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LAND USE COMMISSION

STATE OF HAWAI'I

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TRANSCRIPT OF PROCEEDINGS

The above-entitled matters came on for a Public Hearing or Action at Molokini Room, Makena Beach and Golf Resort, 5400 Makena Alanui, Makena, Maui, Hawai'i commencing at 10:20 a.m. on February 16, 2012 pursuant to Notice.

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

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A P P E A R A N C E S

COMMISSIONERS:
KYLE CHOCK
THOMAS CONTRADES
RONALD HELLER
NORMAND LEZY (Chairman)
CHAD McDONALD
ERNEST MATSUMURA
NICHOLAS TEVES, JR.

EXECUTIVE OFFICER: ORLANDO DAVIDSON
ACTING CHIEF CLERK: RILEY HAKODA
STAFF PLANNERS: BERT SARUWATARI

DEPUTY ATTORNEY GENERAL: SARAH HIRAKAMI, ESQ.

AUDIO TECHNICIAN: WALTER MENCHING

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

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

For the County: MICHAEL HOPPER, ESQ.
Deputy Corporation Counsel

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

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

Docket No. A11-790 KULA RIDGE, LLC (Maui)

For the Petitioner: STEVEN LIM, ESQ.
MARTIN LUNA, ESQ.

For the County: MICHAEL HOPPER, ESQ.
Deputy Corporation Counsel
DANNY DIAS, Planning Dept.

For the State: BRYAN YEE, ESQ.
Deputy Attorney General
JESSE SOUKI
Director Office of Planning
Robyn Loudermilk, Planner

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1 CHAIRMAN LEZY: Good morning. This is a
2 meeting of the State of Hawai'i Land Use Commission.
3 First item on the agenda is adoption of minutes from
4 the February 2, 3, 2012 meeting. Commissioners, any
5 revisions? Hearing none, do we have a motion?

6 COMMISSIONER CONTRADES: Move to approve.

7 COMMISSIONER TEVES: Second.

8 CHAIRMAN LEZY: All in favor? (Aye) All
9 opposed? Motion passes. The next item on the agenda
10 is the Commission's tentative meeting schedule.
11 Mr. Davidson.

12 MR. DAVIDSON: Thank you, Chair. You have
13 the meeting schedule before you. As always contact
14 either Riley or myself if you have any questions or
15 conflicts. One thing we're in the process of doing,
16 for your information, is for the next meeting,
17 March 1st, getting extra air con till 6:30 p.m. that
18 first day in an effort to make substantial progress on
19 the Ho'opili docket. So that's just for notice for
20 all. Thank you.

21 CHAIRMAN LEZY: Thank you. The next item on
22 the agenda is a hearing on Docket No. A10-789 A&B
23 Properties, Inc. Wai'ale Petition to amend the
24 Agricultural Land Use District Boundary into the Urban
25 District for approximately 545.229 acres at Wailuku

1 and Waikapu, county of Maui, state of Hawai'i TMK
2 portion of 23 and 37, 3-8-07:71 portion of 101 and
3 104.

4 As a preliminary matter I would like the
5 record to reflect that the Notice of Hearing in this
6 matter indicated that the meeting would be held in the
7 Wailea Salon. And obviously it was not. It's being
8 held in the Molokini Room. There have been two signs
9 posted at the Wailea Salon advising individuals that
10 the meeting has been moved. I would, again, like the
11 record to reflect that Notice has been provided of
12 that change in meeting location.

13 On November 7, 2011 the Commission received
14 Petitioner's first amendment to its Petition for Land
15 Use District Boundary Amendment verification, Exhibits
16 9 through 11, Affidavit of Service of First Amended
17 Petition for Land Use District Boundary Amendment,
18 and Affidavit of Sending First Notification of
19 Petition Filing.

20 Also on November 7, 2011 a letter from the
21 Executive Officer finding the Petition to be a proper
22 filing was mailed to Petitioner.

23 On November 15, 2011 the Commission filed
24 and mailed the Findings of Fact, Conclusions of Law
25 and Decision and Order accepting Petitioner's Final

1 Environmental Impact Statement to the parties.

2 On November 22, 2011 the Commission received
3 Petitioner's Affidavit of Service Regarding Notice of
4 Hearing, and Exhibits A through D.

5 On December 7, 2011 the Commission received
6 State Office of Planning's Statement of Position.

7 On December 12, 2011 the Commission received
8 and granted a request from Maui County Planning
9 Department to file a Position Statement on
10 December 16, 2011.

11 On December 28, 2011 the Commission received
12 written correspondence from Walette Pellegrino and
13 Jacob Verkerke.

14 On January 11, 2012 a pre-hearing conference
15 was held by the Commission's executive director with
16 the parties via teleconference.

17 On January 20, 2012 the Commission received
18 Petitioners's List of Witnesses, List of Exhibits, and
19 Exhibits 19 through 34.

20 On January 23, 2012 the Commission received
21 State Office of Planning's List of Witnesses, and List
22 of Exhibits and Exhibits 1 and 3-11.

23 On January 26, 2012 the Commission received
24 Maui County Planning Department's List of Witnesses
25 and List of Exhibits and Exhibits 2 through 6.

1 On February 1, 2012 the Commission received
2 Petitioner's First Amended List of Witnesses; First
3 Amended List of Exhibits and Exhibits 35 and State
4 Office of Planning's Exhibit 2.

5 On February 6, 2012 the Commission received
6 Maui County Planning Department's Amended List of
7 Witnesses and Exhibits 1 and 7.

8 Let me briefly describe our procedure for
9 today on this docket. First, we'll have the parties
10 identify themselves for record. Then those
11 individuals who wish to provide public testimony will
12 be called to identify themselves.

13 All such individuals will be called in turn
14 to our witness box where they will be sworn in prior
15 to their testimony.

16 After completion of the public testimony
17 portion of the proceedings the Commission staff will
18 provide a map orientation. After the Commission staff
19 has provided the map orientation the parties will be
20 provided an opportunity to admit their exhibits into
21 the record.

22 After the admission of exhibits into the
23 record the Petitioner will present its case. Once
24 Petitioner has completed its presentation they will be
25 followed in turn by the County of Maui Planning

1 Department and then the State Office of Planning.

2 I note for the parties and the public that
3 from time to time we'll be taking short breaks. We
4 will also take a break at 11:00 a.m. in order to take
5 up agendaed matter No. 5.

6 Are there any questions regarding our
7 procedures for today? Hearing none, will the parties
8 please make their appearances.

9 MR. MATSUBARA: Good morning, Chair Lezy,
10 Commissioners. Benjamin Matsubara and Curtis Tabata
11 on behalf of A&B Properties, Inc. With me today is
12 Grant Chun, vice president of A&B Properties, Inc. and
13 Daniel Yasui, director of planning and entitlement.
14 Thank you.

15 CHAIRMAN LEZY: Good morning.

16 MR. HOPPER: Good morning Chair and Members
17 of the Land Use Commission. Michael Hopper with the
18 Department of Corporation Counsel representing Maui
19 County Department of Planning. With me is planner
20 Daniel Dias. We also have Ann Kua.

21 CHAIRMAN LEZY: Good morning.

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

1 CHAIRMAN LEZY: 'Morning. Before we move
2 into live public testimony we'll let the record
3 reflect that the Commission received three pieces of
4 written testimony, the first being dated February 16,
5 2012 from Dick Mayer, the second being dated
6 February 15, 2012 from Joseph Pontanilla, County
7 Council Vice-Chair. And the third dated February 16,
8 2012 from the Waikapu Community Association. One more
9 piece of written public testimony received
10 February 16, 2012, Hokuao Pellegrino.

11 Is there anyone in the audience who desires
12 to provide public testimony? Mr. Davidson, you have
13 the list of public testifiers.

14 MR. DAVIDSON: I'll read the first three
15 names. We'll have a 3-minute rule. Eric Miyajima
16 followed by Scott Sakakihara followed by Jacob
17 Verkerke.

18 ERIC MIYAJIMA
19 being first duly sworn to tell the truth, was examined
20 and testified as follows:

21 THE WITNESS: Yes.

22 CHAIRMAN LEZY: Please state your name, your
23 address and proceed.

24 THE WITNESS: My name is Eric Miyajima. My
25 address 73 Pu'unene Avenue, Kahului. I was given the

1 opportunity to talk today about supporting the Wai'ale
2 Project. Basically my testimony is because it's gonna
3 create housing, affordable and market.

4 I've been a mortgage banker for about 31
5 years here on Maui. Was born and raised here. Kind
6 of grew up in the so-called Dream City so I kinda saw
7 how the opportunities were for young people.

8 And this will probably enhance a lot of
9 people to, who went away for college and come home and
10 create jobs for them to come home to. It's kinda
11 funny that a lot of my classmates that I went to
12 Baldwin with that never had the opportunity to come
13 home.

14 So, you know, something like this Project
15 will create, I think, opportunities for our young
16 children that go away for school and have them come
17 home instead of being on the mainland or in Honolulu.
18 So I think this will probably help them.

19 I also was the past president for Maui
20 Junior Golf for the last 20, 21, 22 years. And I
21 coached Baldwin for the last -- I coached for 14
22 years. So these kind of opportunities for our
23 children to kinda grow up and have recreational
24 facilities, also given the opportunities to come back,
25 I think it's important for growth on Maui.

1 And it's important that we can give them
2 this kind of opportunities. Because if we stagnate
3 the growth of Maui I think it's not going to give jobs
4 nor work for our young children. So, I believe this
5 is going to be a great form of opportunity for them.
6 Thank you.

7 CHAIRMAN LEZY: Parties, questions?

8 MR. MATSUBARA: No questions.

9 CHAIRMAN LEZY: Commissioners, any
10 questions? Thank you.

11 MR. DAVIDSON: Scott followed by Jacob
12 Verkerke followed by Lyn McNeff.

13 SCOTT SAKAKIHARA
14 being first duly sworn to tell the truth, was examined
15 and testified as follows:

16 THE WITNESS: Yes.

17 CHAIRMAN LEZY: Please state your name, you
18 your address and proceed.

19 THE WITNESS: My name is Scott Sakakihara.
20 My address is 33 Lono Avenue, Kahului, Hawai'i. Good
21 morning, Commissioners. I've lived and worked in
22 Central Maui for most of my life.

23 Like Eric I grew up in Dream City. And I'm
24 here to testify in favor of the reclassification of
25 545 acres of land in A&B's Wai'ale Project from

1 agriculture to urban.

2 The Master Planned community will provide
3 for the growth of our local population. The Project
4 will bring affordable and market rate homes in a
5 Master Planned community. The homes will be in easy
6 reach of parks, commercial space and a new middle
7 school. You know, that kind of reminds me of the
8 community that I grew up in.

9 While the economy and housing market today
10 is weak, I suspect that our population will continue
11 to grow, as will the housing needs of the community.
12 The Project has critical mass needed to avoid
13 appearance of inflated prices and lack of supply.

14 The biggest detriment of high home prices is
15 that families and individuals are forced to work
16 oftentimes long hours or more than one jobs leading to
17 social problems in the community.

18 I believe this housing Project will help to
19 feed the demand for years to come. I believe the
20 Project is a logical extension of Kahului and
21 beneficial to the community over all.

22 CHAIRMAN LEZY: Parties, questions?
23 Commissioners, questions? Thank you.

24 MR. DAVIDSON: Jacob followed by Lyn McNeff
25 followed by Hokuao Pellegrino.

1 XX

2 JACOB VERKERKE

3 being first duly sworn to tell the truth, was examined
4 and testified as follows:

5 THE WITNESS: Yes, I do.

6 CHAIRMAN LEZY: Please state your name, your
7 address and proceed.

8 THE WITNESS: My name is Jacob Verkerke.
9 I'm the president of the Waikapu Community
10 Association. My address is 25 Keapua Street in
11 Waikapu. I'm here to represent the community of
12 Waikapu, the last remaining traditional small town in
13 the central valley of Maui. I will not repeat the
14 testimony I provided in printed matter. I'll try to
15 summarize it and highlight what's important.

16 Waikapu is a rich community, small town
17 community worthy of protection. We have lost too many
18 of these communities over the years through
19 development efforts that weren't properly planned to
20 preserve the historical, cultural and natural
21 resources that are contained in the areas.

22 The proposed development falls within the
23 ahupua'a of Waikapu. And as a community association
24 we're very interested, very focused on trying to
25 preserve, protect all that's good and valuable in that

1 area.

2 One of the biggest concerns for the
3 community is the preservation of that identity of
4 Waikapu small town that we still have. This Project,
5 the previous testifier stated that it's a natural
6 extension of Kahului. That's exactly what concerns
7 the Waikapu community. Because it's located in the
8 Waikapu ahupua'a and as such should not serve to
9 become what connects Waikapu and allows Waikapu to be
10 absorbed in Kahului.

11 We're here to ask for protection of that
12 separate identity for that recognizable visual
13 separation that still exists between Waikapu and its
14 northerly neighbors Wailuku and Kahului.

15 There are lots of valuable, natural cultural
16 resources, as I mentioned. One of those most obvious
17 features is the intact systems of sand dunes believed
18 to contain many Hawaiian burials.

19 We ask for a number of conditions to be
20 imposed on this Project should the Commission decide
21 to approve the Petition for Boundary Amendment. Those
22 conditions are that a requirement for open space in
23 the form of a green belt be placed between Wai'ale and
24 Kahului such as included in the General Plan Advisory
25 Committee that's been working on the Maui Island Plan.

1 Their maps recommended a clear buffer between the
2 Waikapu community including Wai'ale and Kahului.

3 The second condition we asked for is that
4 protection of the Wai'ale sand dune system being
5 required against any disturbance to preserve its
6 natural, cultural and historical significance and to
7 serve as an open space area of separation between the
8 proposed Wai'ale community and the present community
9 of Waikapu.

10 I appeared before you on November 3rd to
11 provide testimony on the Final EIS. We raised a
12 number of issues dealing with the managing of water,
13 the availability of water and the treatment of
14 wastewater.

15 So the third condition that we'd like to ask
16 for -- since the EIS was quite vague on how that's
17 going to be handled and how that's going to be
18 provided -- so the third condition we ask for is to
19 require a third study and analysis to identify actual
20 solutions to the problems of water sourcing and
21 treatment, including design alternatives to reduce the
22 amount in disposal requirements.

23 The written testimony mentioned that
24 attached would be the community's statement of values.
25 Of course, that's sitting on my desk at home so I

1 will provide it to staff via email. But we've
2 provided that to you. Thank you very much.

3 CHAIRMAN LEZY: Parties, questions?
4 Mr. Yee.

5 MR. YEE: Just quickly, how many members are
6 part of the association?

7 THE WITNESS: We have about 40 to 50 active
8 members, which is fairly typical representation in
9 small communities. There are -- our general meetings
10 are attended by, at times by 75 to a hundred community
11 members -- community residents but not all are active
12 members.

13 MR. YEE: So it's not necessarily a
14 membership like they have sign up for membership.

15 THE WITNESS: Right. It's voluntarily to be
16 a member. But we do believe -- it's about 1100
17 families in the community. I think we fairly
18 represent the various factions.

19 MR. YEE: Thank you. Nothing further.

20 CHAIRMAN LEZY: Commissioners, questions?
21 Thank you.

22 THE WITNESS: Thank you.

23 MR. DAVIDSON: Next is Lyn McNeff followed
24 by Hokuao Pellegrino followed by Kay Fukumoto.

25 LYN McNEFF

1 being first duly sworn to tell the truth, was examined
2 and testified as follows:.

3 THE WITNESS: Yes.

4 CHAIRMAN LEZY: Please state your name, your
5 address and proceed.

6 THE WITNESS: My name is Lyn McNeff. My
7 address is 99 Mahalani Street, Wailuku. I'm the CEO
8 of Maui Economic Opportunity, and I am here to support
9 A&B's request. A&B's an important community partner
10 and supporter of MEO. A&B is a part of Maui
11 community. In the year 2010 the foundation that A&B
12 supports gave 1.3 million to organizations. Of that
13 1.3 million, 435,000 went to Maui, the largest island
14 that got an amount.

15 A&B's management employees live in the
16 community and they serve in volunteer leadership
17 roles in charitable organizations, community groups,
18 youth athletic teams, professional and trade
19 organizations, government boards and commissions.

20 It is evident by their donations and their
21 time in the community that they care about Maui. This
22 plan is well thought out and has public recreational
23 areas, commercial space, affordable and market-priced
24 homes and a new middle school which we need.

25 The community needs this kind of housing so

1 that our local workforce can afford to live on Maui.
2 It is a community for the next generation, a place for
3 our children and grandchildren who haven't been able
4 to return at this time, to be able to make a home for
5 themselves in the future. Thank you for the
6 opportunity to testify.

7 CHAIRMAN LEZY: Parties, questions?
8 Commissioners, questions? Thank you, ma'am.

9 MR. DAVIDSON: Mr. Pellegrino followed by
10 Kay Fukumoto followed by Laks Abraham.

11 HOKUAO PELLEGRINO
12 being first duly sworn to tell the truth, was examined
13 and testified as follows:

14 THE WITNESS: Yes.

15 CHAIRMAN LEZY: Please state your name,
16 your address and proceed.

17 THE WITNESS: My name a Hokuao Pellegrino.
18 My address is 213 West Waiko Road, Waikapu. Aloha mai
19 kakou. Good morning. Good morning, Chair, Members of
20 the State Land Use Commission. My name is Hokuao
21 Pellegrino. I'm a 33 year-old resident and lineal
22 descendant of the Waikapu ahupua'a.

23 I'm a wetland kalo farmer that utilizes the
24 freshwater resources of Waikapu on our family kuleana
25 land mauka of the proposed Project. I'm also a board

1 member of the Waikapu Community Association, and a
2 chairperson of the cultural and natural resource
3 management committee.

4 I've provided comments that have been
5 documented in the entire process of this proposed
6 Project.

7 Today I come before you and ask that you
8 hear concerns of our Waikapu community and how the
9 Applicant's Petition to reclassify this land as it
10 currently stands will negatively impact my 'ohana, the
11 uniqueness of our community and the precious resources
12 that historically and presently sustain our way of
13 life.

14 I'm by no means against the building of
15 homes for the people of Maui. I am, however, against
16 urban sprawl and the desecration and decimation of
17 natural and cultural resources in order to secure
18 homes that could potentially be good for our island
19 and community if done right.

20 Therefore, I'm requesting the following
21 amendments and conditions be completed in compliance
22 prior to any approval of the Applicant's petition.

23 Regarding water resources --

24 CHAIRMAN LEZY: Mr. Pellegrino, I'm sorry,
25 didn't mean to interrupt you. Could you slow down

1 just a little bit. Our court reporter's going to go
2 nuts.

3 THE WITNESS: I'm deeply concerned about the
4 negative impacts that the two sources for the proposed
5 1.9 to 2.8 million gallon water supply will have on
6 the riparian and appurtenant uses of those in the
7 Waieha region, from Waihe'e to Waikapu, my family and
8 I included.

9 There were no clear discussions nor a
10 comprehensive analysis on the impacts of streams,
11 aquifers and the rights of kuleana users in this known
12 region.

13 The Applicant cannot say for certain where
14 or what their water source will be, and has not
15 demonstrated to the aforementioned communities and the
16 State Water Commission of the potential adverse
17 impacts.

18 Furthermore, this indecisiveness on behalf
19 of the Applicant clearly displays a lack of value nor
20 respect for our precious water resources.

21 The Applicant has a responsibility under the
22 Hawai'i stated law to properly manage both instream
23 and offstream uses which also includes their own
24 subsidiary, HC&S who stated during the Na Wai Eha
25 Contested Case that they couldn't afford to lose a

1 drop of water or agricultural operations would
2 negatively be impacted or cease.

3 Therefore I strongly urge that a condition
4 be attached to require a comprehensive study and
5 analysis to clearly identify which water source will
6 be utilized, and where it derives from.

7 Included in this study shall be an extensive
8 report on the impacts this development would have on
9 the surface and groundwater of the Nawaieha region:
10 Waihe'e to Waikapu, including Kahului, the impacts it
11 would have on the aforementioned communities,
12 especially those who have kuleana appurtenant riparian
13 rights to the water.

14 In addition to this condition I'm asking the
15 Land Use Commission to insure that the Applicant
16 complies with all laws according to the State Water
17 Code and the public trust doctrine within the
18 necessary study and analysis.

19 Second and last: Another significant area
20 that I find inadequate regarding this development is
21 the lack of acknowledgment and understanding of how
22 important the last remnant sand dunes are in Waikapu
23 as they seek to stand as natural, cultural and
24 historical assets and relics of our community.

25 The native Hawaiian-owned consulting company

1 Hanapono, conducted a CIA and shows no advocacy for
2 this precious cultural and natural resource which
3 should obviously be important to them as Hawaiians.

4 The AIS and FEIS does nothing but set aside
5 what they claim as one intact dune which would be
6 preserved, and leaves the rest to be destroyed.

7 The current Wailuku and Kahului Community
8 Plan has a list of policies under the cultural
9 resource section No. 5: Policy lists significant
10 Wailuku, Kahului regional sites and areas to be
11 protected. The list describes Wahipana, which are
12 significant traditional places. This include pu'uone
13 or sand dunes formation through Kahului to Waikapu.

14 The remaining pu'uone within the Wai'ale
15 development should be preserved and protected in its
16 entirety for the mere fact that: 1. They are the
17 last intact dune structures on the entire island of
18 Maui within this region with unique geological and
19 cultural features.

20 2. Sand dunes possess hundreds of iwi
21 kupuna documented of different social classes, thus
22 the of a niho palaoa in a test pit found on this
23 particular Project site which has a symbol that had
24 been worn by royalty.

25 3. Illegal sand mining is occurring on 50

1 acres for many years and have displaced over 90
2 documented sets of iwi.

3 4. These sand dunes in particular played a
4 integral role in the famously documented
5 Ahulaunapi'ipi'i Nakanelua battle where scores of Maui
6 warriors defeated the forces of Hawai'i Island whose
7 attempts at conquering Maui were thrown out by the
8 very own usage of these sand dunes.

9 And 5. The sand dunes align with the county
10 of Maui's definition of significant cultural
11 resources. Therefore, I strongly urge the following
12 conditions be assigned to the Applicant for their
13 inadequate studies to protect cultural and natural
14 resources on my home ahupua'a at Waikapu.

15 1. Conduct a study to list the Wai'ale
16 burials on State and National Historic Registers, as
17 it deserves.

18 2. Require the Applicant to conduct a
19 traditional cultural property study to be done
20 following federal guidelines.

21 3. And foremost, require alternative Project
22 design that protects unmined and mined sand dunes
23 onsite as clearly shown in the Maui Island Plan
24 directed growth maps approved by GPAC and the Maui
25 Planning Commission.

1 On behalf of myself and the Waikapu
2 Community Association mahalo each and every one of
3 you. Do you have any questions?

4 CHAIRMAN LEZY: Parties, questions?
5 Commissioners, questions? Commissioner McDonald.

6 COMMISSIONER McDONALD: Thank you for your
7 testimony. This question, you mentioned you folks or
8 your family has kuleana lands up mauka.

9 THE WITNESS: Yes, yes.

10 COMMISSIONER McDONALD: With regards to the
11 water commitments for use of the water, do you folks
12 as kuleana lands have perpetual water rights?

13 THE WITNESS: Yes, we do. On our family
14 kuleana land we have 2.143-acre land that has been in
15 my family from the time of the Mahele 1848. We do
16 have appurtenant and riparian rights to the stream
17 water and irrigation ditch that runs through our
18 property. Are you asking as it regards to this
19 proposed Project and how it will be affected?

20 COMMISSIONER McDONALD: No, I was wondering
21 if your kuleana lands have perpetual water rights.

22 THE WITNESS: Yes, they do. Yes. And
23 they're documented with the State Water Commission.

24 COMMISSIONER McDONALD: All right. Thank
25 you.

1 THE WITNESS: Mahalo.

2 CHAIRMAN LEZY: Commissioners, further
3 questions? Thank you for your testimony.

4 MR. DAVIDSON: Kay Fukumoto followed by Laks
5 Abraham followed by Eric Yoshizawa.

6 KAY FUKUMOTO
7 being first duly sworn to tell the truth, was examined
8 and testified as follows:

9 THE WITNESS: Yes, I do.

10 CHAIRMAN LEZY: Please state your name, your
11 address and proceed.

12 THE WITNESS: My name is Kay Fukumoto.
13 Address is 543 Pohaku Street, Kahului, Maui, Hawai'i.
14 I'm here to support the Wai'ale Project. I was born
15 and raised in Maui. Have lived in Kahului for over 45
16 years. The first 13 years with my family was in the
17 eighth increment. Then my husband and I purchased
18 property in the tenth increment and we've been there
19 for 25 years now.

20 So I've been -- my husband and I have been
21 integral members of the community for more than 25
22 years here on Maui since graduation from college.
23 Attended Baldwin High School, went to the mainland and
24 UH Manoa for college and returned home.

25 I attended the 2005 community workshops

1 planning this community and appreciated being able to
2 give input along with several others into this plan.
3 It is a reflection of the collaboration of a lot of
4 local folks who have lived in Kahului and elsewhere.

5 I love that during the community workshop we
6 looked at infrastructure, schools, employment and
7 other services to be included in these new
8 neighborhoods. This is a local housing project both
9 affordable and market and a Master Planned community
10 that will include recreational and commercial space.

11 This is the community that I grew up in,
12 similar to how all the increments that were developed
13 in Kahului. This is a very well planned community.
14 And I appreciate being part of that effort to design
15 it.

16 This is exactly the kind of housing that our
17 local workforce needs if they are going to be able to
18 afford to live here on Maui. This is not a project
19 that will be built tomorrow. This is a project that
20 will come years from now. And we're looking at future
21 housing.

22 This is a community for the next generation,
23 a place my son, who is currently going to college on
24 the mainland, might be able to make a home for himself
25 in the future. I recently asked my son about where he

1 thought he would end up when he finally settled down.

2 So I wanted to quote what he said.

3 "It has been my plan all along to remain on
4 the mainland long enough to establish myself with a
5 good computer science job. It would be best for me to
6 remain up here for a while after graduating. However,
7 in the long term I really, really would like to return
8 to Maui. I think it is the best place in the world to
9 raise a family." End of his quote.

10 So I ask for your consideration for
11 supporting this Project for future generations. I ask
12 for my family, especially my son and other local
13 families who want their children to have good homes
14 here. Thank you very much.

15 CHAIRMAN LEZY: Parties, questions?
16 Commissioners, questions? Thank you, ma'am.

17 MR. DAVIDSON: Laks Abraham followed by Eric
18 Yoshizawa.

19 CHAIRMAN LEZY: I need to swear you in. Do
20 you affirm the testimony --

21 THE WITNESS: Yes, I do.

22 CHAIRMAN LEZY: Could you raise your hand
23 for me, please.

24 THE WITNESS: Yes.

25 LAKS ABRAHAM

1 being first duly sworn to tell the truth, was examined
2 and testified as follows:

3 THE WITNESS: Yes.

4 CHAIRMAN LEZY: State your name, your
5 address and then proceed.

6 THE WITNESS: My name is Laks May Abraham.
7 My address is 143 Iniiniki, Wailuku, Hawai'i.

8 Again, good morning. I am the president and
9 chief professional officer of Maui United Way. First
10 of all, I'd like to say mahalo for allowing me to
11 testify in support of A&B Properties and their pursuit
12 of land reclassification in Wailuku and Waikapu. I'm
13 also a long-time resident of Waikapu.

14 Just to give you a brief background: Our
15 agency represents over 500 volunteers, 34 partner
16 agencies, and over 4,000 donors islandwide. Last year
17 alone Maui United Way served 64,000 people through our
18 36 health and human service programs which wouldn't be
19 possible without the support of key community
20 contributors like A&B.

21 To say that A&B is an important contributor
22 to our community is a complete understatement. They
23 are for Maui United Way the most important community
24 contributor that we work with.

25 Over the last decade A&B and its affiliates

1 have contributed close to \$2 million to Maui United
2 Way and our community.

3 A&B is not only a generous contributor,
4 they're strong supporters in community activism
5 encouraging their employees to get involved by
6 volunteering their time on numerous boards, committees
7 and through efforts of countless community projects.

8 A&B cares about Maui. They care about
9 taking care of their employees and caring for our
10 community. This Project is all about supporting our
11 local working community. This is a plan we can feel
12 proud of and know it will benefit our community in
13 countless ways.

14 It will provide public recreational space,
15 commercial space, homes, both affordable and market,
16 and a new middle school. This is exactly the kind of
17 housing that our local workforce needs if they're
18 going to be able to sustain living here on Maui. This
19 is a logical extension of Kahului and provides easy
20 access infrastructure, schools, employment and other
21 services.

22 As a born and raised Mauian and a fierce
23 advocate of affordable housing and sustainable living
24 I humbly ask you to strongly consider the importance
25 for needs of this Project and others like it.

1 Just in my own immediate family I have two
2 brothers, both college graduates, which continue to
3 work and live in California because of the lack of
4 jobs and affordable housing here on Maui. My
5 brothers, like so many others, have been forced to
6 live on the mainland, desperately wishing they could
7 come home. But as you know we have to provide for our
8 families first and foremost.

9 As a single parent of two boys I was blessed
10 to have the opportunity to become a homeowner solely
11 because of affordable housing initiatives. Never a
12 day goes by that I don't realize how lucky I am to be
13 able to live and work in the place that I love most,
14 the place of my ancestors and the only place I could
15 ever imagine raising my children.

16 With your support this Project could serve
17 so many other deserving families with the opportunity
18 and the dream of attaining homeownership, jobs and
19 much needed support for our economy.

20 This is a community for the next generation,
21 a place our keiki may be able to make a home for
22 themselves in the near future.

23 Again, thank you for the opportunity to
24 testify today. And I humbly ask for your support of
25 A&B's request to make this plan a reality. Mahalo.

1 CHAIRMAN LEZY: Parties, questions?
2 Commissioners, questions? Thank you.

3 MR. DAVIDSON: Next witness Eric Yoshizawa.

4 ERIC YOSHIZAWA

5 being first duly sworn to tell the truth, was examined
6 and testified as follows:

7 THE WITNESS: Yes, I do.

8 CHAIRMAN LEZY: Please state your name, your
9 address and proceed.

10 THE WITNESS: I'm Eric Yoshizawa. Thank you
11 for hearing my testimony. I have formerly come before
12 you many times before this Commission representing
13 Ameron Hawai'i. Today I come as a Kahului resident.

14 This Project provides much needed
15 residential housing opportunity in the Kahului area
16 that we as residents see on a recurring daily basis and
17 a nice complement, I think, to what's already growing
18 in the adjacent area of Maui Lani area. The project
19 provides a mix of uses that are going to be welcome
20 complements to what's there, both operational and
21 commercial spaces.

22 As an employer I can see among my employees
23 their dream to achieve homeownership. And that goal
24 has been elusive for many. And this helps many of
25 these along the way.

1 From a personal and maybe a historical
2 perspective: My grandparents were immigrant workers
3 in the plantations. And along the way the development
4 of Kahului, largely under A&B's hand, helped my
5 parents segue from plantation housing, that my
6 grandparents had, into their own homes.

7 So I also grew up in Dream City in the first
8 increments. So our family was one the early entrants
9 into the first increment being developed. That's the
10 history. Sixty years later this Project comes along
11 and with potential benefit.

12 I have two daughters, should they choose to
13 return, I think that's been more of a dream of our, of
14 the next generation to be able to come and find a home
15 on Maui.

16 This is a natural fit. But I do feel it's a
17 nice fit in the community. And the planning has been
18 given thoughtful approach. And I do urge your
19 favorable consideration of this Project. Thank you.

20 CHAIRMAN LEZY: Parties, questions?
21 Commissioners, questions? Thank you for your
22 testimony.

23 (New speaker approaching microphone)

24 Sir, before you step forward, as reflected
25 in the agenda we're going to take a break now in

1 Docket A10-789 to take up agendaed item 5 in Docket
2 A11-790. So if I could ask the parties to step back
3 unless you're involved in this docket matter. And the
4 parties involved in Docket A11-790 please step
5 forward.

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2 CHAIRMAN LEZY: (Gavel) This is an action
3 meeting in Docket No. A11-790 Kula Ridge, LLC to
4 approve the Form of the Order in this matter.

5 On January 6, 2012 the Commission met in
6 Kahului, Maui, Hawai'i and voted to grant with
7 conditions the Petition to amend the land use district
8 boundary of approximately 34.516 acres of land in the
9 Agricultural District to the Urban District and
10 approximately 16.509 acres of land from the
11 Agricultural District to the Rural District at
12 Kahului, Maui, Hawai'i.

13 Prior to the vote each Commissioner affirmed
14 that he or she had reviewed the record and read the
15 transcripts for any missed meetings and is prepared to
16 deliberate.

17 Commission staff was asked to prepare
18 proposed Findings of Fact, Conclusions of Law and a
19 Decision and Order consistent with the Commission's
20 decision for consideration, deliberation, and
21 adoption.

22 Will the parties please identify themselves.

23 MR. LIM: Good morning, Mr. Chair, Members
24 of the Commission, Steven Lim and Martin Luna
25 representing Kula Ridge LLC. And seated to my right

1 is its manager Clayton Nishikawa.

2 CHAIRMAN LEZY: Nice to see you, Mr. Luna.

3 MR. HOPPER: Good morning, Mr. Chair,
4 Michael Hopper with the Department of Corporation
5 Counsel representing the Maui County Department of
6 Planning.

7 MR. YEE: Good morning. Deputy Attorney
8 General Bryan Yee on behalf of the Office of Planning.
9 With me is Jesse Souki from the Office of Planning.

10 CHAIRMAN LEZY: Good morning. As a
11 preliminary matter, Commissioner Contrades, have you
12 had an opportunity to review the record and read the
13 transcripts for any meeting you missed on this docket,
14 including the transcript of the January 6, 2012
15 meeting? And if so are you prepared to deliberate and
16 vote in this matter?

17 COMMISSIONER CONTRADES: Yes, I am.

18 CHAIRMAN LEZY: Thank you. There are no
19 witnesses signed up for public testimony. Is there
20 anyone in the audience who wishes to provide public
21 testimony on this matter? Step forward, please.

22 UNIDENTIFIED SPEAKER: Kalama'i. Maybe I
23 didn't understand the question. What is this public
24 testimony for?

25 CHAIRMAN LEZY: This is for the Kula Ridge

1 docket not the Wai'ale.

2 UNIDENTIFIED SPEAKER: Okay.

3 CHAIRMAN LEZY: All right. Is there anyone
4 who wishes to provide public testimony in the Kula
5 Ridge docket matter? Hearing none, Commissioners,
6 before you are the proposed Findings of Fact,
7 Conclusions of Law and the Decision and Order prepared
8 by staff as requested for your consideration,
9 deliberation and adoption.

10 I'll invite any discussion on this matter.

11 Any discussion? Commissioner Heller.

12 COMMISSIONER HELLER: I'm not sure if you
13 wanted discussion first or if it's appropriate to
14 simply make a motion. But I'd like to move to approve
15 and adopt the Findings and Conclusions and Decision
16 and Order as drafted by the staff.

17 CHAIRMAN LEZY: Is there a second?

18 COMMISSIONER TEVES: Second.

19 CHAIRMAN LEZY: Commissioner Teves, second.
20 Discussion? Hearing none, Mr. Davidson?

21 MR. DAVIDSON: Motion to approve the D&O in
22 All-790. Commissioner Heller?

23 COMMISSIONER HELLER: Yes.

24 MR. DAVIDSON: Commissioner Teves?

25 COMMISSIONER TEVES: Yes.

1 MR. DAVIDSON: Commissioner Matsumura?

2 COMMISSIONER MATSUMURA: Yes.

3 MR. DAVIDSON: Commissioner McDonald?

4 COMMISSIONER McDONALD: Yes.

5 MR. DAVIDSON: Commissioner Contrades?

6 COMMISSIONER CONTRADES: Yes.

7 MR. DAVIDSON: Commissioner Chock?

8 COMMISSIONER CHOCK: Yes.

9 MR. DAVIDSON: Chair Lezy?

10 CHAIRMAN LEZY: Yes.

11 MR. DAVIDSON: Motion passes 7 to zero with
12 2 excused.

13 CHAIRMAN LEZY: Thank you.

14 MR. LIM: On behalf of the Petitioner, thank
15 you very much for your time and consideration of this
16 Petition.

17 CHAIRMAN LEZY: Thank you. Anything
18 further? Okay. Thank you. We will then resume
19 public testimony in Docket A10-789. (Pause).

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2 (Reporter's note: Public witness Michael Lee now
3 seated at witness table. Document handed to Mr.
4 Hakoda)

5 MR. HAKODA: Excuse me.

6 THE WITNESS: Yes.

7 MR. HAKODA: It says, "D.R. Horton Schuler
8 Homes"?

9 THE WITNESS: That is correct. I'm
10 testifying as a cultural expert but in public
11 testimony. So to back up my public testimony I'm
12 putting some of my affidavits in my other federal
13 cases to give gravitas to my testimony. I didn't see
14 in the rules that that was prohibited by law.

15 If you wish, Chair, that can be distributed
16 later so not to disrupt the committee at this time.
17 My oral testimony, this backs up what I'm saying.
18 People don't have to leaf through it, but it basically
19 gives gravitas to what I am going to be testifying in
20 public as a public person who is recognized in First
21 Circuit Court, in Federal Court on the Big Island in
22 Judge Hifo's court...

23 CHAIRMAN LEZY: Let me suggest this,
24 Mr. Lee. If this is going to be submitted in support
25 of your public testimony --

1 THE WITNESS: That is correct.

2 CHAIRMAN LEZY: -- then the parties have to
3 be provided the documents prior to --

4 THE WITNESS: Okay. Well, we don't have to
5 disrupt it if that is the rule and you don't want it
6 in, that's fine. I'll just continue with my
7 testimony.

8 CHAIRMAN LEZY: I would suggest if anyone
9 questions your credentials then perhaps you can
10 address that.

11 THE WITNESS: I appreciate that.

12 CHAIRMAN LEZY: So if I could ask --
13 probably the cleanest thing to do at this point, do
14 you still wish to -- if you don't wish to submit these
15 things, again, if you do we're going to have to
16 distribute them to the Commissioners and the parties.
17 I might suggest you have your lovely assistants
18 collect them for now.

19 THE WITNESS: Okay. Please, our lovely
20 assistants? They're here. Mahalo.

21 CHAIRMAN LEZY: I appreciate the
22 consideration. Let me swear you in and we'll proceed.

23 MICHAEL KUMUKAUOHA LEE
24 being first duly sworn to tell the truth, was examined
25 and testified as follows:

1 THE WITNESS: I do.

2 CHAIRMAN LEZY: Please state your name, your
3 address and proceed.

4 THE WITNESS: My name is Michael Kumukauoha
5 Lee. I reside at 91-1200 Keaunui Drive, Unit 614
6 'Ewa Beach, Hawai'i 96706.

7 I am a native Hawaiian cultural
8 practitioner. As a kahuna lapa'au oki ka lima I also
9 did my own pro se case to stop the 'Ewa Marina in the
10 shrinkage case just finished recently.

11 I'm here today in opposition of the A&B
12 Project. I'm a fourth great-grandson of Kamehameha
13 III. There are 330 exhibits in my shrinkage of the
14 marina on this genealogy with certified wills and
15 documents.

16 A&B does not have a legal right or title to
17 this property for this Project. According to the
18 Supreme Court of the Kingdom of Hawai'i, 4 Hawai'i
19 Reports 239 October 1879 it was Claus Spreckels versus
20 the People of Po'olehuanui. The royal patents, which
21 were canceled, have no legal existence or purpose in
22 that case, according to the Hawai'i Supreme Court.
23 A&B has no legal claim to this property that belongs
24 to my fourth great-grandfather Kamehameha III through
25 Eliza Makali'i Haole.

1 You cannot build a project when you don't
2 own the land. You cannot suborn fraud or perjury.
3 According to the statutes for Land Court there's no
4 statutes of limitations on fraud. There is no vested
5 interest in fact. This land does not belong to A&B.
6 It doesn't have clear title. Therefore in the
7 statutes, both federal and state, they cannot build on
8 land that doesn't belong to them. It's my fourth
9 great-grandfather's land.

10 According to the FEIS they did not define
11 the Hawaiian cultural resource: The freshwater that
12 runs through it, through the karst systems that feed
13 to the fisheries, one, the Wailuku fishery and one the
14 Anakoli'i fishery on the Ma'alaea side.

15 As a native Hawaiian cultural practitioner,
16 the water that flows through the ocean is the basic
17 water foundation for the food chain of our fishery.
18 What is the value of our fishery? That is the native
19 Hawaiian cultural resource for all the people. This
20 was never mentioned in their FEIS.

21 The iwi that were slaughtered, the 800 of
22 the a'alapa, the chiefs are my lineal ancestors from
23 the Big Island. That area has been used for illegal
24 mining. No one has been able to come and claim legal
25 lineal descent. My Kamehameha genealogy is at the

1 SHPD and O'ahu Island Burial Council right now. The
2 only Kamehameha heir that has placed documents, wills
3 both in a court case -- excuse me, a contested case,
4 not a court case, for the shrinkage of the marina and
5 for SHPD.

6 I affirm to you that this is ill-conceived
7 and that you cannot suborn fact. Basically this
8 Project does not have the legs to stand on legally to
9 propose development of land it doesn't own. That is
10 my testimony.

11 CHAIRMAN LEZY: Parties, questions?
12 Commissioners, questions? Thank you for your
13 testimony.

14 THE WITNESS: Thank you very much.

15 MR. DAVIDSON: Clare Apana followed by Dick
16 Mayer followed by Robyn Knox.

17 MS. APANA: Before I start, I was not
18 understanding the documents 'cause I have some
19 documents to give you?

20 CHAIRMAN LEZY: You have documents to submit
21 to the Commission now?

22 MS. APANA: Yes. They've already brought
23 them out. I wasn't sure what your decision was.

24 CHAIRMAN LEZY: We'll take a look at what it
25 is you're submitting. (pause)

1 MS. APANA: They're minutes to the burial
2 council on two separate occasions and my own
3 testimony.

4 MR. DAVIDSON: There's eleven copies of
5 this.

6 CHAIRMAN LEZY: Okay. Let's go then. If
7 you could bear with us while we have them stamped.

8 MR. DAVIDSON: Chair, maybe a 5-minute
9 break?

10 CHAIRMAN LEZY: We'll take a 5-minute break
11 to straighten out the documents.

12 (Recess in place was held.)

13 CHAIRMAN LEZY: Let me swear you in, please.
14 Could you raise your hand, please, your right hand.

15 CLARE APANA
16 being first duly sworn to tell the truth, was examined
17 and testified as follows: --

18 THE WITNESS: Yes, I do.

19 CHAIRMAN LEZY: Please state your name,
20 your address and proceed.

21 THE WITNESS: My name is Clare Apana. And I
22 live at 260 Hale Lani Drive in Wailuku, Maui, Hawai'i.

23 CHAIRMAN LEZY: Please go ahead.

24 THE WITNESS: First, I'd like to, before I
25 start out, explain what I've given you. One is a copy

1 of Burial Council minutes. I have two of those. One
2 is a copy of the CRC or the Cultural Resources
3 Committee -- Commission minutes. And the Cultural
4 Resources Commission is from a date when we went to
5 the Cultural Resources Commission to explain the
6 importance of the battle of Kakanilua. The two Burial
7 Council minutes will refer to what is in my testimony.
8 Okay? Thank you.

9 CHAIRMAN LEZY: Okay.

10 THE WITNESS: First of all, for the record
11 I'd like to say my interview for the Cultural Impact
12 Assessment has never been finished. And I have asked
13 for it on several occasions to be finished. And what
14 was printed in your final environmental impact
15 statement is part of an interview which I never signed
16 off on and approved.

17 I'd like to say that I agree with Hokuao
18 Pellegrino that there should be more done to preserve
19 the cultural sites. And I think his idea was really
20 great. You should actually have him be the person who
21 could tell you what might be more significant to
22 preserve. And I don't know why that's not happened
23 yet.

24 And I want to tell you about the 106
25 process. This particular parcel of land happens to be

1 a backdrop and a part of the battle of Kakanilua. It
2 is one of the most famous battles in Maui's history,
3 in Hawaiian history, the last battle with hand-to-hand
4 combat. Hokuao Pellegrino has already taken you
5 through the geographic location and place names that
6 set it right through this property.

7 And ironically the only sand dunes left
8 where this battle could have happened is there. I
9 mean there's probably, maybe, 20 acres out of
10 2,000 acres of sand dunes. It's pitiful that that's
11 all that's left. And we would say we'll save one
12 piece of one dune and say this is a great
13 preservation? 'A'ole.

14 All of that should be preserved for the
15 history of this island, of the people of Hawai'i, for
16 the kanaka maoli. I want my children to go there. I
17 want them to hear of this great battle and how it set
18 up the battle of 'Iao and how the warring chiefs were
19 really cousins and brothers and sisters and how all of
20 this worked in the royalty and the ali'i system.

21 I want them to know. I want them to see how
22 that battle was fought in the sand dunes, how
23 Kalaniopu'u was brought into that sand dune and
24 trapped in there and they all died that day. I want
25 them to know that this is the history.

1 I really don't want to have grade schools
2 sitting on top of this property like they are at
3 Mauiwaena which has to be blessed all the time.
4 That's not fair to our children.

5 It's not fair to put people in houses on top
6 of a battle ground, on top of burials, known burials.
7 And that is just what this Project proposes to do.
8 Don't stop the Project. We need work. But be smart.
9 Do not ask people to live in these kinds of
10 conditions.

11 And as for sand mining, what I've given you
12 is a Burial Council minutes where they said absolutely
13 stop sand mining in the 425 acres that Hawaiian Cement
14 was trying to still sand mine. Stop sand mining. If
15 you give them the opportunity to have urban in all of
16 this area, they can get a grading, grubbing permit and
17 sand mine.

18 That is all in the Burial Council minutes at
19 a later date that an archeologist, who also works for
20 this Project, said that what they do is for the
21 grading permit they sand mine. And you can do that
22 when you give them an urban designation.

23 I don't understand why you cannot preserve
24 just that little piece of history and the burials and
25 put it into conservation, put into -- save it for the

1 rest of time. It's so beautiful. I wish you had
2 gotten off the bus to walk in those sand dunes. All
3 of a sudden you're walking and you go, "Hey, I'm in a
4 sand dune. Look at this. Look, I'm looking down a
5 slope and I'm looking up a slope and there's grasses
6 growing here and it's quiet. And there's sand all
7 around us and this is a sand dune. And this is
8 beautiful. And we deserve to keep it."

9 It started off in a park, but it went
10 through the community and now it's scheduled to have
11 houses, multi-family, mixed business use? I think
12 that you -- if anything you could do would be to
13 preserve this place. Let's have Smart Growth, smart
14 building. A&B has a reputation of being such a
15 community partner.

16 What about the Hawaiian people? Are you
17 partnering with us? Or would you go through our
18 burials again like you allowed that to happen in Maui
19 Lani, burial after burial, shoved all of them into a
20 lot, hundreds of burials into one house lot? No, just
21 not one. One, two, three on the same street, and one
22 more up the street with 150 burials. Would you do
23 that again?

24 Partner with us. Work with the Hawaiian
25 people. We, we happen to be people too. We are part

1 of the community. Those are our ancestors that you
2 are putting in jeopardy. I ask you for so little and
3 I have gotten nothing from you. I think it's
4 shameful.

5 And I ask you to uphold the law. Uphold the
6 decision from the Ka Pa'akai Case and actually look at
7 what are the impacts to our culture. What are the
8 impacts to me? How am I going to go into there, walk
9 into an apartment building and say, "Hello, Kupuna,
10 how are you?" Or will you shove them into one little
11 corner and I have to go there all the time because
12 there's unrest there? It's peaceful in those
13 untouched sand dunes.

14 Please, leave it that way and save it for
15 the rest of Maui, save it for history. It's such a
16 small thing to ask after you've gone and sand mined
17 through thousands of acres of land already. Thank you
18 very much.

19 CHAIRMAN LEZY: Parties, questions?
20 Commissioners, questions? Thank you for your
21 testimony, Ma'am.

22 THE WITNESS: Thank you.

23 MR. DAVIDSON: Dick Mayer followed by Robyn
24 Knox followed by Lucienne deNaie.

25 RICHARD 'DICK' MAYER

1 being first duly sworn to tell the truth, was examined
2 and testified as follows:

3 THE WITNESS: I do.

4 CHAIRMAN LEZY: Please state your name, your
5 address and proceed.

6 THE WITNESS: My name is Richard 'Dick'
7 Mayer. I'm well-known as Dick Mayer. I live on of
8 1111 Lower Kimo Drive, Kula. And I thank you for
9 letting me testify. I want to thank you all for
10 giving us the opportunity to do so. I passed out a
11 handout and I'm going to be reading mostly from that
12 with a few extra comments on it.

13 As the vice-chair of the Maui Island General
14 Plan Advisory Committee, I am disturbed to see that
15 the Wai'ale Project has made significant changes from
16 the recommendations of the GPAC, the Maui Planning
17 Commission, and the planning director.

18 All three recommended that there be a very
19 wide and continuous green belt separating Maui Lani
20 and this proposed Project.

21 The present A&B proposal has reduced the
22 width of the green belt and it is no longer
23 continuous. Further more, the GPAC recommended that
24 even the green belt itself not be included within the
25 Urban Growth Boundary.

1 The 50-acre parcel that was to be designated
2 for an affordable housing requirement for the A&B Maui
3 Business Park II has been shifted westward from an
4 appropriate location near Maui Lani's Pomaikai
5 Elementary School to a site near the former Central
6 Maui dump, much further from the school.

7 And let me point out a couple things. The
8 General Plan Advisory Committee was given this map
9 that I'm holding up now when we were to make
10 decisions. And on this map you'll see here the
11 proposal of A&B. The GPAC did not accept this but
12 made a recommendation. On a map that I've had passed
13 out to you, this long map here, I'd like you to take a
14 look at it, please.

15 This map has on it five different maps. The
16 first one is the recommendation of the GPAC. If you
17 could just look up here for a minute, then I think
18 you'll find it much easier. You'll see this green
19 belt that cuts across, all the way across all these
20 recommended plans. These are the plans of first the
21 GPAC, the Maui Planning Commission, the planning
22 director's original recommendation and now modified
23 recommendation.

24 Over on the right you'll see the proposal
25 that is now before you which is very different than

1 has been recommended by all these bodies today. The
2 council is now considering these and will make its
3 final determination.

4 My guess is that they prefer to have some
5 combination of one of these recommendations to them.
6 And it would be quite different than what you have in
7 front of you for Wai'ale at this time.

8 With regard to the school -- excuse me.
9 With regard to the affordable housing requirement for
10 the business park, you put that requirement in and it
11 says very clearly in your language that it should be
12 near Pomaikai School.

13 This Project, proposal that you now have in
14 front of you, moves the school from where it was
15 supposed to be located, the area near where the school
16 is, further north close to the Central Maui dump.

17 Second item. Wai'ale is planning to
18 construct 2550 residential units for local residents.
19 However, no site within Wai'ale's 500+ acres has been
20 set aside for an elementary school. Pomaikai
21 Elementary School will be needed for the buildout of
22 Maui Lani, which is still far from complete. The new
23 elementary school above Wailuku will be needed for the
24 remaining Kealani project buildout.

25 The EIS states that there will be 1150

1 students living on this Project. That's in their EIS
2 on Page 129. Roughly 100 students per grade. In
3 other words, from K through 5 there will be roughly
4 500 to 600, closer to 600, students. There's no
5 elementary school being proposed in this Project. And
6 there's probably going to be no space elsewhere.

7 Please do not require the hundreds of
8 Wai'ale Elementary School children to be bussed far
9 away. A project of the Wai'ale scale should have its
10 own elementary school. Please do not allow it to
11 avoid this obligation. Condition an elementary school
12 within Wai'ale.

13 I don't know why the DOE said that they
14 don't need it. And I would like you to get
15 information from the DOE exactly where these 1150
16 students and 600 elementary students will be going.

17 No. 3. Require Wai'ale to connect to a new
18 regional wastewater treatment facility. They don't
19 describe where they're going to have the wastewater
20 going. Through a condition please do not allow
21 Wai'ale to put an increased burden on the aged
22 treatment plant in a tsunami inundation zone.

23 There are several other already entitled
24 projects that will be utilizing that facility,
25 including A&B's own 440-unit Kahului Town Center.

1 They should have a proposal as part of this package
2 where they're going to be having their treatment
3 plant.

4 Number 4. A&B already has been given land
5 entitlements rights for numerous residential projects
6 and it has land-banked these entitlements rather than
7 completing the needed housing.

8 They have, for example, all the way back
9 since roughly 1996, the 170-unit Hali'imaile housing
10 project. They have not built it. The Aina o Kane
11 Condos across from Kahului Sears, 102 units not built.
12 The much awaited Kahului Town Center, 442 units, not
13 built. And you, the Land Use Commission, has given
14 them a 600-unit project in North Kihei, not yet built.

15 If Wai'ale is so great a project that the
16 Land Use Commission is tempted to approve the boundary
17 application -- and I think in general it is a good
18 Project, but there are certain problems with it that
19 I'm enumerating -- then the Commission should
20 condition it with a requirement that one or more of
21 the other A&B entitlements be withdrawn.

22 In other words, put pressure on A&B to put
23 up or get out of the entitlement-collecting business.
24 Scattered unbuilt entitlements hinder good
25 county/state infrastructure planning. We have too

1 many of these projects that have been entitled and not
2 built.

3 Furthermore, A&B's entitlements may be
4 getting in the way of other developers who could more
5 rapidly produce construction jobs and who will
6 actually build needed affordable housing in the right
7 locations.

8 The delays in constructing various entitled
9 projects long predate the 2008 downturn. So the
10 excuse of the downturn in the economy doesn't hold
11 weight. We have been waiting since 1996 for that
12 Hali'imaile housing.

13 No. 5 and last. The promised affordable
14 housing count seems unclear. The overall Wai'ale
15 Project will have 2550 total units with a minimum
16 affordable requirement according to county code of
17 25 percent. Twenty-five percent of 2550 equals 637
18 units.

19 Yet, on Page 32 of the final EIS they state
20 that they will only have 563 affordable units planned.
21 And they furthermore do not make it clear whether this
22 563 units includes the obligation for the Maui
23 Business Park. If it does include those affordable
24 units, then this would be double counting. And if
25 not, it is still too low a figure that they're now

1 proposing. Thank you.

2 CHAIRMAN LEZY: Parties, questions?
3 Commissioners, questions? Thank you for your
4 testimony, Sir.

5 THE WITNESS: Thank you.

6 MR. DAVIDSON: Robyn Knox followed by
7 Lucienne deNaie followed by Roderick Fong.

8 ROBYN KNOX
9 being first duly sworn to tell the truth, was examined
10 and testified as follows:

11 THE WITNESS: I do.

12 CHAIRMAN LEZY: Please state your name, your
13 address and proceed.

14 THE WITNESS: My name is Robyn Knox. I live
15 at 28 Waikalani Place in Kihei. I am an environmental
16 scientist. I'm happy to have the opportunity to speak
17 to such an auspicious group of our business and
18 decision-makers in our community.

19 I'm a little underdressed for the occasion
20 because I am a working scientist. I'm out in the
21 field. So it's no lack of respect that I'm not
22 dressed up today.

23 I would like to bring to your attention
24 several points based on my experience as an
25 environmental scientist tasked with protecting health

1 of both ecosystems and people.

2 The latest research in my specialty, which
3 is water resources, is that the world is running out
4 of drinking water. Another bit of latest research is
5 that scientists who are trying to, perhaps, just look
6 at certain types of chemical, physical and biological
7 data, should look at cultural data and indigenous
8 knowledge. Because in the face of uncertainty it has
9 been shown that this source of knowledge can give us
10 valuable clues to what's going on.

11 With this particular Project the fact that
12 there's so many burials and some other things that I
13 see in the EIS regarding geology and hydrology, lead
14 me to have concerns that there may be some
15 undetermined types of hydrology going on here that
16 might be important to understand.

17 Burials were often in caves. And the area
18 that we're talking about in the past was under sea
19 level and might have formations of coral interspersed
20 among the lava layers.

21 And these can form what are called karst
22 when the acidic water coming through the volcanic
23 soils can actually carve out through the calcium and
24 make, in essence, reservoirs and pipelines under the
25 ground.

1 And so there's both cultural evidence and
2 some geologic uncertainty and hydrologic uncertainty
3 because the EIS didn't really go into functions of the
4 hydrology and the ecology and tell us what's going on
5 there. So there's a lot of uncertainty about how
6 water's moving. And if there are karst formations,
7 this is two points of concern.

8 1. If you cut through a karst it's like
9 cutting through a pipeline that's attached to an
10 elevated storage tank. You could dewater not only
11 that area but areas higher upslope and other areas
12 that are interconnected.

13 Secondly, the past use of the land included
14 a lot of industrial agriculture, spills of
15 contaminants and unregulated landfills. These have a
16 history of releasing heavy metals, petroleum and
17 organic volatiles, nitrates and other poisons.

18 My career, unfortunately, I spent many days
19 looking as situations why who allowed them to build an
20 elementary school on top of lead waste? Who allowed
21 them to build on top -- people's houses on top of
22 contaminated landfills?

23 So I hope that by hearing this today you,
24 who are the one who has the authority to make
25 decisions, will heed the fact that there's uncertainty

1 here about what's going on underground.

2 If there is a karst, one of the concerns
3 about it, in addition to losing the water, is that the
4 water's moving more rapidly than you might predict if
5 it was other types of geology. This means there's
6 less time for remediation of contaminants. And all
7 the risk assessments were based on assuming one kind
8 of geology and we don't really know that this is that
9 kind of geology.

10 My conclusion is that the appropriate use of
11 this is not to change it to Urban. In fact I would
12 even recommend considering Conservation or remediation
13 as the best and highest use of this area as well as
14 natural open space and cultural preservation.

15 I would ask that if you feel compelled to
16 change this into any kind of designation that would
17 allow development, that you not allow extensive
18 grading, filling or other disturbances prior to
19 determining really how does the hydrology function in
20 this area. Is there any karst hydrology going on
21 there? And how is it connected to ecological
22 functions.

23 So I request as conditions of the changing
24 of the land use designation, that you investigate the
25 geology to define the groundwater connectivity and

1 water quality including looking at contaminants.

2 And that, secondly, you overlay the cultural
3 information that we do know on what we know about
4 geology to see if maybe there is a system of
5 indicators there that would be useful to all of us in
6 these decisions.

7 And, thirdly, prohibit any extensive
8 grading, filling, or other disturbances until you have
9 some definitive understanding of how the hydrology
10 functions and know that you're not going to be
11 endangering either our water supply or people's
12 health.

13 CHAIRMAN LEZY: Parties, questions?
14 Commissioners, questions? Thank you for your
15 testimony, Ma'am.

16 MR. DAVIDSON: Lucienne deNaie followed by
17 Roderick Fong followed by Daniel Kanahale.

18 LUCIENNE deNAIE
19 being first duly sworn to tell the truth, was examined
20 and testified as follows:

21 THE WITNESS: I do.

22 CHAIRMAN LEZY: Please state your name, your
23 address and proceed.

24 THE WITNESS: My name is Lucienne deNaie. I
25 am testifying on behalf of the Sierra Club Maui Group.

1 My personal address is 320 Door of Faith Road in
2 Haiku. The Maui Group of Sierra Club's address is
3 P. O. Box 79-1180 Paia, 96779.

4 I did pass out written testimony. It's very
5 brief. But in essence, Sierra Club has weighed in on
6 this Project since the very beginning. And I'm proud
7 to say that I think our comments on the prep notice
8 that there're no mentions of natural -- of man-made
9 hazards on the site of which everyone on Maui knew
10 that there're plenty of man-made hazards as this area
11 is known as a dump area -- those were included in the
12 Draft EIS and then later the Final EIS. However, much
13 information was left out in that regard.

14 Sierra Club also has been tracking the need
15 for affordable housing in Central Maui and starting
16 back about a decade ago, appeared before this
17 Commission along with a number of other community
18 groups asking that as the A&B Business Park in Kahului
19 application was considered, that there be a condition
20 to require affordable housing. Some affordable
21 housing was required as a condition of the LUC
22 approval. Then the county council additional.

23 So I'm hoping that all of you are aware that
24 there is 50 acres here that is going to be utilized by
25 the county of Maui for affordable housing, a park and

1 a community center.

2 That being said, I'd like to address the
3 affordable housing aspect very briefly. All the
4 Commissioners should be aware my math shows that 35
5 percent of this Project is affordable and the rest is
6 market priced.

7 So all the good people here who are
8 supporting affordable housing, they should be, but
9 there should be more affordable housing here. That
10 includes the section, the 300 units the county would
11 be responsible for building.

12 As we advocated for this affordable housing
13 we went through a process called the Maui Island Plan.
14 And the General Plan Advisory Committee looked at this
15 area. Mr. Mayer referred to this and showed you maps.

16 You have also with testimony, have a single
17 map that looks like this. It shows the configuration
18 that was discussed for this Project when the Maui
19 Island Plan was being reviewed. It was handed out by
20 A&B, the Applicant.

21 And this is what, when people say, "Oh, we
22 supported this and the community reviewed this," this
23 is the map they looked at. The community has never
24 really seen the map that you see here today. That is
25 a new map with a smaller footprint and completely

1 different configuration.

2 In the older map what we saw on the General
3 Plan Advisory Committee and what the public commented
4 on, and we had hundreds of people come and comment on
5 these maps, was that there would be a green place like
6 a buffer zone. And it's shown on the A&B map between
7 the old county dump site and the beginning of any kind
8 of village use.

9 Now in the plan we have an industrial zone
10 there, an industrial zone where people will be
11 working. Our concern is that the affordable housing
12 was always discussed for a different area of this
13 Project.

14 And since the Applicant has 37,000 acres on
15 Maui you'd think that you could find a place for a
16 30-acre Project that wasn't next to an unmonitored,
17 unlined landfill that had after-the-fact use, after it
18 was closed in the 1980's.

19 It was closed because new environmental
20 regulations were coming into effect. And the county
21 didn't want to spend the money to dig it up, line it,
22 install monitoring wells, and so forth. So they
23 closed it.

24 And since this whole area's used for scrap
25 yards and dumps no one thought much about it. It

1 wasn't thought that this was going to be a prime
2 housing area. But to our disappointment this is the
3 area that is chosen for a majority of the land to be
4 given to the county to house our local working
5 families.

6 And we just feel that with a Project of this
7 size, 500 and something acres, that there should be a
8 few other options. As Mr. Mayer said, there are other
9 options near Pomaikai School.

10 This basically will be put next to a
11 landfill. And there also was this storage after the
12 landfill was closed, of abandoned vehicles there. I
13 believe it was in, like, 2003 or 2004 the county had
14 not placed all the roadside wrecks. So all the oil
15 and everything from that dripped down on that same
16 landfill.

17 What we would ask from the Sierra Club is
18 that the Commission require additional monitoring
19 wells to be installed along the western boundary of
20 this former landfill at the Applicant's expense. We
21 understand this was a county landfill. But we just
22 think in good faith since the Applicant is not
23 choosing to just create a buffer there as was
24 recommended during the community planning process by
25 the planning commission, the GPAC and the county

1 planning staff, if they insist that this needs to be
2 developed with industrial zone and affordable housing,
3 then in good faith these monitoring wells should be
4 installed and the results made publically available.

5 This is especially important because there
6 are a couple of monitoring wells that you folks
7 require from the adjacent village/mixed-use project.
8 And that project is near the very narrow end of the
9 landfill. The landfill is long and kind of
10 rectangular. So the north end of it has two
11 monitoring wells.

12 The information from them is not publically
13 available according to the hazard report that is in
14 the EIS for this A&B Project. So it's going to be
15 very hard for county authorities or anybody else,
16 Department of Health, concerned about public safety --
17 maybe the Department of Health could request this
18 information -- but the public has a right to know.

19 All these people who are hoping their
20 children and grandchildren could live in these homes
21 have a right to know if there are toxic substances
22 that are being released, or dangerous levels of
23 methane gas.

24 So we would very much like to urge you to
25 put that condition on. And the Wai'ale site just in

1 general is surrounded by other heavy industrial use.
2 Besides the former unlined landfill there's a former
3 wrecking yard closed by the Department of Health.

4 This is not adjacent to the affordable
5 housing, but it is adjacent to some areas that are
6 going to be housing an industrial use.

7 There was also a massive pesticide spill
8 recorded on one side of the property near Kuihelani
9 Highway. And there is feedlots, folks dealing with
10 hazardous substances like asphalt paving and so forth.

11 So this is really something that should be
12 built into the Project with the proper kind of
13 monitoring and buffering so we can know what is going
14 on. The whole Project is included in the underground
15 injection control line for the county and yet there
16 are two potable wells on site. So there's a lot of
17 contradictions here.

18 So just to conclude, we would really prefer,
19 after working so hard, to see that 50 acres could be
20 given for affordable housing and a community center
21 and so forth, that the 30-acre portion that's adjacent
22 to the old landfill be consolidated with the other
23 portion, and the Project redesigned so that it more
24 closely resembles what the community has reviewed
25 during the Maui Island Plan process.

1 We hope our county staff will address this
2 because I just have to say it's kind of a slap in the
3 face if you participate in these kinds of things and
4 then you're ignored when it comes down to the final
5 planning process.

6 So please use your wisdom and make sure that
7 these affordable housing is located in a safe place
8 and we get this dump site monitored. Because
9 whatever's around it we need to know what's going on
10 there. Thank you very much.

11 CHAIRMAN LEZY: Parties? Commissioners? I
12 have a question for you.

13 THE WITNESS: Yes.

14 CHAIRMAN LEZY: Does Sierra Club have any
15 direct dialogue with A&B on this issue, in particular
16 the question of change in the green belt?

17 THE WITNESS: Yes. We have written
18 extensive comments. And the replies we get back on
19 the comments is that, "Oh, yeah, this was a Sierra
20 Club idea."

21 They're not really acknowledging that this
22 was a community idea. And I think that there really
23 needs to be a reopening of the charrettes and the
24 dialogue. Because what we heard from people -- I was
25 a member of this GPAC -- and what we heard from people

1 sitting around tables looking at big maps is, "Ooh,
2 this is a bad place for a development because all this
3 yucky stuff is here. We've known about this since we
4 were little kids that this is where the dump and the
5 scrapyard and everything are."

6 And what we said is, "But look. We're going
7 to put this big green belt in."

8 "Okay. That would okay."

9 Then it's like a bait and switch that goes
10 away. So I believe more dialogue is needed.

11 CHAIRMAN LEZY: Thank you.

12 MR. DAVIDSON: Roderick Fong followed by
13 Daniel Kanahale followed by Kaniloa Kamaunu.

14 RODERICK FONG

15 being first duly sworn to tell the truth, was examined
16 and testified as follows:

17 THE WITNESS: Yes.

18 CHAIRMAN LEZY: Please state your name, your
19 address and proceed.

20 THE WITNESS: My name is Roderick Fong, 495
21 Hukilike Street, Kahului. Dear Mr. Chairman and
22 Members of the Commission, I am part of Fong
23 Construction, Consolidated Baseyards and the future
24 Waiko Industrial Project, all located in this lower
25 Waiko Road-Waikapu area.

1 I'm here to testify in favor of the proposed
2 A&B Wai'ale Project that surrounds the properties I
3 mentioned. I am associated with these various
4 companies near this location because of my business,
5 Fong Construction Company, first relocated its 4-acre
6 baseyard here in 1984 from the previous K-Mart
7 location near the airport.

8 Th properties were owned by A&B, but I
9 obtained a proper special use permit to appropriate
10 this site as a construction baseyard all these years.

11 In the early or 1990s we started to develop
12 the industrial project in the area called Consolidated
13 Baseyards which was completed a few years ago, as a
14 20-acre, 35-industrial lot subdivision along Waiko
15 Road which was adjacent to my 4-acre baseyard.

16 I am familiarized with and welcome A&B
17 Wai'ale plans. Their vision is appropriate to the
18 area's natural infill urbanization from Maui Lani to
19 Waiko Road and from Waikapu to Kuihelani Highway.

20 As in my projects I see their Project
21 significantly helping local residents and businesses
22 in Central Maui. And my sense is that this Project
23 will greatly improve and complete the community.

24 We're talking about local housing, both
25 affordable and market, commercial as well as

1 recreational space, schools, all Master Planned by an
2 experienced, caring local developer in A&B Properties.

3 This Project being situated along Kuihelani
4 Highway will provide easy access to the rest of the
5 island. This is a community for the next generation,
6 a place where many of my family and friends might be
7 able to make a future for themselves.

8 Thank you for giving me this opportunity to
9 give this testimony on behalf of A&B, on behalf of
10 this Project. Thank you.

11 CHAIRMAN LEZY: Parties? Commissioners?
12 Thank you for your testimony, Sir.

13 MR. DAVIDSON: Daniel Kanahale followed by
14 Kaniloa Kamaunu followed by Johanna Kamaunu.

15 DANIEL KANAHELE
16 being first duly sworn to tell the truth, was examined
17 and testified as follows:

18 THE WITNESS: Aye.

19 CHAIRMAN LEZY: Please state your name, your
20 address and proceed.

21 THE WITNESS: Daniel Kanahale, 1100 Kupulau
22 Drive in the ahupua'a of Olowalu in the moku of
23 Honua'ula. Aloha mai kakou, Commissioners. I'm happy
24 that we have today present students from the
25 University of Hawai'i, Maui College to witness the

1 proceedings of this body. I do believe there's some
2 truth in the olelo no'eau that says that: We do not
3 inherit the land from our ancestors, but we borrow it
4 from our children.

5 I wish to echo the sentiments of other
6 kanaka ma'oli who have come before you like Clare
7 Apana and Hokuao Pellegrino that has pleaded with this
8 Commission to uphold our constitutional rights to
9 protect our traditional and cultural practices
10 guaranteed under the constitution.

11 You cannot practice without cultural and
12 natural resources. There are no traditional cultural
13 resources or practices without those resources.

14 I have passed out my testimony to you. I
15 will now read from that. I am not in support of the
16 Commission granting the proposed boundary amendment.
17 I ask that the Land Use Commission discharge its
18 obligation to ensure that legitimate, customary and
19 traditional practices of native Hawaiians be protected
20 as is required by our constitution, the State
21 Constitution.

22 These practices include protection of our
23 kupuna iwi burials both known and likely. If the
24 Commission insists upon approving the requested
25 boundary amendment as proposed, the following

1 conditions should be included in the findings of fact
2 and conclusions of law: The Applicant shall initiate
3 a study to nominate the extensive pre-contact burial
4 sites already known on the Project site for listing on
5 the State and National Register of Historic Places
6 before further land use entitlements are given.

7 The Applicant shall prepare a traditional
8 cultural property study for the Wai'ale Project site
9 following federal guidelines and in consultation with
10 any knowledgeable individuals and cultural or lineal
11 descendants who wish to be involved before further
12 land use entitlements are given.

13 The Applicant shall prepare an alternative
14 project design that protects unmixed sand dunes on
15 site as shown on the Draft Maui Island Plan Directed
16 Growth Maps approved by the Maui General Plan Advisory
17 Committee and the Maui Planning Commission before
18 further land use entitlements are given.

19 The Applicant shall identify and set aside
20 habitat areas on the Wai'ale site for the federally
21 listed endangered native Blackburn moth, manduka moth
22 and traditional aumakua like our native Pueo both
23 found on this site.

24 In addition a Section 106 Federal
25 Consultation shall be initiated as part of the federal

1 Habitat Conservation Plan process, for that permit
2 process. These conditions are needed because this
3 Project has had, has had -- has not had a thorough
4 review of the cultural sites and features.

5 As an example: The first Archaeological
6 Inventory Survey done almost two decades ago on
7 around 60 acres of this site identified five
8 precontact burials in several locations along with one
9 dune system.

10 By 2010 over 70 traditional burials were
11 found in the same dune, all inadvertent discoveries.
12 Since these burials were not located during the formal
13 survey, our burial council had minimal say in their
14 disposition.

15 On November 19, 2009, as was alluded to
16 earlier, the Maui/Lana'i Burial Council members passed
17 a resolution asking for a cessation of all sand mining
18 activities on 432 acres of this particular TMK, the
19 Wai'ale subject parcel. This request was made due to
20 the high probability of burials in the unmined areas
21 being proposed for mining.

22 The Applicant claims that they regard the
23 large area visible in the Maui Island Plan maps as
24 conceptual designs that can now be ignored since an
25 approved burial treatment plan is in place for

1 Wai'ale.

2 The truth is that the Wai'ale Burial
3 Treatment Plan had little review and is inadequate to
4 protect unmined dunes with high probability of
5 additional burials.

6 These unmined dunes are part of the same
7 areas where the burial council requested a cessation
8 of sand mining activities two years ago. Leveling
9 these intact dunes with bulldozers and crushing and
10 scattering our iwi kupuna for house pads would not
11 pose less of a threat to potential traditional burials
12 than sand mining itself. Neither should be part of
13 this Project design.

14 I'm almost finished. Many years ago in 1994
15 the Land Use Commission heard public concern of lack
16 of adequate cultural site review in another proposed
17 Maui project, the Waialea 670 project, which is right
18 up the road from here.

19 That Commission asked that the project
20 conduct a supplemental archaeological survey as a
21 condition of redistricting.

22 Nearly 20 years later over 60 features have
23 been documented on the Waialea 670 site with many more
24 pending, around 20 of these sites proposed for
25 preservation. All of these sites, including very rare

1 and significant features could have been simply
2 bulldozed out of existence if that Land Use Commission
3 had not exercised its authority to protect public
4 trust resources.

5 Please, please take the same action for the
6 culturally significant Wai'ale Project Area, the
7 sacred burial ground for generations of Hawaiian
8 people and the living habitat for native Hawaiian
9 fauna struggling to survive just like we are. Mahalo
10 nui loa.

11 CHAIRMAN LEZY: Parties, questions?
12 Commissioners? Thank you for your testimony, sir.

13 THE WITNESS: Thank you, Commissioners.

14 MR. DAVIDSON: The last three signed up
15 witnesses are Kaniloa Kamaunu, Johanna Kamaunu and
16 Janet Six.

17 KANILOA KAMAUNU
18 being first duly sworn to tell the truth, was examined
19 and testified as follows:

20 THE WITNESS: Yes.

21 CHAIRMAN LEZY: Please state your name, your
22 address and proceed.

23 THE WITNESS: My name is Kaniloa Kamaunu. I
24 come from Waihe'e Valley, 222 Waihe'e Valley Road.
25 I'm here as a kuleana representative of the area. And

1 hopefully I constructed my testimony in a manner that
2 you can understand.

3 Starting with Public Law 103-150: "Whereas
4 indigenous Hawaiian people never directly relinquished
5 their claims to inherit sovereignty as people over
6 their national lands to the United States either
7 through their monarchy or through plebiscite or
8 referendum."

9 The Apology Resolution acknowledged that the
10 overthrow of the Kingdom of Hawai'i occurred with the
11 active participation of the agents and citizens of the
12 United States. And further acknowledges that the
13 native Hawaiians never directly relinquished to the
14 United States their claims.

15 It was signed 1993 by then President Clinton
16 and also acknowledged by Senators Inouye and Akaka of
17 this state.

18 Kuleana. "Kuleana" means those lands
19 granted to native tenants pursuant to Law 1850 Page
20 202 entitled, "An Act confirming certain resolutions
21 of the King and Privy Council passed this 21st day of
22 December 18, 1849 granting to the common people
23 allodial titles for their own lands and house lots and
24 certain other privileges as originally enacted and
25 amended."

1 Comply to reference of 1846 many cases arise
2 that can only be measured by the old law. New laws or
3 amendments of old laws cannot divest rights previously
4 acquired. And as in other countries, so in this. A
5 repealed ordinance must resort to the numerous
6 occurring before the repeal or modification. Means,
7 remedies may be altered but the rights themselves, if
8 vested, cannot be constitutionally disturbed. This is
9 one admitted doctrine of civil jurisprudence.

10 Another is the doctrines, even the
11 exposition of the new law is that the old law must be
12 first understood and the mischief intended to be cured
13 by it in order to apply the remedy.

14 This came up in the kuleana tax when the
15 county was trying to put through the tax for the
16 property. This came up. And we told them, "There is
17 a law to protect us."

18 And when they were -- asked the Corp.
19 Counsel on their citings, all they stated was it was
20 an old law. They never stated that the law was
21 actually done away with. All they could say was an
22 old law.

23 "Allodial. Land held absolutely in one's
24 own right and not of any lord or superior. Land not
25 subject to feudal duties or burdens. An estate held

1 by absent ownership without recognizing any superior
2 to whom the duty is due on account thereof.'

3 And the law of 1872 states -- or excuse me
4 -- "Whereas the laws obtained or made here to act to
5 obtain allodial titles to their lands, the people on
6 each of the land should not be deprived of the right
7 to take firewood, house and accord, thatch or ki leaf
8 from the land on which they live for their own private
9 use. But they shall not have the right to take such
10 articles to sell for profit.

11 "The people shall also have a right to
12 drinking water, running water and the right-of-way,
13 the springs of water and running water, the roads to
14 be free to all.

15 "And all lands granted in fee simple
16 provided this shall not be applicable to wells and
17 water courses which individuals have made for their
18 own use.

19 "1872. Every allodial land patent hereafter
20 issued upon an award of the Board of Commissioners to
21 quiet title shall be in the name of the person to whom
22 the original award was made. Even though the person
23 is deceased or the title to real estate thereby
24 granted has been alienated. And all patents so issued
25 shall inure to the benefit of the heirs of assigns and

1 holders of original awards."

2 So what this is saying that my kupuna still
3 has all his rights intact. His lands still belongs to
4 him even though he's not there. And I as his heir
5 have the right to be able to execute all rights, all
6 privileges under the law given to him as he acquired
7 during the time 1849.

8 Patents are issued by legislative authority.
9 Federal court title 43 USC court code, legislative
10 assembly 1844 Hawai'i. "The Supreme Court of Hawai'i
11 will not go behind any already adjudicated court order
12 decreeing land to awardee of title, recipient on the
13 certificate of title." (inaudible)

14 I am an heir to Kekahuna LC-405 Royal Patent
15 6749 Makakau Waihe'e. Also land patent for Kekahuna
16 4303, 4304, Royal Patent 5358, Maika'iloa Land
17 Commission Award 3718. Royal Patent 5452 -- excuse
18 me. I'm sorry, lost my voice. I'm almost done.

19 Land Commission Award 4304 Royal Patent
20 4893. This is all in Waihe'e. And the one that I
21 live on, Pi'imaiwa'a, LCA 3866, Royal Patent 5330,
22 Kalapelepe, Waihe'e.

23 This is my heritage. And for these
24 gentlemen who come to you, they are a corporation.
25 They don't have vested rights. According to law I

1 have vested rights to my kupuna. They're asking for
2 the use of a resource which is mine. And yet we are
3 put on the side and not brought to the table to be
4 able to discuss what they actually have.

5 A&B has nothing. They have no vested rights
6 to water. My kupuna, as I just named, have those
7 things intact. I'm their living heir. And by right
8 as a trustee to me as the state is a trustee, your job
9 is to make sure that my rights stay intact that I have
10 inherited for me and for the rest of my future
11 kindred. Thank you.

12 CHAIRMAN LEZY: Parties, questions?
13 Commissioners, questions? Thank you for your
14 testimony, Sir.

15 MR. DAVIDSON: Johanna followed by Janet
16 Six.

17 JOHANNA KAMAUNU
18 being first duly sworn to tell the truth, was examined
19 and testified as follows:

20 THE WITNESS: I do.

21 CHAIRMAN LEZY: State your name, your
22 address and proceed.

23 THE WITNESS: My name is Johanna Kamaunu.
24 And I live in Waihe'e Valley, 222 Waihe'e Valley Road.
25 I'd like to speak to you as -- in three, with three

1 different hats, first as the po'o for a group called
2 Hui Pono E Kekanawai.

3 It's a new organization made up of kanaka
4 maoli. None of us are educated in law, but we've made
5 it a practice in the last five years to spend some
6 time studying the law.

7 Our purpose is to discover what our rights
8 as kanaka maoli are. And as you've heard from Kaniloa
9 before, that we've discovered there's a lot more to
10 the laws than we had ever imagined.

11 The point that we're trying to make here is
12 that we're recognizing there are still rights that are
13 being, if I could use a better word for it, I can't
14 think of one right now, it's being veiled by the
15 current state system.

16 In our recent topic of discussion we looked
17 at the Republic of Hawaii vs. Edwards. And the
18 question of repeal of the laws came up. And in that
19 discussion it was brought out that there was not a
20 repeal for kingdom laws. Instead, what Congress did
21 was accept some of the kingdom laws and ignored the
22 rest that they didn't want to utilize.

23 So if you're waived on Hawaii Revised
24 Statutes it's our group's belief that our rights to
25 Kingdom law are still intact. And as it comes to

1 A&B's and their authority or their right to the Land
2 Commission award in this particular area, we don't
3 agree that they have that, as Kaniloa stated, allodial
4 title. I believe 172-11 says that the title enures to
5 the title owner. And there can only be one title
6 owner on allodial land. That's our understanding of
7 the law. And I think that's all supported in the
8 Supreme Court cases.

9 The second hat I'd like to speak to you as
10 is under, as a kuleana we have water entitlements.
11 That has always been a real big issue since the Water
12 Commission acquired or was in the process of acquiring
13 management rights over Na Wai Eha.

14 This Project, if completed, will want to
15 take water from Waihe'e Valley. You need to
16 understand what happened in our valley. With the
17 culmination of that case, 11 million gallons per day
18 was put back into the stream. Barely noticeable.
19 It's a lot and we're glad we have it. Barely
20 noticeable.

21 Commissioner Miiki suggested that
22 48 million gallons a day be put back. Huge
23 discrepancy between what was suggested by the hearing
24 officer, recommended by the hearing officer as to what
25 actually took place.

1 The third hat I'd like to speak to you
2 as.... is that of..... a descendant. When Clare Apana
3 became very engrossed, almost to being possessed with
4 this Project, I hadn't realized what moved her. But
5 in the last year I began to understand because it's
6 this kind of movement that is awakening all of us to
7 what our rights are. Hui Pono was a result of just a
8 handful of people. What Clare is doing, the requests
9 she's making to the discovery of the iwi, the
10 importance of the land, our history, I have to tell
11 you Kakaniloa was a battle I read years ago. But you
12 know who preserved that knowledge? Lorrin A.
13 Thurston.

14 So I have to be grateful that that knowledge
15 was still preserved; that this history, that battle
16 was still preserved.

17 And it's because of being moved by the
18 spirits of our kupuna, and I pray God is in this
19 movement with us, that I believe it's really important
20 the decision you make today will have a lasting impact
21 on all of us.

22 I understand what A&B is trying to do. They
23 have been doing it for a long time. And they've made
24 a lot of money on it. And they've siphoned years and
25 years of sand from our island. We cannot let it

1 continue. That's what I'm saying. We cannot let it
2 continue. Our sand dunes should have been designated
3 a historic site long ago. And now the central plains
4 is almost nothing. That's my testimony. Thank you.

5 CHAIRMAN LEZY: Parties, questions?
6 Commissioners, questions? Thank you.

7 THE WITNESS: May I add that there's one
8 more person that wants to testify.

9 CHAIRMAN LEZY: I'll ask.

10 MR. DAVIDSON: Janet Six.

11 JANET SIX

12 being first duly sworn to tell the truth, was examined
13 and testified as follows:

14 THE WITNESS: Yes, I do.

15 CHAIRMAN LEZY: Please state your name, your
16 address and proceed.

17 THE WITNESS: My name is Dr. Janet Six. My
18 address is 2675 Kapakua Road, Haiku, Maui, 96703.

19 My background is in plantation archaeology.
20 I worked on the Big Island at the Case of Hialeah,
21 particularly specializing in hydrological despotism or
22 controlling of the water.

23 I teach at the college.

24 THE REPORTER: Could you slow down, please.

25 THE WITNESS: I teach at the college. I

1 teach heritage sites. Now I'm also a licensed
2 archaeologist in the state and had some students here
3 today. And basically I became aware of Sand Hills.
4 I've been here since 1978. I'm aware of that area.
5 Several of my students came to tell me about burials
6 that they had seen on hikes and they were within the
7 known area. But as an archaeologist trained, the
8 probabilistic studies: If you've got 70 burials in
9 one dune there's probably a lot more, the alapa
10 battle, the alapa warriors, different things that have
11 been documented.

12 Earlier archaeology reports talk about those
13 things and later they disappear from the reports. So
14 what I would like to ask is that a traditional
15 cultural property survey be done, and they talk to
16 lineal descendants and others before we have business
17 as usual in this area.

18 I also understand this is zoned as ag. We
19 definitely need to grow more food. So too, as someone
20 who went to Maui Community College, was encouraged by
21 Dick Mayer to go away to school. I returned back. I
22 still do not own a house on Maui. Affordable housing
23 is out of my range as a professor at the college. So
24 I would rather have dunes and historic sites than
25 another 2500 homes in the central valley.

1 There's -- you know, we often protect the
2 moth or the Pueo because oftentimes we are more
3 interested in endangered species than endangered
4 culture. So for me it's just as important. It's near
5 the college. The students, we go to these areas, we
6 go to these areas. I work in Loiloi and I'ao Valley.
7 A lot of these areas have been broken apart by
8 development and they're not contiguous anymore. So
9 the idea that just another area with more houses and a
10 small amount of affordable homes near an area that was
11 a dump is not what I would consider to be Smart Growth
12 planning.

13 So I would really ask you folks to listen to
14 the testimony here today and see in the compelling
15 testimony of people who are lineal descendants of this
16 area.

17 I went to school in Philadelphia. You
18 cannot go dig up a burial. You can't go put buildings
19 on top of a Quaker cemetery. So I don't understand
20 why it's okay to continue this in Hawai'i. If it's
21 not Christian doesn't mean it's not important. It
22 doesn't mean it's not a cemetery or burial area.

23 I know that the United States Supreme Court
24 is working on defining 'what is a burial'. As we all
25 lived through the Ritz Carlton in 1988, it's time to

1 change the paradigm.

2 I ask that you take testimony here today to
3 heart. If you want jobs, let's have jobs in cultural
4 land natural resource management. We all know
5 construction is great when you're building and then
6 after that what do you do?

7 Let's have something that can sustain
8 through economic downfall and downturn. Thank you
9 very much.

10 CHAIRMAN LEZY: Parties, questions?
11 Commissioners? Thank you for your testimony. That's
12 the last of the public witnesses signed up. Is there
13 anyone who wishes to provide public testimony? Step
14 forward, please. If there is anyone else who wishes
15 to provide public testimony we'd also appreciate it if
16 you would also step forward.

17 WILMONT KAHAIALI'I
18 being first duly sworn to tell the truth, was examined
19 and testified as follows:

20 THE WITNESS: Aye.

21 CHAIRMAN LEZY: Please state your name and
22 your address and proceed.

23 THE WITNESS: 'O au kaumanukai ike noa niao.
24 Ma helu 'elua e kahe e kulo Akeke Place, Lahaina Maui,
25 Hawai'i.

1 Ladies and gentlemen, aloha.

2 AUDIENCE: Aloha.

3 THE WITNESS: Kala mai, Commissioners. I
4 cannot begin my hoike if the aloha is not returned.
5 Aloha.

6 THE COMMISSION: Aloha.

7 THE WITNESS: Maika'i no, you need to know
8 who you are and where you're at. If I'm going to come
9 to your hale and you are here to listen to the hoike
10 us, the people, we cannot trust you if you cannot
11 trust us.

12 Aloha plays a very significant role in our
13 culture. I was brought up to understand and
14 appreciate that when aloha is extended it must be
15 returned. If you cannot return it, then how am I to
16 trust that the 'olelo I'm about to share will have
17 value or weight in this council? Maopopo?

18 (Audience: 'Ae.)

19 THE WITNESS: Ladies and gentlemen of the
20 Commission, maopopo means, "Do you understand?" And
21 The appropriate response should be, 'ae". Do you
22 understand this obligation under which you take upon
23 yourself?

24 CHAIRMAN LEZY: Sir, you're here to provide
25 testimony.

1 THE WITNESS: I am going to bring my
2 testimony. I will not do it unless you can
3 reciprocate.

4 CHAIRMAN LEZY: Sir, if you're going to
5 share public testimony with us, please do.

6 THE WITNESS: Kalamai. Chair, your name is
7 Normand Lezy. What I'm about to share, ladies and
8 gentlemen, is something that you need to be aware of
9 because it is this knowledge that's going to help
10 strength then your decision.

11 I'm here to bear testimony for and on behalf
12 of those who cannot testify for themselves because
13 they're already sleeping beneath the sands of Kahului.

14 Known in the history of our people is the
15 alapa, warriors. I want you to step back in time
16 because this testimony requires that you do so in
17 order to understand and appreciate what I'm sharing
18 with you and the rest of my 'ohana shared with you.

19 The Bay of Ma'alaea is where Kalaniopu'u
20 came to Maui so that he could take this island by
21 force. It was the intent of the alapa regiment to
22 fight their way to the waters of Wailuku so that they
23 might drink of it. They were 800 in number.

24 The sheer size of this force gave them
25 extreme confidence that they would meet their

1 objective. As they closed upon Pu'uone o ka Kanu'u
2 they were surprised.

3 While they fought the force of Kahekili they
4 did not know that Kahekili had already enlisted the
5 aid of the army of O'ahu. When they came to
6 face-to-face with this great show of force, the alapa
7 were slowly cut down. And 800 warriors of old lost
8 their lives in the battle of Nakanelua. They fell
9 short of their goal of drinking from the waters of
10 Wailuku.

11 Why do I share that with you? Well, it's
12 become apparent to me that in the study of my
13 genealogy I realized that these words were from the
14 Big Island of Hawai'i from Kohala. That is where I am
15 from.

16 Ladies and gentlemen, they sleep beneath the
17 sands waiting to be returned home. However, it's
18 unfortunate that for some, some sand mining has been
19 carried out. Bones have been retrieved by accident, I
20 believe, that some of it was unintentional. For this
21 reason many of them who are still there continue to
22 make their presence known.

23 I would encourage this council to seriously
24 think about the impacts, both spiritual and cultural,
25 that will be made if any more of my kupuna are dug up.

1 Also cannot allow you to build and use the iwi of our
2 kupuna as a foundation for this new development.

3 If you need assistance and would like to
4 know what you can do to help us, I would advise that
5 you please take into heart and kahea, call the
6 families so that we can come to the table and kukakuka
7 so that if in the event our iwi kupuna are dug up by
8 accident, that no one will continue the practice of
9 just taking the bones, throwing it in the box and
10 depositing it somewhere where we have no knowledge and
11 cannot continue the practice of interring our kupuna
12 in a very proper manner.

13 I wanted to read a couple statutes. Already
14 Hui Pono has come forward to share some mana'o
15 regarding the kanawai poho pa'aina. The kanawai is
16 the laws of the Kingdom of Hawai'i. There are several
17 laws from the kingdom that have been transferred over
18 to the state today.

19 Civil Code of 1859 section 1477 is what you
20 call HRS 7-1. And in it the rights of the people
21 respecting land, titles, water is affirmed even to
22 this day.

23 There's another law from 1872 by Kamehameha
24 V. And that law talks about the Royal Patents, the
25 Land Commission Awards. You'll find that law in HRS

1 172-11-12 that those rights are affirmed. Now, think
2 about it. You may be infringing or encroaching upon
3 the rights of those people who are living here today
4 and those statutes of those rights.

5 We request the right to be heard and to sit
6 down and kukakuka. But those who want to avoid any
7 legal liabilities or impacts that might come forward
8 as a result.

9 O ka'u me kalua me kalu Hawai'i kale lahui
10 nui na ku nu'u. O ka'u no i'a. E hiki a'a ke o kahi
11 mai ahi mai no ko a miki aloha.

12 Let aloha prevail in this and we can move
13 forward. If you cannot allow aloha to be a part of
14 this process, then I cannot promise you that it will
15 end well. Please, give us an opportunity to make this
16 right. E ho'omau i ka pono. Mahalo.

17 CHAIRMAN LEZY: Parties, questions?
18 Commissioners, questions? Thank you for your
19 testimony, sir.

20 THE WITNESS: Mahalo. I have written
21 testimony of someone who could not be here. Can I
22 give this to them? (Document given to Chief Clerk)

23 CHAIRMAN LEZY: That concludes the public
24 testimony portion of this hearing. We'll take a
25 1-hour break for lunch and reconvene at about

1 1:30 p.m. Thank you.

2 (Lunch recess held)

3 CHAIRMAN LEZY: (2:00) This meeting is
4 reconvened. Mr. Matsubara, you're aware of the
5 Commission's policy regarding the reimbursement of
6 hearing expenses?

7 MR. MATSUBARA: Yes, we are. We'll comply,
8 Mr. Chair.

9 CHAIRMAN LEZY: Thank you. Next, staff will
10 provide map orientation. Mr. Saruwatari.

11 MR. SARUWATARI: Okay. The Commission's Map
12 NO. 1 is a GIS composite of the official maps.
13 Petition Area, which is highlighted in yellow, is
14 located on quadrangle M5 Wailuku.

15 The Petition Area is located in Central Maui
16 and is comprised of two areas separated by East Waiko
17 Road and the Consolidated Baseyards Development. Both
18 areas are bordered to the east by Queen Kuihelani
19 Highway.

20 The northern Petition Area is bordered by
21 the Waikapu landfill to the northwest and the Maui
22 Lani Master Planned development to the north.

23 The southern Petition Area is bordered to
24 the south by Waikapu Stream. That concludes my brief
25 map orientation.

1 CHAIRMAN LEZY: Commissioners, questions?
2 Thanks. Let's turn to exhibits, Mr. Matsubara.

3 MR. MATSUBARA: Mr. Chair, pursuant to our
4 first amended list of exhibits we have listed 35
5 exhibits which we'd like to introduce and have
6 admitted into evidence in support of our case.

7 CHAIRMAN LEZY: Any objections?

8 MR. HOPPER: No objection.

9 MR. YEE: No objection.

10 CHAIRMAN LEZY: Commissioners? Hearing
11 none, Petitioner's Exhibits 1 through 35 are admitted.
12 County.

13 MR. MATSUBARA: Thank you.

14 CHAIRMAN LEZY: County?

15 MR. HOPPER: County of Maui requests that
16 all of its exhibits be admitted. I believe that's
17 Exhibits 1 through 7 as provided on the County's
18 Exhibits List.

19 CHAIRMAN LEZY: Petitioner?

20 MR. MATSUBARA: No objections.

21 CHAIRMAN LEZY: OP?

22 MR. YEE: No objections.

23 CHAIRMAN LEZY: County's Exhibits 1 through
24 7 are admitted. Mr. Yee?

25 MR. YEE: The Office of Planning requests

1 that OP Exhibits 1 through 11 are admitted into
2 evidence.

3 CHAIRMAN LEZY: Petitioner?

4 MR. MATSUBARA: No objection.

5 CHAIRMAN LEZY: County?

6 MR. HOPPER: No objection.

7 CHAIRMAN LEZY: Office of Planning's
8 Exhibits 1 through 11 are admitted. With that,
9 Mr. Matsubara, are you prepared to proceed?

10 MR. MATSUBARA: Yes, I am, Mr. Chair.

11 CHAIRMAN LEZY: Please do.

12 MR. MATSUBARA: For your information we have
13 five witnesses prepared to testify today. The first
14 will be Tom Witten who is our expert in community
15 planning and environmental planning.

16 We have Adrian Wong from Austin Tsutsumi and
17 Associates who's an expert civil engineer; did the
18 preliminary engineering plan and drainage report.

19 Third witness today will be Lisa
20 Rotunno-Hazuka, our archeologist.

21 The next witness will be Glenn Kunihisa
22 who's our real estate market assessment and economic
23 impacts expert.

24 And the last witness for today is Robert
25 Hobdy who's our biologist who did the aquatic flora

1 and fauna survey. Hopefully we'll be able to fill the
2 time you've graciously set aside for us today.

3 CHAIRMAN LEZY: Great. Thank you.

4 MR. MATSUBARA: Mr. Witten.

5 THOMAS WITTEN

6 being first duly sworn to tell the truth, was examined
7 and testified as follows:

8 THE WITNESS: Yes.

9 CHAIRMAN LEZY: Please state your full name
10 and your business address.

11 THE WITNESS: Thomas S. Witten, 1001 Bishop
12 Street, suite 650, Honolulu, Hawai'i 96813.

13 DIRECT EXAMINATION

14 BY MR. MATSUBARA:

15 Q Mr. Witten, pursuant to our request you've
16 prepared written testimony for us in several areas,
17 one of it related to the Wai'ale Sustainability Plan
18 identified as Exhibit 19, is that correct?

19 A Correct.

20 Q And Exhibit 20 is your written testimony
21 relating to the Master Plan for Wai'ale and State Land
22 Use District standards?

23 A Correct.

24 Q You also prepared written testimony
25 identified as Exhibit 21 which relates to the Wai'ale

1 solid waste management.

2 A Correct.

3 Q You've also prepared a PowerPoint
4 presentation today that incorporates your testimony in
5 Exhibits 19 and 21, have you not?

6 A Correct.

7 Q And you've also prepared a visual aid for
8 the Commissioners in the event they have some
9 difficulty seeing the PowerPoint because of the glare
10 which they all have, is that correct?

11 A Correct.

12 Q Could you please give us your presentation.

13 A Yes. Chair, if it'd be all right I'll go
14 over and present from the PowerPoint.

15 CHAIRMAN LEZY: Okay.

16 MR. MATSUBARA: I'm sorry, Mr. Chair, one
17 housekeeping matter. Mr. Witten, you've been
18 introduced and accepted as an expert before the Land
19 Use Commission previously, have you not as an expert
20 in community planning and environmental planning?

21 THE WITNESS: Correct.

22 MR. MATSUBARA: Thank you. I'd like to have
23 Mr. Witten accepted as an expert.

24 CHAIRMAN LEZY: County?

25 MR. HOPPER: No objection.

1 MR. YEE: No objection.

2 CHAIRMAN LEZY: Commissioners? Mr. Witten
3 is accepted.

4 THE WITNESS: Thank you very much,
5 Commissioners. And I'd like to just give you a good
6 overview of the Project from our planning perspective
7 and maybe touch on some of the issues that arose
8 earlier in some of the public testimony, try to
9 provide some clarity to those. You do have a handout
10 of this because the PowerPoint, everything doesn't fit
11 on the screen from this perspective.

12 Anyway, this overview will touch on the
13 regional context, which Bert already sort of covered,
14 the conceptual planning process and some of the
15 background that went into the community based planning
16 effort, then the Master Plan and Project description.
17 And finally an overview of the Sustainability Plan
18 that's been submitted as an exhibit.

19 First, as Bert was showing you, the Project
20 Area is defined on the eastern, southeastern side of
21 Kuihelani Highway. The airport is up in this area,
22 Kahului Harbor, other major highways, state highways,
23 Honoapi'ilani Highway and Mokulele Highway which we
24 all came out on from, you get on Kuihelani, you take
25 that right, go past Pu'unene Mill and head out to

1 Kihei, Wailea and Makena.

2 The Project Area is approximately 545 acres.
3 It's bisected by East Waiko Road that connects between
4 Kuihelani Highway and Honoapi'ilani Highway. And the
5 Waikapu area is up in this area here. Wailuku, the
6 seat of government and the seat of business, the
7 business and economic heart of Maui being the Kahului
8 and Wailuku area.

9 It's comprised of five TMK parcels, 545
10 acres. Just quickly, State Land Use, Bert gave you an
11 overview of that. It's adjacent to the existing State
12 Land Use urban boundary of Maui Lani. And then
13 extends south from there. From the detailed Land
14 Classification Study it's classified as very poor
15 agricultural land, D class.

16 On the Community Plan, which was adopted in
17 2002 for Wailuku/Kahului, it was identified at that
18 time as a future growth area. There's two existing
19 project district 1 and project district 3 that were
20 anticipated to fill the housing needs through that
21 planning period.

22 Project district 1 is Maui Lani. And
23 project district 3 is Kealani, which is in the Wailuku
24 area.

25 The conceptual planning process we started

1 in 2005 and engaged the community in a before-meeting
2 process. I think we had over a hundred community
3 members participating over that period of time. But
4 we had a series of meetings that started with an
5 orientation of what we knew about the property at that
6 time, went through a sort of conceptual planning
7 charrette with the community.

8 And three alternatives developed. Refined
9 that with an open house with community input. And
10 finally resulted in a conceptual Master Plan that has
11 been referred to earlier.

12 This is just some of the shots of the
13 process we went through over those four meetings and
14 some of the alternatives that were generated. Through
15 that process they did, the community came up with a
16 vision statement. I thought it was appropriate to
17 kind of recap that: Create a socially and integrated
18 community with the unique sense of identity and
19 character, capitalizing on its location and natural
20 features.

21 An extension of Kahului Dream City, Wai'ale
22 would be a community that makes both visitors and
23 residents feel welcome and plans for the long-range
24 community civic facilities to support the Central Maui
25 region.

1 The key planning components of the
2 community. One was looking for a walkable mixed use
3 neighborhood, full range of housing types, much needed
4 community facilities including a regional park,
5 including a multimodal transportation systems for
6 walking, biking, jogging and driving, commercial
7 activities, schools, civic and recreational facilities
8 and also respect the natural historical, cultural
9 significance of the lands.

10 And to the extent possible capitalize on the
11 views from the property across the isthmus to
12 Haleakala and to the west, the West Maui Mountains.

13 This was the conceptual plan that we came up
14 with in 2005 with community input. Here's Kuihelani
15 Highway on the bottom of the plan. Here's Waikapu and
16 Honoapi'ilani Highway. East Waiko Road is this road
17 that comes through and connects both the major
18 highways.

19 And the concept then was sort of a regional
20 center opportunity and then a series of walkable
21 neighborhoods which are denoted as these villages, I
22 think six different villages.

23 At that time the land holding or A&B's land
24 holding in this area extended -- it does extend across
25 Waikapu Stream, which is here. I think there's a

1 couple hundred acres further south that was included
2 in the planning area.

3 Subsequently to that planning effort there
4 was a process where we were participating and A&B was
5 participating in the 2030 County General Plan update
6 which includes the Maui Island Plan.

7 And through that process there was some
8 testimony earlier this morning about there was
9 originally a Planning Department-recommended plan, a
10 General Plan Advisory Committee called the
11 GPAC-recommended plan. Then the Planning Department
12 took it to the Planning Commission and they came up
13 with a recommendation. Then there's currently a plan,
14 a similar plan before the County Council now that is
15 taking up the basic concept.

16 In any case, in all the schemes the
17 entire -- well, not the entire -- but based on the
18 2030 land use projection in housing needs they had
19 defined the boundary of being Waikapu Stream. So the
20 area south of Waikapu Stream was excluded from the
21 Project Area.

22 In addition, Maui Business Park Phase II
23 went forward. And there was a condition both by the
24 Land Use Commission and subsequently the County
25 Council that required, ultimately required 50 acres to

1 be included, 40 acres for affordable housing,
2 seven acres for a community center and three acres for
3 a park. And that has been incorporated into the plan.

4 In addition, the county moved forward with a
5 county bus system which we've been coordinating our
6 planning and transportation system with.

7 Additionally, the technical studies that
8 weren't available or only a portion of them were
9 available in 2005, were completed. As you know the
10 environmental impact statement was prepared and
11 processed and approved last year. Both the
12 Archeological Inventory Survey and the preservation
13 and burial treatment plans have been approved by the
14 State Historic Preservation Division. Those areas
15 have been incorporated into the Master Plan.

16 Maui Lani also moved forward in its
17 expansion just to the north of the Project with a
18 mixed use area that also provides opportunities for
19 connectivity and continuation of that neighborhood.

20 These are the resultant cultural features
21 that were identified including the large remnant sand
22 dune that's been referred to in some of the earlier
23 testimony. Had geologist support, help define what
24 they classified as liptivide sand dune formation.
25 Some areas, as was noted, over the years have been

1 sand mined and the dunes removed.

2 But this area, I think it's upward of
3 40 acres, was still relatively intact and had not
4 been, had not been sand minded. And those are the
5 lands that we had set aside in addition to
6 concentrations of some burial areas and archaeological
7 features that were identified.

8 So this map highlights some of those
9 features that we were working around or integrating
10 into the plan.

11 The resultant community Master Plan that was
12 subject of the environmental impact statement in 2011,
13 basically achieved, achieved the concept of the buffer
14 that people have referred to between the communities.

15 There was a concern and conceptually
16 identified in the Maui Island Plan to have a buffer,
17 open space element between what was described as
18 Kahului and Wailuku.

19 As noted earlier Waikapu area is right up in
20 here. So the resultant plan based on where we
21 ultimately were able to define the impact with the
22 white sand dune areas and the concentration of burials
23 and some other outlying areas, were closely identified
24 in the field, staked and marked. And they're very
25 clearly defined topographically when you're in the

1 field. So those were closely surveyed and
2 incorporated into our planning.

3 In addition, the regional park was
4 configured in a manner with a middle school, planned
5 middle school the Department of Education was
6 requesting with their sports field. This portion of
7 the site.

8 So we could achieve a continuous significant
9 landscape buffer for both the preserve, community
10 center, school fields and the regional park component.
11 At the edge of Maui Lani where currently there, all
12 this area of Maui Lani has been planned without any
13 potential connectivity. All the roads are looped.
14 And there wasn't really any opportunity to provide
15 that sort of inter-connectiveness.

16 So the only opportunity where we have
17 connectivity is in the new section of Maui Lani that
18 has some secondary collector roads planned and was
19 referred to here, including the buffer around the old
20 county landfill area.

21 Similar to Maui Lani's conditions imposed by
22 the county through consultation with the Department of
23 Health, was a hundred foot buffer for nonresidential
24 use. So as you see here we're showing some light
25 industrial uses on the area below the landfill area,

1 and then the balance of the residential.

2 As also mentioned there's 50 acres that were
3 planned or would be set aside for the county that are
4 included in this plan. And of that, 40 acres of
5 residential were in discussions with the county have
6 been identified up in this area. It's a relatively
7 flat and graded. That's a portion of the area that
8 had undergone sand mining.

9 It has opportunities for connection and
10 utility connections with Maui Lani which they're
11 looking for. And it's still within walking distance
12 to the elementary school and close proximity to the
13 planned middle school.

14 Besides the 30 acres up here there's another
15 10-acre site down here that would comprise -- these
16 two parcels would comprise a residential area, the
17 3-acre park, and the 7-acre community center here. So
18 generally the public open space would provide a
19 significant buffer.

20 In addition, the separation between Waikapu
21 proper is achieved by the landfill. And then there's
22 a large retention basin in this area that was
23 developed in relation to the Waikapu residential
24 component here. So there is a large breadth of open
25 space for separation.

1 And even topographically as this is the low
2 point of the site and viewed from Honoapi'ilani
3 Highway and Waikapu, you really don't -- you really
4 don't have any visual connection between Waikapu
5 Village proper and the Project Area.

6 The land use summary, I think it's clear in
7 the environmental impact statement, but that's
8 basically the Community Plan, Maui Island Plan calls
9 for 2550 units which we're assuming about 300 of those
10 would be for the county on their 40 acres, resulting
11 in 2,250 units for the development by A&B.

12 Includes village mixed use districts where
13 we'd probably have higher density uses with commercial
14 and office uses.

15 There's approximately 23 acres of commercial
16 property for office and business use. And also about
17 16 acres of light industrial which would be buffering
18 the existing industrial areas along East Waiko Road.

19 The schools, as I mentioned, an 18-acre
20 middle school has been planned in consultation with
21 DOE. They didn't -- they didn't conclude the
22 elementary -- based on their projections -- that an
23 additional elementary school would be required. If
24 you recall back in the 2005 plan we did have another
25 elementary school but it was going to be in the future

1 phase across Waikapu Stream.

2 Public support facilities. As I mentioned
3 the county's 7-acre community center and their parks.
4 And in total as Master Planned with the parks, the
5 cultural preserve, the greenways and open space
6 approximately 142 acres or about 26 percent of the
7 site is planned for open space.

8 And we have an integrated plan for bicycle
9 and pedestrian paths along the major thoroughfares and
10 also connecting up all the parks and open space
11 elements.

12 On the parks note from a county planning
13 perspective and their requirements for park
14 dedication, for the buildout of the 2,250 units the
15 actual park dedication would come out to about
16 25 acres. So you can see this far exceeds the local
17 park requirements, but it's something that's been in
18 the plan from the get-go. The county and state has
19 been looking for large tracts of land for regional
20 parks. And this was one of the areas that they've
21 identified even more recently.

22 Again, the draft Maui Island Plan as I
23 mentioned earlier has been ongoing from about 2007.
24 The Planning Department issued a draft in 2008. The
25 General Plan Advisory Committee completed their work

1 in 2009, the Planning Commission in 2009. And we're
2 currently in 2012 and the county's getting toward the
3 end of their review, including the growth strategy
4 that includes Wai'ale in their overall plan.

5 And we feel that Wai'ale conforms to that
6 island growth strategy, encourages development in
7 close proximity to the urban, urban centers of Maui,
8 urban and employment centers of Maui and existing
9 infrastructure.

10 Importantly is conformance with the
11 standards, the State Land Use district standards.
12 Again, quickly, the property is contiguous to existing
13 urban. It won't provide a scattered or spot urban
14 development type of project. It's in close proximity
15 to citylike concentrations.

16 The topography and drainage
17 characteristics are suitable. It's -- although
18 there's about 150 feet of fall across the site, the
19 average slope is 2 to 3 percent which is relatively
20 level, and I think affords a great opportunity to
21 provide a very walkable kind of plan with the
22 neighborhoods and parks and open space systems, which
23 would be very conducive to walking and biking.

24 Infrastructure systems are in close
25 proximity. And our Project engineer will address the

1 infrastructure elements. And consistency with the
2 General Plan and draft Maui Island Plan as we've noted
3 previously.

4 The sustainability plan was put together and
5 focused on the planning principles that are advocated
6 by sort of three general areas: The low carbon
7 community planning principles, Smart Growth planning
8 principles, planning and design principles and LEED,
9 the Leadership in Energy and Environmental Design for
10 neighborhood developments.

11 So we basically have looked at and organized
12 the sustainability plan around those principles and
13 have applied those principles through these early
14 phases of conceptual planning for the Project.

15 Low carbon community planning principles.
16 All of these -- a lot of these are somewhat redundant
17 because they all focus on compact, efficient
18 development located in areas where you have the
19 supporting services.

20 But anyway, the integrated planning and
21 design principles which really looks at all aspects of
22 the Master Plan. A low carbon site from a standpoint
23 of transportation, the urban form greatly influences
24 the emission levels.

25 So to the extent you could provide mixed use

1 and walkable neighborhoods with employment centers
2 nearby it reduces the daily trips that a resident has
3 to take is where the benefits accrue there.

4 Linking the housing with employment.
5 Again, we have some light industrial, have some
6 commercial areas on the Project area that we feel
7 could provide a pretty good job of housing balance in
8 addition to the close proximity to the major
9 employment centers of Kahului and Wailuku.

10 Energy demand reduction is using the
11 renewable solar and other sources. And in all cases
12 doing a cost/benefit analysis to make sure the
13 technology you're using and applying is gonna achieve
14 the results you want to achieve.

15 The Smart Growth planning principles, these
16 have been around for a few years. But, again, land
17 use and urban design, transportation, connectivity,
18 trying to make the neighborhoods and community
19 function easily. Have appropriate parks and open
20 space such as planned definitely has its advantages:
21 Water management, energy management and also providing
22 education in close proximity to the residents.

23 LEED for neighborhood developments. Again,
24 smart location being close to existing urban centers,
25 neighborhood patterns and design so that there is

1 connectivity and opportunity to introduce green
2 infrastructure in buildings.

3 The result of this sustainability plan as it
4 was expressed in those principles is what we feel is
5 Wai'ale is a very sustainable Master Planned location,
6 consistent with the Maui Island Plan, mix of uses,
7 integrated system of walking and bike paths, a range
8 of housing types, employment opportunities in the
9 mixed use, commercial districts and light industrial
10 uses.

11 The recreation, both regional and
12 neighborhoods. The regional park that we're showing
13 is, I think, approximately 60 acres. So it's --
14 typically a regional park is categorized 50 acres and
15 over. So it's a significant element in a location on
16 the site that is relatively level so we can -- it will
17 be very conducive to active field sports which
18 Wailuku/ Kahului is short of.

19 To the extent possible we're linking up the
20 transportation systems and looking at renewable energy
21 and reduced energy demand and would implement reduced
22 potable water demand through appropriate landscaping
23 standards. And also have a recycling and waste
24 diversion strategy for the Project as it's built out.
25 Thank you very much.

1 MR. MATSUBARA: Thank you, Tom. Mr. Witten
2 is available for questions.

3 CHAIRMAN LEZY: County?

4 MR. HOPPER: He's going to remain there for
5 the questions?

6 THE WITNESS: I could go back if it's
7 easier.

8 MR. HOPPER: Thank you.

9 CROSS-EXAMINATION

10 BY MR. HOPPER:

11 Q Thank you, Mr. Witten. Would you be able to
12 give us a brief summary of what additional
13 requirements this Project would require before it can
14 be constructed?

15 A Sure. As the Maui Island Plan was assumed
16 to be adopted in possibly this year, and the
17 consistency with that, assuming State Land Use
18 approval's achieved, the next step would be to get
19 county zoning.

20 For a Project such as this the county has
21 project district zoning classifications which provides
22 some flexibility. But although through that process
23 it's a three-step process.

24 Originally you go in for the county zoning
25 which defines the general, the general land area and

1 allocation of permitted uses and that's Phase 1.

2 Phase 2 you come back to the Planning
3 Commission with a more specific plan. And ultimately
4 step 3 is subdivision, construction plans approved
5 through the Planning Department and Public Works.

6 Q Would a Community Plan amendment also be
7 required?

8 A I guess we'd probably -- because unless,
9 unless they restructure the Maui Island Plan to
10 address the community plan, right now I think the
11 intent is that the Maui Island Plan gets completed and
12 then they go back to update all the regional
13 development plans such as Wailuku, Kahului.

14 So to the extent that the Maui Island Plan
15 doesn't address that issue of going back and redoing
16 the Community Plans, then we'd likely currently with
17 the change of zone request for community plan
18 amendment that could be processed concurrently.

19 Q In either way so the Community Plan would
20 have to be changed either by the comprehensive --
21 perhaps a comprehensive update or a Community Plan
22 amendment.

23 A Correct. 'Cause currently, as I noted, it
24 was -- it's still designated as Ag.

25 Q Okay. And through that process, you

1 mentioned project district zoning, will the uses in
2 each of these particular areas be specified and
3 determined at that stage?

4 A Yeah. There will be a lot more detailed
5 planning that we go through and also in coordination
6 with the county on their housing side, to firm up the
7 land areas that they're pursuing or would like to
8 develop, as I noted earlier. But, yeah, plan would
9 get further refined.

10 Although there's still an intent and I think
11 a desire the project district to provide some
12 flexibility. But I think the major infrastructure
13 elements would have to be tied down, especially the
14 Kamehameha Avenue extension and that alignment East
15 Waiko Road.

16 Q So this is, as stated, a conceptual plan
17 that may change based on the additional entitlements
18 required such as zoning and any other additional
19 entitlements?

20 A Correct.

21 Q You mentioned the Maui Island Plan is
22 currently in the draft stage still and has not yet
23 been adopted by the council, correct?

24 A Correct.

25 Q So once that plan is adopted, which includes

1 Urban Growth Boundaries, this Project would be
2 required to conform to that plan, correct?

3 A Correct.

4 Q And that's the adopted version of the plan
5 itself. So the location of all of these uses,
6 including the park configuration, the road alignment,
7 the location of the county housing, it has not been
8 finalized at this stage, correct?

9 A Correct.

10 Q Now, you acknowledge in your written
11 testimony that the Project's going to be required to
12 comply with the residential workforce housing
13 requirement in place in the county code?

14 A That's correct.

15 Q And that requirement would require that the
16 Project execute a workforce housing agreement with the
17 Department of Housing and Human Concerns to outline
18 how they would be satisfying the ordinance, correct?

19 A Correct.

20 Q And at that time the amount of units would
21 be specified. But based on your, on the ordinance
22 today, what is your projection of how many affordable
23 units must be provided?

24 A I have it in my notes. It was -- basically
25 it was 25 percent of the 2,250 units. So I think it

1 was 363 or....

2 Q 563.

3 A 560, yeah, 563.

4 Q It's a matter of record in your Draft EIS,
5 that's correct?

6 A Correct.

7 Q But the exact amount's going to have to be
8 specified in an affordable housing agreement the
9 Department of Housing and Human concerns approves,
10 correct?

11 A That's my understanding.

12 Q Okay. In addition, you do recognize in your
13 written testimony that the design and construction of
14 the roadways may change depending on county standards
15 in place at the time of the subdivision approval,
16 correct?

17 A Correct. Typically through the project
18 district that the details or some of the concepts as
19 far as road sections and in this case where we're
20 trying to link up a greenway bikeway system would be
21 worked out with the county.

22 Q Have you done any design work studying the
23 visual impact of the Project as measured from the
24 adjacent roadways and Highways?

25 A Not specifically, no.

1 Q But you're aware that in the project
2 district process, specifically Phase 2, that that's
3 something the Project's going to have to address in
4 front of the commission, the Planning Commission?

5 A Correct.

6 Q If that happens. Okay. Then finally the
7 length for the affordable housing, the location, not
8 only would that be subject to approval by the
9 Department of Housing and Human Concerns, but would
10 not the county council have to accept the dedication
11 of that land for affordable housing?

12 A That's my understanding.

13 Q Thank you.

14 MR. HOPPER: No further questions.

15 CHAIRMAN LEZY: Office of Planning.

16 CROSS-EXAMINATION

17 BY MR. YEE:

18 Q Are you aware of the Department of
19 Agriculture's concerns expressed in Office of Planning
20 Exhibit 11 regarding a 300-foot buffer around the
21 landfill?

22 A I wasn't aware of the 300-foot, but I was
23 aware of a buffer that was implied based on Maui Lani
24 Project Area.

25 Q Currently the Petitioner's proposing to have

1 light industrial activities within that buffer area?

2 A Yes.

3 Q And I know you said that's consistent with
4 Maui Lani, but are you aware that would be
5 inconsistent with the Department of Health letter?

6 A I may be in error, but I think we were
7 trying to be consistent with the Department of Health
8 standards as they applied to Maui Lani.

9 Q You're aware the Department of Health's
10 letter directed specifically for this Project rather
11 than for Maui Lani?

12 A I'm not familiar with the specific letter.

13 Q Are you aware of any discussions that you or
14 A&B may have had with the Department of Health on this
15 issue?

16 A No, I'm not.

17 Q You mentioned that this Project is
18 consistent with the draft Maui Island Plan, and its
19 proposed Urban Growth Boundary will be inconsistent
20 with the existing Community Plan?

21 A Correct.

22 Q And I think you said that the matter's
23 currently before the County Council. I take it no one
24 really knows when that decision will be coming.

25 A Correct. It's been several years in the

1 process.

2 Q Why are you -- do you know why A&B is coming
3 to the Land Use Commission before the Petition Area's
4 consistent with the existing Maui Island Plan?

5 A Well, I think there's been enough expression
6 through the efforts of the Planning Department and the
7 General Plan Advisory Committee to show that the
8 intent is, that it is consistent on the draft plans.
9 So they're trying to move forward based on those
10 understandings.

11 Q Are there any areas of discrepancy between
12 your proposed Project and the current draft Maui
13 Island Plan?

14 A I think conceptually it speaks to the issues
15 that are identified both narratively and graphically
16 depicted.

17 As noted in some of their earlier testimony
18 some feel the conceptual representation of an open
19 space element that's graphically depicted on the Maui
20 Island Plan, which was depicted that way without any
21 knowledge of the actual site features on the property
22 was -- should be respected as if it's a zoning
23 boundary.

24 We do not feel that that was the intent or
25 good planning to try to represent a concept such as

1 that without the information needed to define that.

2 So we've always felt, and I think A&B has
3 represented in their testimony, throughout the Maui
4 Island Plan process that in concept we agree. And in
5 concept we think we've achieved that in response to
6 how we've laid out the park and where the cultural
7 preserve sand dune elements ended up being physically
8 located on the property.

9 Q This is in reference, I guess, to Mr.
10 Mayer's public testimony today?

11 A Correct.

12 Q Do you believe it would require any
13 amendment to the Maui Island Plan to make it
14 consistent?

15 A No. I believe the expression of the --
16 however, it ends up -- but the expression of having a
17 significant buffer between the Kahului and Waikapu
18 area is achieved through our plan so it would not
19 require an amendment to the Maui Island Plan if
20 adopted. I think the language is general enough that
21 it could be, and I think the County agrees, that the
22 plan as conceptual as it is is consistent with the
23 Maui Island Plan as currently drafted.

24 Q So the conceptual plan you're submitting to
25 the Land Use Commission is consistent with the Draft

1 Maui Island Plan currently before the city council, is
2 that right?

3 A Correct. That's our feeling, yes.

4 Q If your conceptual community Master Plan is
5 implemented as it's currently set forth, would you
6 require any revision to the current proposed Maui
7 Island Plan? Or could you just move forward sort of
8 with both documents as is?

9 A I think we can move forward with the project
10 district zoning and Community Plan amendment as noted
11 with the conformance with the Maui Island plan as
12 drafted.

13 Q So it wouldn't be necessary to -- I mean I
14 guess the question I'm asking is there's apparently a
15 graphic in the Maui Island Plan indicating a green
16 area, right?

17 A Correct.

18 Q And the location of that green area, you
19 know, subject to change I understand as you move
20 forward with the Project, right?

21 A Correct. I mean it was expressed as a desire
22 and intent to have an open space element separating
23 Kahului and Waikapu. And I think in our park and
24 preserve where those resources ended up on the Project
25 and the resultant plant achieved that separation.

1 Q So even if the green area within this
2 Petition Area changes from the graphic in the Maui
3 Island Plan because the -- I mean are you saying it
4 would still be consistent because the major goals and
5 objectives or principles of the Maui Island Plan would
6 be met?

7 A Yes. I think it meets the intent of that
8 concept.

9 Q In the EIS I notice that you had set forth
10 two potential alternatives for wastewater treatment,
11 one being either connection to the county wastewater
12 system or the second being construction of the
13 wastewater treatment facility, correct?

14 A Correct.

15 Q Do you currently have intention for this
16 Project as to which alternative it would be going
17 with?

18 A I don't, but the Project engineer will be
19 testifying after me.

20 Q Going back to one of the public testifiers,
21 Mr. Verkerke, I believe, testified regarding a
22 protection area. Are you familiar at all with the
23 protection area being listed within the Maui Island
24 Plan?

25 A No, I'm not.

1 Q And let me just represent it's a phrase in
2 quotes. And I don't know where he got it from. I
3 wondered if you knew where he got it from.

4 A Well, there's -- on the Maui Island Plan it
5 was depicted that there is an open space element and
6 there's another -- I don't, defined as protection
7 area, but a cultural preserve area again that was, you
8 know, generally, depicted generally where they thought
9 the sand dunes and burials were located.

10 As it turned out through more site-specific
11 planning those aren't the exact areas where those
12 resources are. So the plan's been modified
13 accordingly.

14 Q So the graphic, is it the Maui Island Plan
15 it's contained in?

16 A Yeah. That same graphic there's two tones
17 of green. So maybe that second tone is the
18 protection.

19 Q That graphic just doesn't reflect the actual
20 areas that need to be protected.

21 A That's our interpretation of what the intent
22 was.

23 Q Are you familiar with the Department of
24 Education's desire to get an educational contribution
25 agreement with A&B?

1 A That's been their standard practice, yes.

2 Q Are you familiar at all with Office of
3 Planning's Exhibit 7 which has that request in it?

4 A No, I'm not.

5 Q So do you know what the status is of any
6 discussions with the Department of Education to reach
7 an agreement?

8 A I think the Applicant would probably be the
9 best to answer that.

10 Q Who would I ask regarding any meeting or
11 discussion and/or agreement with the U.S. Fish and
12 Wildlife and the Department of Fish and Wildlife on
13 the State DLNR regarding endangered species?

14 A Probably Bob Hobdy or Applicant.

15 Q Mr. Chun.

16 A Yes. Or Dan Yasui.

17 Q Who's not listed as a witness. Okay.
18 You've listed in your testimony some of the
19 principles, sustainability principles of various types
20 that will be applied at least conceptually in design
21 for the Project, right?

22 A Correct.

23 Q Are there any specific mitigations other
24 than the Project's location which this Project will
25 implement to meet those more general goals and

1 principles?

2 A Oh, yes. I think there's a lot of specific
3 opportunities within the Project as far as the
4 neighborhood designs, the circulation for the roadways
5 that have a very interconnected and walkable
6 neighborhood structure in close proximity with open
7 space elements -- for a higher open space elements
8 being various levels of parks and the opportunity for
9 the mixed use development from live/work type units to
10 vertical mixed-use to just horizontal mixed use in
11 close proximity to higher density residential.

12 All those key land uses and circulation
13 design elements can be implemented at a site such as
14 this because of its general topography.

15 Q Are there specific energy-saving measures
16 that are going to be done for the Project?

17 A I'm sure both solar, solar water,
18 photovoltaics. It's in a high solar radiation zone.
19 I think it'd be -- a lot of those elements would be
20 feasible.

21 Q When you say "feasible" I guess that means
22 it's realistically possible. Do you know whether it
23 will be done for this Project?

24 A Not at this stage, no.

25 Q Are there any energy-saving measures you can

1 say will be done for this Project?

2 A Not at this stage, no.

3 Q Other than existing county requirements are
4 there any water-saving measures that you can say will
5 be done for this Project?

6 A I think there's a lot of opportunities from
7 a design standpoint to implement water saving
8 strategies and even potentially dual use, depending on
9 what the wastewater system is. But it's too early, I
10 think in the Project to specify exactly what those
11 solutions will be.

12 Q And there are no specific commitments to
13 reduce water energy by a particular percentage --

14 A No.

15 Q -- for this Project?

16 A No, we haven't gotten to that level of
17 specificity.

18 Q You talked about one of the sustainability
19 measures being the compact design and the fact that
20 there are opportunities for people to walk to work for
21 example, right?

22 A Correct.

23 Q Do you know how many people, or do you have
24 an estimate of how many residents in this Project will
25 be working in the Project?

1 A I don't have the -- I don't have -- I don't
2 recall if there was a specific employment generation,
3 whether that was quantified. I can't answer that.

4 Q You know, I also forgot to ask you: Are
5 there any specific low impact development measures
6 that you can say will be done for this Project at this
7 time?

8 A It's hard to say "will be done" when we're
9 not in the design phase. But I think based on the
10 topography, the soil characteristics, that I think a
11 lot of the site drainage can be handled in an LID,
12 low impact design manner because of the natural sort
13 of sandy soils and low gradients that I think lends
14 itself. And the parks, especially the regional park,
15 has been located at the low end of the site. So we
16 anticipate a lot of the site drainage could be
17 accommodated in those recreation areas.

18 Q So once again there would be many
19 opportunities for low impact development, but you're
20 not at a stage where you could tell us a particular
21 measure that would be undertaken?

22 A Yeah. I think from a planning perspective
23 we recognize the opportunities and located the open
24 space elements in that manner. But from a design
25 standpoint we're not at that stage to be able to

1 quantify that we're going to keep so much -- be able
2 to retain so much of the drainage on site.

3 Q You know, I have one other question. You
4 may be the wrong person to ask. But in the public
5 testimony there was discussion about untouched sand
6 dunes being developed. Do you know whether that's a
7 factually correct statement?

8 A From my understanding, and we had some
9 geologist support in helping us define, survey the
10 dune area what was considered the intact lithified
11 sand dune area.

12 And from my understanding that dune complex
13 that was defined was the remaining lithified sand
14 dune formation. And we've kind of worked around that.
15 So as far as -- I wasn't clear on what other areas
16 they were considering the sand dunes.

17 Q By "they" you mean what the public was
18 referring to?

19 A What the testimony was alluding to.

20 MR. YEE: Thank you very much.

21 CHAIRMAN LEZY: Redirect?

22 MR. MATSUBARA: None, Mr. Chair.

23 CHAIRMAN LEZY: Commissioners, questions?
24 Commissioner Heller.

25 COMMISSIONER HELLER: Yes. In the public

1 testimony several people expressed concerns about
2 whether there should be an elementary school within
3 the Project site.

4 And I know when you kind of walked us
5 through the overview you indicated that there was an
6 elementary school just off of the Project site to the
7 north.

8 My question is that's offsite to the north.
9 The areas identified as villages 5 and 6 at the
10 southern end, how far are they actually away from that
11 school? And how far would those kids have to go?

12 THE WITNESS: The existing elementary school
13 is right adjacent to the property. You can see it
14 right here. (Witness using diagram) It was developed
15 a few years on the edge of Maui Lani.

16 And yet that was of the school in reference.
17 I think the testimony was feeling that with the
18 planned -- anticipated student generation from this
19 Project for an elementary school they thought that
20 school would be insufficient.

21 We have worked closely with the Department
22 of Education. And they came back with saying that
23 looking at their whole complex that this was, was a --
24 they didn't feel they'd have a need for another
25 elementary. There's another elementary -- it's off

1 this map -- but there's another elementary being built
2 up in Kehalani, which is probably a half mile away.

3 And I think as far as distance from the
4 furthest residence in the southern portion of the
5 Project to the existing elementary, probably less than
6 a mile. And would be connected with that system of
7 bikeways and greenways along the major roadways.

8 So as far as -- I think it could still be a
9 walkable solution. And we kind of went along with, in
10 our consultation, with the Department of Education
11 based on their projections. Because some of the, you
12 know, there's the -- the student bodies kind of go in
13 waves depending on the maturity of the community. So
14 I can't answer specifically why they didn't feel
15 another elementary was identified.

16 COMMISSIONER HELLER: I was basically just
17 asking about the distance. The other offsite school
18 that you mentioned, would that be closer to the
19 Village 5 and 6 area?

20 THE WITNESS: No, no. It's further towards
21 Wailuku and it's upslope. So I don't think it would
22 be -- I don't think they're anticipating that between
23 Maui Lani and Wai'ale that existing elementary school
24 would service this community.

25 COMMISSIONER HELLER: Thank you. That's all

1 I have.

2 CHAIRMAN LEZY: Commissioner Teves.

3 COMMISSIONER TEVES: Hello, Mr. Witten. I
4 have a question. Is there any current sand mining
5 taking place right now on the Petition Area?

6 THE WITNESS: Not that I'm aware of. I
7 think the sand mining ceased, oh, several years ago.
8 And I think the Applicant can speak specifically to
9 how that sand mining was permitted and when it was
10 stopped.

11 COMMISSIONER TEVES: As a follow up to the
12 Office of Planning. The Petition will protect the
13 sand dune, is that right?

14 THE WITNESS: Yeah. The area we've
15 depicted, that 30 plus acres that was defined
16 topographically and by the geologist, was going to be
17 a cultural preserve. That's where the concentration
18 of burials has been located.

19 So, yes, that would be basically kapu. I
20 mean we're not planning to touch that. There's even
21 very -- there is one, one road that it's cut through
22 that we thought maybe we could keep as a path,
23 pedestrian path and try to link up some pedestrian
24 paths around the perimeter of it. But no, there's no
25 plan modification to what's there now.

1 COMMISSIONER TEVES: Thank you for the
2 information.

3 CHAIRMAN LEZY: Commissioners? Mr. Witten,
4 I wanted to make sure I understand one piece of your
5 testimony. There was public testimony on the issue of
6 the green buffer between Waikapu and Kahului and
7 Wailuku.

8 Do I understand your testimony correctly,
9 then, that because of a failure to take into account
10 the actual conditions in the area, that the proposed
11 buffer that was pointed out in the GPAC
12 recommendation, and the Maui County Planning
13 Commission Recommendation was essentially not a
14 feasible, ah ...?

15 THE WITNESS: I mean I guess you could say
16 it was feasible. But it didn't relate to the physical
17 characteristics and the resources that was there. It
18 was sort of a strike through the middle of the
19 property. And, you know, from our understanding and
20 when we did participate, and the Applicant A&B
21 participated, it was their understanding it was this
22 conceptual intent. And in the verbiage it talks about
23 having that separation.

24 And at one time -- or in the General Plan
25 Advisory Committee recommendations besides putting

1 that, that stripe through the Project, they had
2 proposed not to include that stripe in the Urban
3 Growth Boundary. They were drawing the line around
4 the Urban Growth Boundary. We said, "That's not
5 feasible. We don't even know -- we don't even have a
6 plan yet that really shows how this concept will be
7 achieved."

8 So subsequently the Planning Department,
9 Planning Commission was before the County Council,
10 includes the entire Project, but still has the concept
11 and expresses the concept narratively and graphically
12 which we've testified that we don't think they should
13 try to graphically show it because some will take that
14 to mean that's where it's supposed to be.

15 And we're saying that's not a workable
16 solution when you're trying to Master Plan a community
17 of 500+ acres. And you have some real constraints as
18 far as areas, natural resources you're trying to
19 protect with the sand dunes and the burials to say
20 that you can give up another, another hundred acres
21 and still achieve your housing objective which was
22 2550 units.

23 CHAIRMAN LEZY: And did I also understand
24 your testimony, then, that the proposal that you've
25 identified today as far as the intent of this green

1 buffer, that that fulfills the functional equivalent
2 of the intent of what has been previously clarified?

3 THE WITNESS: Yes. That's basically --
4 that's our, our understanding and implementation of
5 that principle that's expressed in the current draft
6 of the Maui Island Plan.

7 CHAIRMAN LEZY: Is there any substantive
8 difference you've identified other than location and
9 configuration between the two as far as meeting that
10 functional intent?

11 THE WITNESS: No. I think it meets the
12 functional intent. It also links well with the
13 adjacent district park, I think they call it district
14 park, next to Maui Lani and provides additional
15 connection which is another 25 acres here that links
16 up, which is sort of the terminus of that. The
17 remnant of this end of the sand dune terminates there.

18 So ideally you have this huge open space
19 along that point all the way up. There's a large
20 detention basin here that is committed to open space
21 in addition to the landfill area.

22 So you really have a significant open space
23 element separating Kahului as defined by Maui Lani and
24 Wai'ale. And then, again, going upslope to Waikapu.
25 And visually if you're in Waikapu, I don't think

1 you'll see -- you kinda look over Wai'ale to the
2 central isthmus. Other than having people in
3 proximity to you you won't really visually see it.

4 CHAIRMAN LEZY: Thank you. Anything else?
5 No. Thank you for your testimony.

6 THE WITNESS: Thank you very much.

7 CHAIRMAN LEZY: Let's take a 5 minute break
8 while we get the next witness

9 (Recess was held. 3:20)

10 CHAIRMAN LEZY: (Gavel) Mr. Matsubara.

11 MR. TABATA: Our next witness is our civil
12 engineer Adrian Wong.

13 CHAIRMAN LEZY: I need to swear you in.

14 ADRIAN WONG

15 being first duly sworn to tell the truth, was examined
16 and testified as follows:

17 THE WITNESS: Yes.

18 CHAIRMAN LEZY: Please state your name and
19 your business address.

20 THE WITNESS: My name is Adrian Wong. And
21 my business address is 1871 Willapa Loop in Wailuku.

22 DIRECT EXAMINATION

23 BY MR. TABATA:

24 Q Ms. Wong, could you please state your
25 position and place of employment.

1 A I'm vice president and project manager with
2 Austin Tsutsumi & Associates.

3 Q And did you prepare the preliminary
4 engineering and drainage report for this Project which
5 is identified as Petitioner Exhibit 9N?

6 A Yes.

7 Q And did you also prepare your written
8 testimony and curriculum vitae which is Petitioner's
9 Exhibit 22?

10 A Yes.

11 Q And does your curriculum vitae contain your
12 qualifications and experience as a civil engineer?

13 A Yes.

14 Q And as a part of your experience is it
15 correct that you have over 20 years as a licensed
16 civil engineer in the state of Hawai'i?

17 A Yes.

18 Q Thank you.

19 MR. TABATA: Mr. Chair, Petitioner would
20 like to request that Ms. Wong be admitted as an expert
21 in the field of civil engineering.

22 CHAIRMAN LEZY: Mr. Hopper.

23 MR. HOPPER: No objection.

24 MR. YEE: No objection.

25 CHAIRMAN LEZY: Commissioners? Ms. Wong's

1 admitted.

2 MR. TABATA: Thank you.

3 Q Ms. Wong, could you please summarize for us
4 your written testimony.

5 A Yes. Let's see, Austin Tsutsumi and
6 Associates was retained by A&B Properties to conduct a
7 preliminary engineering analysis of existing and
8 required infrastructure for the planned Wai'ale
9 Project.

10 The report provides preliminary civil
11 engineering design which includes existing and
12 proposed drainage, water, wastewater, roadway,
13 electrical, cable, utility improvements to service the
14 Project.

15 I'll summarize the findings of this report.
16 For drainage Wai'ale will contain a mix of
17 residential, commercial and light industrial as well
18 as parks and a proposed middle school. The storm
19 runoff will be collected by open swales and a
20 stormwater drainage system which will be routed to
21 several retention basins.

22 Prior to retention the southern portion of
23 the Project will -- excuse me. The southern portion
24 of the Project will produce a proposed 100-year
25 24-hour storm runoff of 459 cubic feet per second.

1 The northern portion will produce a 100-year 24-hour
2 runoff of 1,526 cubic feet per second.

3 With the installation of the proposed
4 retention basins the southern portion will retain 414
5 CFS which limits the runoff to 45 cubic feet per
6 second.

7 The northern portion will retain 1,454 cubic
8 feet per second which limits the runoff to 72 cubic
9 feet per second. This represents a significant
10 decrease in runoff from the existing flows of 389 CFS.
11 Thus, the Waikapu Stream and Kealia Pond drainage
12 systems will be protected from any peak flow
13 increases.

14 In addition to reducing the peak flow rates,
15 the proposed stormwater management system will provide
16 water quality treatment to reduce the discharge of
17 pollutants by utilizing the following Best Management
18 Practices: We'll be using grass swales which will
19 provide natural filtration while allowing percolation
20 into the underlying soil. We've got open space and
21 reduced impervious coverage.

22 About 25 percent of Wai'ale will be reserved
23 as park areas, cultural preserves and open space.
24 Important cultural preserves will remain undisturbed.
25 There will also be buffer strips that will be

1 maintained along the Waikapu Stream.

2 There will be open space and park areas
3 which will be maintained with grass and native
4 vegetative cover. This reduces the impervious
5 coverage which promotes infiltration and maintains a
6 natural hydrological cycle.

7 We'll also have storm water retention and
8 infiltration where the bottom 2 feet of the retention
9 basins will be reserved for retention of water quality
10 volume.

11 Water quality runoff and pollutants will be
12 mitigated from flowing into downstream areas such as
13 the Waikapu Stream. Stormwater will be held for an
14 extended period allowing suspended solids to be
15 settled out.

16 Water will infiltrate into soil and recharge
17 the groundwater. While the county does not
18 specifically require water quality treatment of
19 stormwater, the United States Green Building Council
20 through LEED and EPA, accept these methods of
21 stormwater quality control as Best Management
22 Practices that reduce pollutant loads associated with
23 stormwater runoff.

24 For the sewage treatment, the projected
25 design average wastewater flow for the Project at full

1 buildout is 980 gallons per day. And this is based on
2 Maui County wastewater flow standards.

3 The two alternatives that we mentioned in
4 our report involves -- the first alternative involves
5 conveying wastewater from Wai'ale Project to the
6 Kahului Wastewater Reclamation Facility in the event
7 that there is available capacity to treat the flows.

8 In discussions with the County Environmental
9 Management it seems that there's limited capacity at
10 the Kahului Wastewater Treatment. And it's based on a
11 first come/first serve basis which is why A&B's plan
12 for an onsite treatment facility, which is our
13 alternative 2.

14 The alternative 2 involves constructing a
15 new onsite Wastewater Treatment Plant to treat the
16 wastewater generated by Wai'ale. The plant will be
17 designed to treat about 1 million gallons per day of
18 wastewater. It will also be designed to produce R1
19 water which could be used for irrigation purposes.

20 The treatment process for the R1 water would
21 consist of secondary treatment followed by filtration
22 and disinfection.

23 The onsite sewer system will collect the
24 proposed water from the proposed lots into this
25 treatment plant located on the north project -- north

1 portion of the Project.

2 As part of the engineering design process
3 relating to the wastewater treatment and disposal, the
4 Applicant and its engineering consultants will have
5 ongoing consultations with the County Department of
6 Environmental Management.

7 Should it be confirmed that an onsite
8 wastewater treatment plant will be required the design
9 of the plant will be undertaken in consultation with
10 the appropriate parties.

11 For the water system our projected average
12 daily water demand for the Project is
13 1.9 million gallons per day with a maximum fire demand
14 of 2,000 gallons per minute in accordance to the
15 Department of Water Supply water system standards.

16 Analysis of the proposed water system
17 includes transmission, distribution, and storage
18 requirements for Wai'ale. The onsite distribution
19 waterlines will be composed primarily of 12-inch
20 waterlines with some 16-inch waterlines within the
21 Project's internal roadways.

22 The lines are sized to provide water for
23 drinking, irrigation and fire suppression. New
24 storage reservoirs will be required to meet the
25 storage requirements for Wai'ale. And it's based on

1 the Water Supply's criteria for max day demand and
2 full reservoir at the beginning of a 24-hour period
3 which the required storage volume would be about
4 2.8 million gallons.

5 There are three alternatives that we are
6 recommending for locations. The first would be to
7 construct an offsite tank at the 440-foot elevation
8 which would allow for the entire Project to be
9 serviced by gravity from the tank.

10 The second alternative would be to construct
11 the tank at a higher elevation to float with the
12 Department of Water Supply's existing 'Iao tank.

13 The third alternative would be to construct
14 one or two tanks at the existing Kehaulani Mauka
15 1.5 million-gallon mid-level tank.

16 For the internal roadways Wai'ale will
17 include the construction of new internal roadways that
18 run parallel and perpendicular to Kuihelani Highway.
19 Access will be provided with connections from
20 Kuihelani Highway, east of Waiko Road, Kamehameha
21 Avenue and the internal roadway within the Maui Lani
22 project.

23 The internal roads meet -- the main internal
24 roads will be collector roads that will consist of
25 two-lane travelway, turning medians and a pedestrian

1 bike pathway. The Kamehameha Avenue will be extended
2 from its existing terminus near Pomaikai Elementary
3 School. The design of these roadways will be based on
4 standards set forth by the County of Maui.

5 The alignment and spacing of Wai'ale's
6 proposed internal roadways will provide greater
7 connectivity to and from Wai'ale as well as the
8 adjoining Maui Lani development.

9 The greater connectivity will permit
10 extension of the county's bus transit system and
11 provide great transportation and mobility options for
12 those who can and cannot drive.

13 For electrical and utility systems Maui
14 Electric Company facilities consists of a 69KV
15 transmission line along Kuihelani Highway. MECO has
16 plans to construct a substation just east of Kuihelani
17 Highway/Maui Lani Parkway intersection. The proposed
18 electrical co-power for Wai'alaie will be obtained from
19 this proposed substation by extending primary
20 distribution circuits underground to the property
21 along Kuihelani Highway.

22 Backup circuits for Wai'ale will be extended
23 from existing MECO facilities along Kamehameha Avenue.
24 New underground primary and secondary distribution
25 lines are proposed within the Project's internal

1 roadways.

2 For Hawaiian Telcom facilities they
3 currently consist of underground cables on Kamehameha
4 Avenue in the Maui Lani development. Hawaiian Telcom
5 plans to provide fiberoptic cable for service as this
6 would allow customers telephone, data and cable TV
7 services.

8 Oceanic Time Warner Cable provides cable TV,
9 data, fiberoptic and telephone services at the Maui
10 Lani development. Services are available at
11 Kamehameha Avenue next to Pomaikai Elementary School.
12 The cable company plans to install pedestal mounted
13 equipment for providing cable services. Thank you.

14 MR. TABATA: Thank you. Ms. Wong's
15 available for questions.

16 CHAIRMAN LEZY: Mr. Hopper.

17 MR. HOPPER: Thank you.

18 CROSS-EXAMINATION

19 BY MR. HOPPER:

20 Q Ms. Wong, I have a few internal roadway
21 questions. If you're unable to answer I know there's
22 another witness tomorrow.

23 Regarding the construction of the internal
24 roadways, the plan is to have all of these roadways
25 improved to county standards including curbs, gutters,

1 sidewalks and bike lanes, if required, right?

2 A Correct.

3 Q And in your written testimony you mentioned
4 the extension of Kamehameha Avenue, building a
5 two-lane road. Again, if the County Department of
6 Public Works and the county subdivision standards
7 require a larger road at the time of subdivision, the
8 Project would be required to provide that, correct?

9 A Yes.

10 Q And, again, one of the internal roadways
11 that was not mentioned in the written testimony was
12 East Waiko Road. Again, should that be a road that
13 through the subdivision process requires certain
14 frontage improvements, the Project would be required
15 to provide those, correct?

16 A Correct.

17 Q Like to shift to wastewater based on your
18 written and oral testimony. You do discuss one
19 alternative of connecting the Project to a wastewater,
20 the County's Kahului Wastewater Treatment Facility.

21 However, the County Department of
22 Environmental Management has advised the Project it
23 cannot assure capacity for this Project. That's
24 correct, right?

25 A Correct.

1 Q Okay. That's the reason why you discuss the
2 possibility of providing for the Petitioner designing
3 and constructing its own wastewater treatment
4 facility, correct?

5 A Yes.

6 Q The design and construction and operation of
7 that facility would be subject to review and approval
8 by the State Department of Health?

9 A It's my understanding, yes.

10 Q Okay. Since there may not be capacity
11 available in the Kahului Treatment Plant, wouldn't the
12 most prudent course of action be to construct an
13 onsite facility?

14 A Yes.

15 Q Okay. The county is proposing a condition
16 in its written testimony that would require the design
17 and construction of a wastewater treatment facility.
18 That's something that, based on your written
19 testimony, I understand that you believe is feasible?

20 A Yes.

21 Q Okay. Now, this onsite facility, would it
22 be possible to dedicate adequate acreage so that if
23 there's other developments in the Project -- in the
24 Project Area that could perhaps have their waste
25 treated at the site?

1 A Could you repeat that?

2 Q Would it be possible to design the facility
3 to make it to provide the acreage in case a
4 development in the future would want to ...

5 MR. TABATA: I believe that would be a
6 question for the A&B representative.

7 MR. HOPPER: Certainly.

8 Q And have you or anyone on the Project team
9 had a discussion with the State Department of Health
10 regarding the use of injection wells in the area?

11 A No.

12 MR. HOPPER: Thank you. I have no further
13 questions.

14 CHAIRMAN LEZY: Mr. Yee.

15 CROSS-EXAMINATION

16 BY MR. YEE:

17 Q You discussed the Best Management Practices
18 for drainage, remember?

19 A Yes.

20 Q Can you tell me that these will be things
21 that will actually be done on the Project rather than
22 simply being a feasibility opportunity?

23 A Well, it's possible, but we need to look at
24 it further.

25 Q So are you not able to tell us at this time

1 that these Best Management Practices are going to be
2 done? Are you able to tell us that?

3 MR. TABATA: If I may, commitments regarding
4 the Project are best directed to the A&B
5 representative.

6 Q (Mr. Yee) Was that your recommendation?

7 A Yes.

8 Q I know you discussed in your written
9 testimony some of the engineering for the water
10 system. I assume -- the assumption is you're
11 connecting up to the existing county water supply, is
12 that right? (pause) Let me rephrase the question
13 then. You're aware that there are potential new
14 sources of water that will be developed for this
15 Project.

16 A There are potential ones.

17 Q Your testimony does not involve the
18 engineering for transmission lines for these new
19 sources, correct?

20 A That's one thing I didn't cover. It's based
21 on wherever the storage tank is gonna be you're gonna
22 connect your transmission line from there and load
23 onto the site. So we don't know exactly where that's
24 going to be.

25 Q Because there'd be a big difference between

1 a well in the Kahului Aquifer versus five wells in the
2 Waikapu Aquifer?

3 A Yes.

4 Q And the engineering would then be very, very
5 different, right?

6 A Yes.

7 Q So because we don't -- I don't think there's
8 been a choice yet, you have not done the engineering
9 for any of that, right?

10 A No.

11 Q So your testimony is about connecting up to
12 the existing county supply -- county system.

13 A Yeah.

14 Q With respect to the wastewater treatment
15 facility, just so that I'm clear, do you have an
16 understanding as to what is the intention for this
17 Project? I mean is their intention to build a new
18 wastewater treatment facility?

19 A Yes.

20 Q And have you analyzed in that whether there
21 were any issues regarding endangered species?

22 A No.

23 Q Have you analyzed whether there are any
24 potential issues regarding the aquifer as it relates
25 to the injection wells?

1 A No. We haven't done any detail studies.

2 Q Would both those issues have to be analyzed
3 before you can move forward with the wastewater
4 treatment facility?

5 A Yes.

6 Q I take it you're not actually a water
7 expert --

8 A No.

9 Q -- so you don't -- so you would not be able
10 to answer questions regarding what the -- would you
11 know what the impacts are --

12 A No.

13 Q -- of an inject --

14 A I'm not a water specialist.

15 MR. TABATA: Tom Nance will be testifying
16 tomorrow. He's our water expert.

17 MR. YEE: Okay. Those are all my questions.
18 Thank you.

19 CHAIRMAN LEZY: Redirect?

20 MR. TABATA: No redirect, thank you.

21 CHAIRMAN LEZY: Commissioners? Commissioner
22 Heller.

23 COMMISSIONER HELLER: Just going back
24 briefly to the wastewater treatment and specifically
25 when you talk about alternative to the onsite

1 treatment facility. If I heard right you said the
2 projected wastewater amount was about 980,000 gallons
3 per day?

4 THE WITNESS: Correct.

5 COMMISSIONER HELLER: And the plant that
6 you're talking about building would have a capacity of
7 1 million gallons per day.

8 THE WITNESS: Mm-hmm.

9 COMMISSIONER HELLER: Now, I'm not an
10 engineer, but it sounds to me like a margin of only
11 2 percent between the projected load and capacity is
12 pretty slim.

13 THE WITNESS: Yes.

14 COMMISSIONER HELLER: Did I miss something
15 there?

16 THE WITNESS: No.

17 COMMISSIONER HELLER: Is that typical that
18 the capacity would only be 2 percent more than the
19 projected load?

20 THE WITNESS: Well, that's just an
21 approximate.

22 COMMISSIONER HELLER: But this is all
23 subject to final design.

24 THE WITNESS: Correct. Correct.

25 CHAIRMAN LEZY: Commissioners? Commissioner

1 McDonald.

2 COMMISSIONER McDONALD: Just a quick
3 clarification. Regarding your drainage you mentioned
4 459CFS -- 459CFS and 1520CFS 100-year, 24-hour.

5 THE WITNESS: Hmm-hmm.

6 COMMISSIONER McDONALD: Is it the intent of
7 the Project to design the drainage system or should I
8 say the retention system for a hundred year, 24 hour?

9 THE WITNESS: Correct.

10 COMMISSIONER McDONALD: Okay. So that's in
11 excess of what the requirement is for the county.

12 THE WITNESS: Yes. This was analyzed based
13 on a hundred year storm because it is over a hundred
14 acres, yes.

15 COMMISSIONER McDONALD: Hundred year/
16 24-hour.

17 THE WITNESS: Yes.

18 COMMISSIONER McDONALD: Thank you.

19 CHAIRMAN LEZY: Commissioners, questions?
20 Thank you, Ms. Wong. Mr. Tabata, if it's Petitioner's
21 intent to have its witnesses read their written
22 testimony, I think the Commission would rather they
23 not unless they're simply going to summarize. Then
24 what I'd ask you to do is the written testimony has
25 been provided to the other parties and to the

1 Commissioners. I think I'd rather have you just
2 tender the witnesses.

3 MR. TABATA: We understand. Thank you.

4 MR. MATSUBARA: Our next witness is Lisa
5 Rotunno-Hasuka.

6 LISA ROTUNNO-HASUKA
7 being first duly sworn to tell the truth, was examined
8 and testified as follows:

9 THE WITNESS: Yes.

10 CHAIRMAN LEZY: Please state your name, your
11 address and proceed.

12 THE WITNESS: My name is Lisa
13 Rotunno-Hasuka. My address is 1930 A East Vineyard,
14 Wailuku, 96793.

15 DIRECT EXAMINATION

16 BY MR. MATSUBARA:

17 Q Lisa, pursuant to my request you prepared
18 written testimony, which we've identified as
19 Exhibit 29. That contains your curriculum vitae, is
20 that correct?

21 A Yes.

22 Q Basically your curriculum vitae reflects the
23 fact that you have 27 years experience as a practicing
24 archaeologist, is that correct?

25 A Yes. Twenty-two, 20, somewhere around

1 there.

2 Q I'm sorry. Twenty-two years.

3 MR. MATSUBARA: I'd like to qualify Ms. Lisa
4 Rotunno-Hazuka as an expert in archaeology based on
5 her years of experience as a practicing archeologist.

6 CHAIRMAN LEZY: Mr. Hopper?

7 MR. HOPPER: No objection.

8 CHAIRMAN LEZY: Mr. Yee?

9 MR. YEE: No objection.

10 CHAIRMAN LEZY: Commissioners, questions?
11 She's admitted.

12 Q (Mr. Matsubara): Lisa, you also prepared
13 Exhibit 9G which is the Data Recovery Plan and
14 Preservation Plan?

15 A Yes.

16 Q And also as part of your engagement with us
17 you obtained what we've identified as the acceptance
18 letter from SHPD which is Exhibit 9H.

19 A Yes. Accepting the burial component of the
20 Preservation Plan and the Data Recovery Plan?

21 Q Yes.

22 A Yes.

23 MR. MATSUBARA: Understanding the Chair's
24 concern, the witness, having prepared written
25 testimony which has been provided to the parties and

1 Data Recovery Plan and the 9H which is SHPD's
2 acceptance has been included in our Petition as
3 Exhibits 9G and 9H, Ms. Rotunno-Hazuka is available
4 for questions.

5 CHAIRMAN LEZY: Thank you, Mr. Matsubara.
6 Mr. Hopper?

7 MR. HOPPER: No questions, Mr. Chair.

8 CHAIRMAN LEZY: Mr. Yee?

9 CROSS-EXAMINATION

10 BY MR. YEE:

11 Q Can you tell me the total acreage of the
12 preservation, cultural preserve area?

13 A It's approximately 30 acres. It's comprised
14 of five separate cultural preserves.

15 Q In geographically separated areas?

16 A Yes.

17 Q And before this preserve was created there
18 was an Archaeological Inventory Survey done, correct?

19 A Yes.

20 Q I'm not going to ask you many questions
21 about that survey, but I do have some questions about
22 surveys, Archaeological Inventory Surveys.

23 A Okay.

24 Q Is it true that generally a survey for
25 archaeological sites involves a walk through the

1 entire area for service, potential service sites?

2 A Yes.

3 Q And that was done in this case, right?

4 A Yes.

5 Q And these walk-throughs are fairly accurate
6 in identifying surface sites in a Petition Area?

7 A Yes.

8 Q But underground sites are sites that are
9 under the ground more difficult to find. Fair to say?

10 A Yes, they are.

11 Q And for this typically there trenching would
12 be done, at least is one of the major ways to
13 determine whether there are underground archaeological
14 sites.

15 A Yes. Backhoe trenching, yes.

16 Q And that was done in this case as well,
17 correct?

18 A Yes. That was done by another firm in 1998.
19 And we did two other areas.

20 Q Now, we went through how a walk-through is
21 a pretty good indicator of finding the surface sites.
22 It's not quite the same story for trenching and
23 underground sites, correct?

24 A Correct.

25 Q So trenching's not necessarily a good

1 indicator that there are -- so if you find nothing in
2 trenching that's not necessarily a good indicator that
3 you're not going to find something else underground.

4 A No, it's only a representative sample.

5 Q And with respect to burials in particular
6 would it be true that burials are often found in
7 clusters?

8 A They can be but they can also be solitary.

9 Q So it's not uncommon, then, to trench a
10 site, not find anything and then find a cluster of
11 burials in a particular location that you just didn't
12 happen to trench.

13 A Yes.

14 Q And what's the different methods or
15 protocols that you follow for burials that you find
16 versus -- during the archaeological survey -- versus
17 the burials that you find after the archaeological
18 survey has been accepted and construction has been
19 done?

20 A Okay. There's two types of burials. During
21 an inventory survey when a burial is found it's
22 identified as a 'previously identified burial'. And
23 the Burial Council has jurisdiction over the burial if
24 it's native Hawaiian. During monitoring, if a burial
25 is found it is identified as an 'inadvertent find'.

1 And SHPD has jurisdiction and consults with the
2 geographic rep of the Burial Council if the individual
3 is a native Hawaiian burial feature.

4 Q So if it's a previously identified burial,
5 then it requires burial consult of the burial plan.

6 A Yes.

7 Q If it's an inadvertent find then you just
8 require SHPD approval of the, I guess I'll call it
9 burial plan.

10 A Yes.

11 Q Now, the history of this location is that
12 there have been a number of inadvertent finds of
13 burials in this general area, correct?

14 A Yes.

15 Q And this is despite the fact that there were
16 other Archaeological Inventory Surveys of the area,
17 correct?

18 A Yes.

19 Q Were you here when various individuals from
20 the public testified about their concern regarding
21 burials?

22 A No, I did not hear that testimony.

23 Q Fair to say you're aware of the concern,
24 though, of the fact there are -- that there very well
25 may be or even probably may be burials located

1 somewhere in the Petition Area?

2 A Yes.

3 Q But would it be fair to say that it's simply
4 in the nature of the process that, the protocol, that
5 there is simply a protocol to follow. And if
6 inadvertent finds are found you simply follow the
7 protocol, correct?

8 A Yes. That's why you have a very intensive
9 monitoring program set up which is one archaeologist
10 with one piece of equipment. And they follow that
11 equipment all day long.

12 Q Do you know what the current burial plan is
13 for the inadvertent finds arising out of Hawaiian
14 Cement's operation?

15 A That is -- that is this preservation plan.

16 Q Is a preservation plan -- is the proposed
17 preservation plan, then, for any inadvertent finds
18 done by A&B in the construction of this Project?

19 A No. Each burial feature is discussed as
20 it's found.

21 Q So the burial plan you presented to or
22 showed to the Commission its purpose for this case,
23 could you explain why you showed it to them; why it's
24 contained in the record here?

25 A Because when you have the burial features

1 and you have proposed development you have to come up
2 with a plan to protect and identify and mark these
3 burials before you have a development.

4 Then once monitoring and construction
5 activities occur, again as you find each individual
6 you would go and look back at your construction plans
7 and determine preservation in place or relocation.

8 Q Part of that analysis -- is part of that
9 analysis involving the practicality of the situation
10 or the circumstances of what do you do with the iwi or
11 burial remains that are found?

12 A As far as you mean an inadvertent find?

13 Q Yes.

14 A Well, again, with jurisdiction the reason
15 that you have SHPD jurisdiction on inadvertent find is
16 because normally you're in construction and you need
17 to make a quick decision.

18 They are learning that you can't just make a
19 quick decision; that you do have to do a process to
20 determine if there's other individuals represented.

21 Same with the Inventory Survey. You have a
22 longer time to look at your development plan, revise
23 accordingly.

24 Q Is there a concept or a template that's
25 intended to be followed for inadvertent finds in this

1 Petition Area to be presented to SHPD?

2 A There is a process that is in place in that
3 construction stops in the area and you notify the
4 appropriate personnel, which would be SHPD. Often it
5 can be the geographic representative from the Burial
6 Council.

7 And they come out, make an assessment,
8 again, if you should do more testing to determine if
9 there's more burial features present.

10 Q So there's a process but not a particular
11 plan that's intended to be proposed to SHPD.

12 A No. Each burial is taken care of as it's
13 found.

14 Q And I don't know if this is an
15 archaeological answer or a geological answer, but let
16 me just ask the question. You can tell me. Let me
17 preface this by saying members of the public have said
18 that there are untouched sand dunes that will be
19 developed over.

20 I believe the written testimony of the
21 geologist says that there are no pristine sand dunes
22 as a geologic feature of the Petition Area.

23 From an archaeological viewpoint what is the
24 status of the sand dunes in the Petition Area?

25 A Well, there's remnant dunes, I guess you

1 would say, particularly the large preserve. Preserve
2 1 is a very -- it's a remnant sand dune but it has a
3 lot of topography.

4 Q Are there other remnant sand dunes that have
5 not been artificially altered?

6 A I believe most have been altered. Because
7 as you go from the Project Area out towards Kuihelani
8 Highway the elevation drops quite considerably.

9 And there have been lessees on the property
10 in the past. And I believe -- I'm not sure -- yeah,
11 with sugar cane possibly too. So it has been altered.

12 Q Would you disagree with a factual statement
13 that there are no -- that there are untouched sand
14 dune within the Petition Area outside of the preserve,
15 the cultural preserve?

16 A I don't believe there are untouched sand
17 dunes, no.

18 Q Outside of the cultural preserve.

19 A Outside of the preserve.

20 Q Do you know whether there is any intention
21 to consult with anyone else, any third parties, Burial
22 Council, civic groups or anyone else when you find or
23 if you find a burial in terms of presenting a burial
24 plan to SHPD?

25 A You could consult with OHA as well. But in

1 an inadvertent find sometimes SHPD will notify them.

2 Q There's no requirement for a petitioner to
3 consult with anyone else before presenting a plan to
4 SHPD, correct, for an inadvertent find.

5 A For an inadvertent? No, just the two: SHPD
6 and the geographic rep.

7 Q Do you know whether there's any intention or
8 plan to do so outside of the legal requirements?

9 A I don't know.

10 THE WITNESS: Okay. I think that's it.
11 Thank you very much.

12 CHAIRMAN LEZY: Redirect?

13 MR. MATSUBARA: Just a few.

14 REDIRECT EXAMINATION

15 BY MR. MATSUBARA:

16 Q Lisa, you prepared the burial site component
17 fo the data recovery plan and the preservation plan,
18 right?

19 A Yes.

20 Q And these are the specific plans that were
21 approved by SHPD?

22 A Yes.

23 Q Which we've identified as 9H.

24 A Yes.

25 Q And in that letter they indicate that

1 they've reviewed your burial site component of the
2 data recovery plan and preservation plan which they
3 found in compliance with the law, and indicate you may
4 proceed with its provision.

5 A Yes.

6 Q Is it SHPD's normal provision subsequently
7 to request confirmation that the Petitioner has
8 successfully implemented the preservation measures?

9 A It's not a common practice. Often when we
10 have implemented the short-term preservation measures,
11 which is orange construction fencing, everything you
12 can do to protect the burial site during construction,
13 we'll take photos and send that to SHPD.

14 But I've never had to show SHPD that we've
15 implemented the preservation measures for long term.

16 Q So this type of confirmation is normally not
17 part of the mitigation process.

18 A No.

19 Q Earlier this morning there was some
20 testimony on the battle of Kakanelua.

21 A Yes.

22 Q Are you familiar with that battle?

23 A Yes.

24 Q Was that battle, as far as you're aware of,
25 did that occur in the Petition Area?

1 A From what we know and what I've read in the
2 history the battle was anywhere from North Kihei
3 towards Ma'alaea to lower Wailuku. And of the burial
4 features that we found in the Petition Area I do not
5 believe they're from the battle.

6 Q The inventory of finds that you had was
7 varied.

8 A Yes. Without going into detail, the burial
9 features that we have identified at the Project Area
10 represent men, women, children and infants of native
11 Hawaiian ancestry. That's one of the reasons we don't
12 believe they're part of the battle.

13 Q Normally on a battle area you would find
14 remains with traumatic injuries?

15 A From the history that I've read, it --
16 again, it's mostly male warriors. They do discuss
17 that some of the women, the chiefesses attended, not
18 that they went to war. But you would see males with
19 some type of injury, some trauma. That's what I would
20 anticipate.

21 MR. MATSUBARA: Thank you. I have no
22 further questions.

23 MR. YEE: Excuse me. Chair, if I may. I
24 didn't object, although I believe the redirect was
25 outside the scope, but if I might be allowed to

1 recross just on those issues.

2 RECROSS EXAMINATION

3 BY MR. YEE:

4 Q With respect to confirmation from SHPD, is
5 it common, though, for -- or does it happen where the
6 petitioner needs to confirm to SHPD that activities
7 have occurred?

8 A That activities -- are we discussing the
9 preservation measures?

10 Q Yes.

11 A I'm not -- I'm not sure, honestly. I
12 haven't had an instance where I've responded to them
13 said, "Yes, all of the measures are in place."
14 Normally, they're just in tune with what we're doing
15 because we discuss islands. But there's never been a
16 written documentation: "We did this. Can you please
17 confirm you've seen everything and it's acceptable."

18 Q Because normally the communication between
19 yourself and the SHPD representatives are so immediate
20 that a document, you're saying, was unnecessary.

21 A Absolutely.

22 MR. YEE: Nothing further, thank you.

23 CHAIRMAN LEZY: Commissioners, questions?
24 Commissioner Chock.

25 COMMISSIONER CHOCK: Good afternoon. Who

1 are the -- just wondering if you've had any outreach
2 or have identified any of the lineal descendants
3 associated with this area as part of your work.

4 THE WITNESS: We have not had any -- or SHPD
5 has not had any cultural or lineal descendancy claims
6 come through their department.

7 COMMISSIONER CHOCK: How about cultural
8 descendants?

9 THE WITNESS: No.

10 COMMISSIONER CHOCK: You folks made any
11 outreach as far as trying to identify who may be
12 lineal or cultural descendants as part of this scope?

13 THE WITNESS: No, we have not. Normally
14 with the burial features that we have, the inadvertent
15 finds, normally SHPD would do that.

16 In the instance of an inventory survey we
17 would put a notice in the paper to try to find lineal
18 and cultural descendants.

19 COMMISSIONER CHOCK: Have you folks done
20 that? Have you folks tried to identify who those
21 people are?

22 THE WITNESS: No, we have not.

23 COMMISSIONER CHOCK: Okay. Don't you think
24 that's something that might measure up to the level of
25 importance, given some of the significance of some of

1 the battle testimony that we've heard earlier today to
2 be a little more in step, maybe in a proactive manner
3 to try to reach out to those families who may be
4 associated with this area?

5 THE WITNESS: We can try, yes.

6 COMMISSIONER CHOCK: So I would imagine
7 there hasn't been any dialogue in terms of access and
8 protocol in terms of caring for the iwi kupuna that
9 are resting in this current area. You folks haven't
10 had any dialogue with anybody.

11 THE WITNESS: No. Just with SHPD. And as
12 far as in our preservation plan we do not have access
13 afforded at this time into the preserve. But there is
14 a caveat that as lineal and cultural descendancy
15 claims come in and are accepted, then those people can
16 come into the preserve and visit and do whatever.

17 COMMISSIONER CHOCK: So they'll have access
18 24/7, 7-day-a-week kind of access?

19 THE WITNESS: Generally we have a clause
20 that says they'll contact the landowner or the
21 homeowners association and there will be an
22 agreed-upon time that they can come in to view or
23 whatever they would like to do.

24 COMMISSIONER CHOCK: Can you describe what
25 kind of mitigation measures you've recommended to your

1 client in terms of some of the cultural issues that
2 you've identified as part of your scope?

3 THE WITNESS: As far as -- you mean
4 long-term care of the preservation?

5 COMMISSIONER CHOCK: Long-term care, buffer
6 areas, what mitigation efforts have you folks
7 discussed and that you recommended?

8 THE WITNESS: Basically, as you can see, we
9 do have the preserves, these areas here. (indicating
10 on map) And in determining the boundaries we would
11 look at the outermost burial feature.

12 And I believe we measured about a hundred
13 feet and drew the boundary around each preserve.
14 Native plants are being proposed inside of the
15 preserve or ground or water-tolerant, drought-tolerant
16 plants there.

17 A lot of burial features that we identified
18 were marked with some water worn stones. So once the
19 burials are preserved we're going to mark 'em in that
20 same manner.

21 And signage. We're gonna have signage so
22 that people understand what the area is and to treat
23 it with respect. "Don't enter. Don't throw trash."

24 COMMISSIONER CHOCK: So besides the pu'uone
25 and the sand dunes where were the burial sites, if you

1 can identify them on the map, generally speaking?

2 THE WITNESS: In this area here is the
3 largest preserve. It's about 28 acres, I believe.
4 This is another cultural preserve here, here, there's
5 a very small one right here, and this one here, this
6 cultural preserve. Also along Kuihelani Highway we
7 have one as well right here.

8 COMMISSIONER CHOCK: Were there any
9 significance that you found in terms of your research
10 and work with respect to burials that were identified?

11 THE WITNESS: Well, without going into real
12 explicit detail, we did have some that had grave goods
13 that may have implied that they were of higher status.
14 Also some were buried differently than some of the
15 other features that seemed to have a lot more care.
16 And so maybe they were higher status.

17 COMMISSIONER CHOCK: And so the plan, if you
18 could kinda generally highlight, how were those
19 burials treated in terms of some of the burial
20 features that you found and funereal items associated
21 with the burial or the resting, objects that might
22 have indicated a higher rank. Was there anything, any
23 kind of extra care taken? Or were they just preserved
24 in place? Or were they repatriated?

25 A They're preserved in place. We have had

1 instances where grave good may have been disturbed
2 from the feature. And when the burial feature is
3 reinterred during the preservation and mitigation
4 measures, the grave good goes back in with that
5 individual.

6 COMMISSIONER CHOCK: You may have answered
7 this earlier as part of the cross-examination. But as
8 far as iwi kupuna that are found outside of the
9 cultural preserve, what is the protocol in terms of
10 how those burials are treated?

11 THE WITNESS: The protocol is that
12 construction will stop. We'll call SHPD. And if the
13 geographic rep is available we'll call him as well.
14 And they will come out. We'll talk about what the
15 find is, conduct any testing necessary that they would
16 need to determine preservation in place or relocation.

17 In the interim we would also be looking at
18 the proposed plans because the preference is always
19 preservation in place and to see what you can re-sign.

20 COMMISSIONER CHOCK: I know earlier in your
21 testimony you referenced the battle of Kakanelua. And
22 you kinda, as I heard you describe it, it took place
23 is over a wide geographic swath of land. And am I
24 correct in hearing you say that the iwi kupuna that
25 are located within the sand dunes are of no relation

1 to that battle?

2 THE WITNESS: From what I can tell I don't
3 believe so, only based on the representation of
4 different genders and ages.

5 COMMISSIONER CHOCK: What about in terms of
6 some of the source material or oral histories that you
7 may have researched as part of your study and
8 assessment? Can you kind of describe what kinds of
9 resources you might have used to make your assessment?

10 THE WITNESS: Basically it's because you
11 speak of male warriors being there. And also the
12 literature talks of anywhere from 800 to 2700 people
13 just from Hawai'i Island. And, you know, Maui
14 warriors were also killed. And we don't have even
15 that quantity of burial features in that area.

16 So I just -- I just don't think we've found
17 it yet. And it would be wonderful. I mean if we
18 thought that this was, if these burials represented
19 that, we would say that. I mean it wouldn't change
20 everything.

21 Everything would still be preserved. We
22 would do different signage. We would, you know,
23 discuss this. I just don't think that burials we've
24 identified so far represent the battle.

25 COMMISSIONER CHOCK: What year did that

1 battle take place?

2 THE WITNESS: 1776.

3 COMMISSIONER CHOCK: And what was its
4 significance to the history of Hawai'i?

5 THE WITNESS: Well, it was Kalaniopu'u
6 coming over time and time again trying to take over
7 Maui and going against Kahekili. He was in Kaupo,
8 plundered there, came up, went back home again, came
9 back.

10 Again, I mean we would be thrilled to find
11 something like that. And there would be no reason,
12 you know, to cover it up or what have you, you know?
13 I mean it would be wonderful.

14 COMMISSIONER CHOCK: Okay. No further
15 questions. Thanks, Chair.

16 MR. MATSUBARA: Commissioner Chock, tomorrow
17 we have our cultural expert scheduled to testify who
18 will get into detail about interviews with cultural
19 and lineal descendants on the site.

20 THE WITNESS: Oh, good point.

21 CHAIRMAN LEZY: Commissioners, any other
22 questions?

23 COMMISSIONER McDONALD: Chair.

24 CHAIRMAN LEZY: Commissioner McDonald.

25 COMMISSIONER McDONALD: Looking at your --

1 looking at the preserves you noted on the plan, it
2 looks like it covers or the different preserve covers
3 different portions of the subject parcel. Some of
4 those are -- well, some of those are burials. Some of
5 them could be other significant items of Hawaiian
6 history.

7 In your, I guess in your estimation, would
8 you expect significant inadvertent discoveries as
9 construction progresses just by looking at how the
10 preserves are kinda spread throughout the site?

11 THE WITNESS: I do anticipate burials, but I
12 don't -- I can't say quantity. What's interesting is,
13 you know, this area has the majority of burials.
14 (indicating maps). But then we moved into this
15 50 acres here and had no findings. And it was a
16 similar sand dune, a little lower, but similar.

17 So, you know, we want to determine patterns.
18 We want to try to anticipate. And we just haven't
19 been able to. Again, knowing what we know we do
20 anticipate burials.

21 COMMISSIONER McDONALD: Those preserves,
22 were they actually -- I guess how it was discovered,
23 was it through just visual inspection or was it
24 through trenching as you had mentioned as part of it?

25 THE WITNESS: The majority of the burials

1 were through monitoring where we monitor construction
2 activities. So the preserves were created around the
3 majority of burial features being preserved in place.
4 And when I say "construction activities" it was the
5 Hawaiian Cement grading of the sand in there. We
6 monitored that activity. It's not development
7 construction yet.

8 COMMISSIONER McDONALD: Okay. Thank you.

9 CHAIRMAN LEZY: Any other questions? I have
10 a question for you, Ms. Rotunna-Hasuka, which came
11 from Mr. Matsubara's comment to Commissioner Chock.
12 Did you interact in any way with the cultural expert
13 who's been retained by the Petitioner as part of your
14 job?

15 THE WITNESS: Partially, but a lot of my job
16 was done before he came on. So I just shared what we
17 found with him. And he was doing his interviews and
18 what have you.

19 CHAIRMAN LEZY: Another question that is a
20 follow up to the questions that Commissioner McDonald
21 just asked you. The cultural preserve sites that are
22 identified in the plan, those were all suggested by
23 you?

24 THE WITNESS: Yes.

25 CHAIRMAN LEZY: Were there any cultural

1 preserve locations that you suggested that were not
2 included in the final proposed plan?

3 THE WITNESS: No.

4 CHAIRMAN LEZY: Thank you. You're done.
5 Thank you.

6 MR. TABATA: Our next witness is Glenn
7 Kunihisa.

8 GLENN KUNIHISA

9 being first duly sworn to tell the truth, was examined
10 and testified as follows:

11 THE WITNESS: Yes.

12 CHAIRMAN LEZY: Please state your name and
13 your business address.

14 THE WITNESS: Glenn Kunihisa. And my
15 business address is 2073 Wells Street, suite 100
16 Wailuku, 96793.

17 CHAIRMAN LEZY: Mr. Tabata.

18 MR. TABATA: Thank you.

19 DIRECT EXAMINATION

20 BY MR. TABATA:

21 Q Glenn, you are the president of ACM
22 Consultants, Inc, is that correct?

23 A Yes, that's correct.

24 Q And did you prepare the market study for
25 this Project which is Petitioner's Exhibit 90?

1 A Yes, I did.

2 Q And did you prepare the assessment of
3 economic impact which is Petitioner's Exhibit 9P?

4 A Yes.

5 Q And did you also prepare Petitioner's
6 Exhibit 31 which is your written testimony and
7 curriculum vitae?

8 A Yes.

9 Q And does the curriculum vitae contain your
10 qualifications and experience in the fields of real
11 estate market assessment and economic impacts?

12 A Yes, it does.

13 MR. TABATA: Mr. Chair, we request that
14 Mr. Kunihisa be admitted as an expert in the field of
15 real estate market assessment and economic impacts.

16 CHAIRMAN LEZY: Mr. Hopper?

17 MR. HOPPER: No objection.

18 MR. YEE: No objection.

19 CHAIRMAN LEZY: Commissioners, questions?
20 He's admitted.

21 MR. TABATA: Thank you. Mr. Kunihisa is now
22 available for questioning.

23 CHAIRMAN LEZY: Thank you. Mr. Hopper?

24 MR. HOPPER: No questions.

25 CHAIRMAN LEZY: Mr. Yee?

1 MR. YEE: Thank you.

2 CROSS-EXAMINATION

3 BY MR. YEE:

4 Q Mr. Kunihisa, in your written testimony I
5 believe you conclude that the market could absorb
6 both the residential and commercial component of this
7 Project, correct?

8 A Yes.

9 Q Is it your conclusion they can do so within
10 a 10-year timeframe from sometime this year?

11 A Yes, it is.

12 Q And as I read your written testimony you
13 indicated that for the residential component that the
14 immediate supply for Central Maui, that there was a
15 sufficient supply for the immediate future. Do you
16 remember that?

17 A For the short-term.

18 Q You then said, "After five years it becomes
19 more difficult to determine what the supply would be."

20 A Yes, it does.

21 Q Okay. Can I take it from that that for the
22 first five years, five years from now, there seems to
23 be a sufficient supply for residential housing in
24 Central Maui?

25 A No. I think with the new projects coming on

1 that would help alleviate the demand.

2 Q I'm sorry. That is what I meant. That with
3 the existing projects that are coming on you believe
4 that there's an adequate inventory for Central Maui
5 for the next five years.

6 A Yes.

7 Q Now, I can understand it becomes more
8 difficult to predict what occurs further on in the
9 future. But I guess my question is is there a method
10 by which you would typically use to estimate the
11 additional supply?

12 A Well, we looked at -- when you look at
13 Wai'ale I think the three key ingredients that you
14 have to look at first of all are location, the segment
15 of the population that it's going to target, and the
16 pent-up demand.

17 The location, Central Maui, is the strongest
18 and most durable market for a single-family or
19 condominium type of real estate in Maui County. It's
20 Central Maui. Everyone wants to live there and work
21 there. It's the center of government, center of
22 commercial/industrial activity, center of education
23 and so forth.

24 So it also has 35 percent of the population
25 of the county of Maui. And historically it's garnered

1 about one third of all the single-family sales in the
2 county of Maui.

3 Now, when you look at not only the location
4 but the product itself that it is being targeted to
5 the workforce segment. And that is, again, the
6 segment that has the greatest demand no matter what
7 the market conditions are.

8 So being that there's been very little
9 construction -- if you look around us there's very
10 little single-family being built. Nothing in
11 projects. Nothing in Central Maui.

12 So what we looked at was the fact that with
13 so little supply coming online and the pent-up demand
14 that's growing as we speak, we think that will be --
15 the Project will be well timed and it will come on
16 board in a very favorable environment.

17 Q You said how very little additional supply
18 would be coming on board. Your written testimony
19 indicates it's difficult to determine or to make
20 future projections more than five years out.

21 How are you able to conclude both that
22 there's going to be very little supply coming on and
23 say that it's difficult to make future projections?

24 A Well, it's difficult to determine exactly
25 which projects are going to materialize. There are

1 projects that, say, are located outside of the Urban
2 Growth Boundaries, the preliminary Urban Growth
3 Boundaries.

4 They may come up against objections. They
5 may come up against community objections and as a
6 result may never get built. That's the difficulty in
7 forecasting the future supply.

8 But we do have a list. And we do know that
9 there are others who are applying for rezoning,
10 subdivision approvals. However, in Central Maui right
11 now it's down to nothing as far as anything being
12 built in projects at this moment.

13 Q With respect to the commercial element you
14 seem to be, I guess, even more confident that this
15 commercial side can be absorbed by the market within
16 the next 10 years. Is that a fair statement?

17 A I don't know that I'm more confident. I
18 feel very confident about the residential real estate.
19 And as that fills in I think the commercial will
20 follow.

21 Q So the commercial is -- the ability to sell
22 the commercial is based in part upon the additional
23 population that would result from this Project. Is
24 that what you're saying?

25 A Yes. I think it will service this

1 community.

2 Q How did you calculate what the probable
3 absorption rate was of the commercial? Did you do a
4 historical analysis or project-by-project analysis?
5 How did you calculate future demand?

6 A We did both. But we looked at it because
7 it's all conceptual, we took a step back, you know,
8 and we looked at it in a macro point of view.

9 We looked at how much industrial and
10 commercial land has been absorbed. That ranged from,
11 say, 5 acres a year to I think almost 20 acres per
12 year. So if we look at, say, 10 to 15 acres per year,
13 I think that would fall within the 10-year period
14 you're talking about.

15 Q So that macro level, was that also part of
16 the reason why you could conclude that even though you
17 don't know the pricing the development is geared
18 toward entry level participants?

19 A Yes. I think the fact that it's geared
20 toward entry level, giving them the opportunity for
21 homeownership, I think that gave us a little more
22 optimism as far as the absorption rate is concerned.

23 Q The entry level, is that something other
24 than the affordable housing? Is that also -- is that
25 the market rate houses as well?

1 A No. I looked at the affordable housing as a
2 different group. And that, of course, will increase
3 the absorption rate tremendously. But we looked at
4 the entry level as a different market segment.

5 Q I'm just trying to make clear the entry
6 level market you're talking about refers to the market
7 rate homes in this Project, not the affordable
8 housing, correct?

9 A Yes. That's correct.

10 Q That's all.

11 MR. YEE: All right. Thank you. I have no
12 further questions.

13 THE WITNESS: Thank you.

14 CHAIRMAN LEZY: Commissioners, questions?
15 Commissioner Heller.

16 COMMISSIONER HELLER: Yes. I'm looking at
17 Exhibit 31, a summary of your written testimony. And
18 under the Anticipated Economic Impact Summary I see a
19 line that says "total households supported 5500
20 units."

21 If I understood correctly the proposal here
22 is to build about 2500 housing units. And I'm just
23 having a little trouble understanding how 2500 housing
24 units represents 5500 households. Am I
25 misunderstanding something?

1 THE WITNESS: Let me find that, Commissioner
2 Heller.

3 MR. TABATA: May I clarify that point with
4 the witness, Commissioner, if I may?

5 COMMISSIONER HELLER: I guess so, sure.

6 MR. TABATA: Thank you.

7 REDIRECT EXAMINATION

8 BY MR. TABATA:

9 Q Glenn, that 5500 household number is that --
10 does that reflect the number of households that will
11 be impacted with respect to economic impacts of the
12 Project as in the creation of new jobs or new
13 employment versus the creation, actual building of
14 2500 units?

15 A Yeah, I think in terms of employment and
16 households affected by the development of this Project
17 that's what the 5500 units is meant to stand for. But
18 I, you know, looking at it as you just pointed it out
19 it kind of caught me by surprise.

20 COMMISSIONER HELLER: So 5500 households is
21 the number of households that would be economically
22 benefited by the Project as opposed to the number of
23 households that would live in the Project.

24 THE WITNESS: That's correct, yes.

25 COMMISSIONER HELLER: Sounds still like a

1 pretty high number. If there are 2500 household in
2 the Project, there are going to be 5500 households
3 that are economically benefited?

4 THE WITNESS: There are a number of
5 households that are indirectly affected, yes, not just
6 the people who are living in the Project itself.

7 COMMISSIONER HELLER: So that would be
8 people who work on building the Project, for example?

9 THE WITNESS: That's correct. Or even
10 others who are involved in landscaping or repairs, and
11 so forth.

12 COMMISSIONER HELLER: Can you tell me just
13 in general terms what kind of process you go through
14 to come up with a number like this 5500?

15 THE WITNESS: We use multipliers from other
16 state reports. And we go through all the different
17 reports and find what multipliers are being used.

18 COMMISSIONER HELLER: Is there a standard
19 source for those multiplier numbers?

20 THE WITNESS: I think we referenced some of
21 the multipliers at the end of this report. It's on
22 Page 10 of our report. Part 6 references the state of
23 Hawai'i Department of Business and Economic
24 Development.

25 COMMISSIONER HELLER: So that's in your

1 Exhibit 90 as opposed to 30.

2 THE WITNESS: It's in the report. I didn't
3 take a look at the exhibit.

4 COMMISSIONER HELLER: It's okay. I just
5 didn't see it in Exhibit 31 but understand it's in
6 your report.

7 THE WITNESS: Yes, Page 10.

8 COMMISSIONER HELLER: Okay. Thank you.
9 That's it.

10 CHAIRMAN LEZY: Commissioners, additional
11 questions? Thank you. Let's take a brief break
12 before we move to the next witness.

13 (Recess was held. 4:28-4:40)

14 CHAIRMAN LEZY: Mr. Tabata.

15 MR. TABATA: Thank you, Chair. Our last
16 witness for today is Robert Hobdy.

17 CHAIRMAN LEZY: Before we start let me just
18 say obviously we'd like to finish with the witnesses
19 that are listed today. Because of travel schedules
20 for some of the Commissioners we're going to have to
21 adjourn somewhere around 5, so the parties know.

22 ROBERT HOBDY
23 being first duly sworn to tell the truth, was examined
24 and testified as follows:

25 THE WITNESS: Yes.

1 CHAIRMAN LEZY: Please state your name and
2 your business address.

3 THE WITNESS: My name's Robert W. Hobdy. My
4 business address is 2560B Ponolei Place, Haiku.

5 MR. TABATA: Thank you.

6 DIRECT EXAMINATION

7 BY MR. TABATA:

8 Q Mr. Hobdy, did you prepare the aquatic
9 survey which is Petitioner's Exhibit 9C?

10 A Yes, I did.

11 Q And also the flora and fauna survey which is
12 Petitioner's Exhibit 9D?

13 A Yes.

14 Q And did you prepare for us your written
15 testimony and curriculum vitae which is Petitioner's
16 Exhibit 32?

17 A Yes.

18 Q And does your curriculum vitae contain your
19 qualifications and experience as a biologist?

20 A It does.

21 MR. TABATA: Mr. Chair, we request that
22 Mr. Hobdy be admitted as an expert in the field of
23 biology.

24 CHAIRMAN LEZY: Mr. Hopper?

25 MR. HOPPER: No objection.

1 MR. YEE: No objection.

2 CHAIRMAN LEZY: Commissioners, questions?

3 He's admitted.

4 MR. TABATA: Thank you. Mr. Hobdy's now
5 available for questions.

6 CHAIRMAN LEZY: Mr. Hopper?

7 MR. HOPPER: I have no questions.

8 CHAIRMAN LEZY: Mr. Yee?

9 CROSS-EXAMINATION

10 BY MR. YEE:

11 Q Mr. Hobdy, in general if a wastewater
12 treatment facility is constructed, does that pose a
13 potential attractant to major birds? Do you know?

14 A As a...

15 Q General matter.

16 A An open water facility?

17 Q Yes. Well, a wastewater treatment facility
18 has open water in it, right?

19 A That would potentially attract waterbirds?
20 Yes, and some endangered possibly.

21 Q And if that's true, wouldn't there need to
22 be, then mitigation to reduce the likelihood of an
23 injury or take of that endangered species?

24 A I am not involved in that end of things.

25 Q You haven't -- so then you haven't analyzed

1 what potential mitigation would be needed to reduce
2 the impacts of a wastewater treatment facility on
3 endangered species if one was constructed on the
4 Petition Area, correct?

5 A I have not.

6 Q Have you analyzed whether the Petition Area
7 would be an attractive nuisance for the Nene?

8 A Not in its present state. At the buildout
9 stage Nene are attracted to green grass, expanses of
10 green grass. They show up on golf courses and parks
11 and wherever they want.

12 Q Were you aware -- do you know whether Nene
13 have been found in the area, in other developed areas
14 near the Petition Area?

15 A They've been seen in some pasture lands, in
16 irrigated cane lands. Especially when they're young
17 when the cane is small they show up where there's
18 water.

19 Q So at full buildout is there the possibility
20 or probability that the Nene may be attracted to the
21 Petition Area after full buildout?

22 A It's possible.

23 Q Have you analyzed whether it's likely?

24 A No, I have not.

25 Q If it was likely the Nene would be attracted

1 to various features within the Petition Area, do you
2 know whether there ought to be mitigation measures to
3 ensure that the Nene are not injured or taken?

4 MR. TABATA: I'm going to object. That
5 question assumes facts not in evidence. It has not
6 been established that if these birds were to come on
7 the property that there would be any harm to them.

8 MR. YEE: Well, if he doesn't believe that
9 would happen he can certainly say it's part of his
10 answer. But if he's an expert it's a hypothetical
11 question.

12 MR. TABATA: Just because it flies onto a
13 park doesn't mean there will be a take. The bird will
14 simply exist on the park and walk there.

15 CHAIRMAN LEZY: Your objection is noted,
16 Mr. Tabata. You can respond, Mr. Hobdy.

17 THE WITNESS: Could you restate the
18 question?

19 Q (Mr. Yee): Sure. If Nene were likely to be
20 attracted to the Petition Area or portions of the
21 Petition Area at full buildout, do you think that
22 there are ought to be mitigation measures to either
23 reduce the likelihood of the Nene coming onto the
24 Petition Area or at least reduce the likelihood of
25 injury or take?

1 A One of the things that can be done is to
2 put up signage just to inform people that Nene are
3 there. Lot of times they can co-exist quite closely
4 along roads in the neighborhood of people. So there's
5 really not a, necessarily a threat of take just by
6 their being there.

7 Q You did an analysis of the Blackburn's
8 Sphinx Moth for this Petition Area, correct?

9 A Yes.

10 Q Do you know how many tree tobacco plants
11 were found in the Petition Area?

12 A I think I said 300?

13 Q And did you conclude that roughly 7 percent
14 of those tree tobacco plants had evidence of the
15 Blackburn's Sphinx Moth?

16 A That's correct, in the neighborhood of 20
17 plants.

18 Q Were they located in a particular area
19 within the Petition Area?

20 A There were some scattered around. But
21 probably the biggest concentration was in the area
22 that had been excavated for sand 'cause that's where
23 their host plants were the most numerous.

24 Q Would you be able to point out on the map
25 behind you where the greatest concentration was found?

1 If you want you can stand up and take the microphone.

2 A I think the sand dune area was in this area
3 right in here. That was the concentration.

4 Q For purposes of your survey I take it it's
5 not necessary to identify or to accurately identify
6 every single tree tobacco plant upon which the
7 Blackburn's Sphinx Moth is located. Fair enough?

8 A Yes.

9 Q You're trying to take a survey but
10 100 percent accuracy isn't necessary, correct?

11 A I tried to look at every plant that I saw.
12 I mighta missed a few.

13 Q It's just realistic that whoever does it is
14 likely to miss a few, correct?

15 A Yeah.

16 Q And that's because it's difficult to find
17 the Blackburn's Sphinx Moth, correct?

18 A Yes. Usually you don't find the moth. You
19 find the eggs or the larvae. And the eggs are quite
20 small. They're about a 16th of an inch across. So
21 you have to really look.

22 Q So then if you cut down the tree tobacco
23 plants -- well, let's backtrack a little bit. Why is
24 the tree tobacco plant important for Blackburn's
25 Sphinx Moth?

1 A It's interesting because the tree tobacco is
2 not a native plant. And it's in the same plant family
3 as the host for this moth. And the native host plant
4 is become quite rare. So the moths were declining.
5 But when the tree tobacco started to spread around
6 Maui, they switched over to this non-native plant and
7 they have started to do quite well. And there's
8 increasing population of these moths. So, yeah, it's
9 an interesting biological switchover.

10 Q And one of the reasons it's important is
11 because both the native plant and the tree tobacco
12 contains a poison which is able to be safely ingested
13 by the Blackburn's Sphinx Moth, correct?

14 A Yes. And then is a protection for them from
15 predators.

16 Q Now, if you cut down the tree tobacco plants
17 and you take reasonable precautions to try to avoid
18 the take of a Blackburn's Sphinx Moth, would you say
19 it's more likely than not that you're gonna miss at
20 least one of the Blackburn's Sphinx Moth?

21 A Yeah.

22 Q For the same reason why it would be
23 unreasonable to expect you to identify in the survey,
24 it'd be unreasonable to expect anyone else to identify
25 every single tree tobacco plant which would have a

1 Blackburn's Sphinx Moth associated with it?

2 A Yes.

3 Q So if you were to cut them down, cut down
4 the tree tobacco plants, even if you took reasonable
5 precautions, isn't it more likely than not that you're
6 going to take at least one Blackburn's Sphinx Moth?

7 A I know the U.S. Fish and Wildlife Service
8 that oversees endangered species has a protocol for
9 how to remove plants so that you do not harm them. So
10 it's a timing issue.

11 Q Isn't that protocol generally part of an
12 incidental take license or incidental take permit?

13 A I have not ever been involved in
14 establishing incidental take. So I can't really
15 answer that.

16 Q Are you aware of a federal law that says
17 that an incidental take permit is required for any
18 activity that is likely to result in the take or
19 taking of a species listed as endangered or
20 threatened?

21 A I believe that's correct.

22 Q So if you were to cut down the tree tobacco
23 plants and even taking reasonable precautions,
24 wouldn't that indicate that an incidental take permit
25 would be necessary because you are likely to take at

1 least one Blackburn's Sphinx Moth?

2 A I think that would be established in
3 consultation with the Fish and Wildlife people.

4 Q You have no opinion.

5 A I don't.

6 Q There's a similar provision for incidental
7 take permits on the state level, correct?

8 A There is.

9 Q But on the state level an incidental take
10 permit is voluntary, correct?

11 A I believe so. They usually defer to the
12 federal law.

13 Q So a private developer could take the chance
14 and cut down the tree tobacco plant, and take the
15 chance that they will either not take a Blackburn's
16 Sphinx Moth or at least not get caught taking a
17 Blackburn's Sphinx Moth, instead of getting an
18 incidental take permit.

19 A I don't know how to answer that one.

20 Q But would it be fair to say that the taking
21 of a Blackburn's Sphinx Moth by the cutting down of a
22 tree tobacco plant would be difficult to enforce by
23 DLNR?

24 A It would definitely be difficult to enforce.

25 Q Because it'd be so hard to know whether or

1 not a Blackburn's Sphinx Moth was taken in any one
2 incident. Fair enough?

3 A Yes.

4 MR. YEE: That's all the questions I have.
5 Thank you.

6 CHAIRMAN LEZY: Commissioners, questions?
7 Any redirect?

8 MR. TABATA: No redirect, thank you.

9 CHAIRMAN LEZY: Thank you Mr. Hobdy.

10 THE WITNESS: All right.

11 CHAIRMAN LEZY: Anything before we adjourn?

12 MR. TABATA: I believe that's it.

13 CHAIRMAN LEZY: Commissioners, anything?
14 I'd like to actually take this opportunity just before
15 we adjourn to say welcome to our new Deputy Attorney
16 General Sarah Hirakami. (Applause)

17 And for the parties and the public we will
18 reconvene tomorrow morning at 8:30. Thank you very
19 much. We stand adjourned.

20

21 (The proceedings were adjourned at 5:00 p.m.)

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C E R T I F I C A T E

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

That I was acting as court reporter in the foregoing LUC matter on the 16th day of February 2012:

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

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

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