves
24 and the closure certification by EPA speaks for
25 itself.

1 I think I made it earlier but I want to make
2 it very clear that our lease with A&B requires that we
3 provide them annual environmental reports done by a
4 certified environmental engineer licensed to do such
5 reports in the state of Hawai'i. And we've complied
6 with that from the day we first did our lease with
7 A&B. And we do it annually. We feel that it's not
8 only an important document for us to meet the
9 requirements of our lease, it's also a great tool for
10 us in overseeing tenants where problems might occur.

11 PRESIDING OFFICER JUDGE: Thank you, sir.
12 Are there any additional questions for any of the
13 parties? At this point, Commissioners, we are just
14 trying to figure out procedurally how to go about
15 this. Let's take a five minute recess. Sorry. Thank
16 you.

17 (Recess was held in place.)

18 PRESIDING OFFICER JUDGE: Thank you. We'll
19 go back on the record. I believe, Commissioners,
20 what's your pleasure on this? Commissioner Makua.

21 COMMISSIONER MAKUA: Hi, Chair. I move to
22 release Conditions 1, 2, 3, 4, 5, 6, 9, 11, 14, 15,
23 17, 18, 20, 21, 22, 24, 25. And to deny the release
24 of Conditions 7, 8, 10, 12, 13, 23 and 26.

25 PRESIDING OFFICER JUDGE: Is there a second

1 to that motion?

2 COMMISSIONER MATSUMURA: Second the motion.

3 PRESIDING OFFICER JUDGE: Seconded by
4 Commissioner Matsumura. Discussion? Commissioner
5 Heller.

6 COMMISSIONER HELLER: Just to clarify, make
7 sure I had it right. Was 19 being released or being
8 retained?

9 COMMISSIONER MAKUA: Retained.

10 COMMISSIONER HELLER: Okay. Thank you.

11 PRESIDING OFFICER JUDGE: Any further
12 discussion? I guess we'll go for a vote. Why don't
13 you repeat it once more for clarification to make sure
14 we have all the same thing.

15 MR. DAVIDSON: Motion to release Conditions
16 1, 2, 3, 4, 5, 6, 9, 11, 14, 15, 17, 18, 20, 21, 22,
17 24 and 25. The same motion declines to release
18 Conditions 7, 8, 10, 12, 13, 19, 23 and 26.

19 MR. YEE: Chair, Condition 16 seems to be
20 missing from the order.

21 PRESIDING OFFICER JUDGE: Napua, did you
22 have 16? Was that to be, in your mind, kept or
23 released or retained?

24 COMMISSIONER MAKUA: Sixteen is to be
25 retained.

1 PRESIDING OFFICER JUDGE: Thank you for that
2 point of clarification. Any further discussion? I'd
3 ask Dan to ask for the vote, please.

4 MR. DAVIDSON: Okay. The motion as
5 aforesaid and corrected in the record: Commissioner
6 Makua?

7 COMMISSIONER MAKUA: Aye.

8 MR. DAVIDSON: Commissioner Matsumura?

9 COMMISSIONER MATSUMURA: Aye.

10 MR. DAVIDSON: Commissioner McDonald?

11 COMMISSIONER McDONALD: Yes.

12 MR. DAVIDSON: Commissioner Heller?

13 COMMISSIONER HELLER: Yes.

14 MR. DAVIDSON: And, Chair Judge?

15 PRESIDING OFFICER JUDGE: Yes.

16 MR. DAVIDSON: Motion passes 5-0, Chair.

17 PRESIDING OFFICER JUDGE: Thank you to the
18 parties. I believe this concludes our business for
19 this meeting. So we will adjourn.

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21 (The proceedings were adjourned at 10:30 a.m.)

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C E R T I F I C A T E

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I, HOLLY HACKETT, CSR, RPR, in and for the State
of Hawai'i, do hereby certify;

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That I was acting as court reporter in the
foregoing LUC matters on the 4th day of November 2011;

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That the proceedings were taken down in
computerized machine shorthand by me and were
thereafter reduced to print by me;

11

12

13

That the foregoing represents, to the best
of my ability, a true and correct transcript of the
proceedings had in the foregoing matter.

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DATED: This _____ day of _____ 2011

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HOLLY M. HACKETT, HI CSR #130, RPR
Certified Shorthand Reporter

