

1

2

LAND USE COMMISSION

3

STATE OF HAWAI'I

4 HEARING

5 A10-789 A&B PROPERTIES, INC. (WAI'LAE)

6

)

)

7

8

9

TRANSCRIPT OF PROCEEDINGS

10

11 The above-entitled matter came on for a Public Hearing

12 at the Molokini Room, Makena Beach and Golf Resort,

13 5400 Makena Alanui, Makena, Maui, Hawai'i commencing

14 at 9:00 a.m. on February 17, 2012 pursuant to Notice.

15

16

17

18

19

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

20

Certified Shorthand Reporter

21

22

23

24

25

| | | |
|----|-------------------------------------|------|
| 1 | I N D E X | |
| 2 | DOCKET WITNESS LIST | PAGE |
| 3 | KUMU KELI'I TAU'A | |
| 4 | Direct Examination by Mr. Matsubara | 6 |
| 5 | Cross-Examination by Mr. Yee | 11 |
| 6 | TOM NANCE | |
| 7 | Direct Examination by Mr. Matsubara | 19 |
| 8 | Cross-Examination by Mr. Hopper | 23 |
| 9 | Cross-Examination by Mr. Yee | 27 |
| 10 | KEITH NIIYA | |
| 11 | Direct Examination by Mr. Tabata | 46 |
| 12 | Cross-Examination by Mr. Hopper | 48 |
| 13 | Cross-Examination by Mr. Yee | 49 |
| 14 | Redirect Examination by Mr. Tabata | 53 |
| 15 | GRANT CHUN | |
| 16 | Direct Examination by Mr. Matsubara | 59 |
| 17 | Cross-Examination by Mr. Hopper | 66 |
| 18 | Cross-Examination by Mr. Yee | 73 |
| 19 | WILLIAM SPENCE | |
| 20 | Direct Examination by Mr. Hopper | 85 |
| 21 | Cross-Examination by Mr. Yee | 98 |
| 22 | | |
| 23 | | |
| 24 | | |
| 25 | | |

1 CHAIRMAN LEZY: (gavel) Good morning. This
2 is a further meeting of the State of Hawai'i Land Use
3 Commission. The first item on the agenda is executive
4 session for the Commission. Do I hear a motion?

5 COMMISSIONER JUDGE: I move.

6 COMMISSIONER HELLER: Second.

7 CHAIRMAN LEZY: All in favor? (Aye) All
8 opposed? Passes. Folks, if you don't mind it should
9 be fairly short, but if you could leave the room
10 probably for about 10 or 15 minutes. Then we'll take
11 up the continue hearing in Docket A10-789.

12 (Executive session held 9:00-9:16).

13 CHAIRMAN LEZY: Good morning, again. Thank
14 you for your patience. This is a hearing on Docket
15 No. A10-789 A&B Properties, Inc. Wai'ale Petition to
16 Amend the District Boundary Amendment into the Urban
17 District for approximately 545.229 acres at Wailuku
18 and Waikapu, county of Maui state of Hawai'i, TMK
19 3-8-05 portion of 23 and 37, 3-8-07:71, portion of 101
20 104. Parties, please make your appearances.

21 MR. MATSUBARA: Good morning Chair Lezy,
22 Commissioners. Benjamin Matsubara and Curtis Tabata
23 on behalf of A&B Properties, Inc. With me is Grant
24 Chun vice president. And director of planning and
25 entitlement, Dan Yasui.

1 CHAIRMAN LEZY: Good morning.

2 MR. HOPPER: Good morning, Mr. Chair,
3 members of Commission. Michael Hopper with the
4 Department of Corporation Counsel representing the
5 Maui County Department of Planning. William Spence,
6 planning director will be joining us later. And we
7 have Danny Dias from the Department of Planning as
8 well.

9 CHAIRMAN LEZY: Good morning.

10 MR. YEE: Good morning. Deputy Attorney
11 General Brian Yee on behalf of the Office of Planning.
12 With me is Jesse Souki and Robyn Loudermilk from the
13 Office of Planning.

14 CHAIRMAN LEZY: Good morning. Before we
15 pick up the Petitioner's case, anything that needs to
16 be addressed? Okay. Mr. Matsubara, are you prepared
17 to proceed?

18 MR. MATSUBARA: Yes, I am.

19 CHAIRMAN LEZY: Please do.

20 MR. MATSUBARA: First witness today is Kumu
21 Keli'i Tau'a.

22 KUMU KELI'I TAU'A

23 (No response)

24 CHAIRMAN LEZY: I'm sorry. I need you to
25 respond orally, sir.

1 THE WITNESS: Yes.

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

4 THE WITNESS: My full name with the title is
5 Kumu Merriwell Keli'i Tau'a. Address 2275 Apala Place
6 Haiku, Maui, Hawai'i.

7 CHAIRMAN LEZY: Sir, I just wanted to tell
8 you just take your time. There's no rush.

9 THE WITNESS: Thank you.

10 CHAIRMAN LEZY: Mr. Matsubara, please.

11 DIRECT EXAMINATION

12 BY MR. MATSUBARA:

13 Q Thank you. Kumu, at our request you
14 prepared written testimony which we have filed and
15 provided to the Commission as well as the parties.
16 And we've marked that Exhibit 23.

17 You attached to that exhibit your resumé or
18 your curricula vitae which reflects your traditional
19 education, which indicates that the highest degree you
20 received under your traditional education, was
21 Doctor of Philosophy with emphasis of Hawaiian
22 Cultural Values at the University of Hawai'i, is that
23 correct?

24 A Not at the University of Hawai'i. The
25 Master's was at the University of Hawai'i focusing on

1 essentially island studies.

2 The Doctorate at that time was not available
3 for any of us who wanted to study the traditional. So
4 I had to create my own program with the Columbia
5 Pacific University where I organized my mentors to
6 oversee my program.

7 Q Thank you. What's interesting on your
8 resumé is that the next category you have on it is
9 entitled Hawaiian Non-degree Learning. And under that
10 you have various categories: Hula, chant, art of
11 kahuna, history and art.

12 And next to each category you have a list of
13 individuals you learned from. Could you care to
14 briefly discuss what was involved in the Hawaiian
15 non-degree learning for us, please.

16 A For the hearing I want to say that if I was
17 to weigh both types of experiences in my learning, the
18 non-traditional would hold higher value than the
19 traditional because the traditional only addresses
20 existing in this world.

21 But Hawaiian learning takes me back to the
22 spirits, to the activities, contemporary activities
23 and presently today. So that required some
24 commitment, but I'm happy to have gone through the
25 experience.

1 MR. MATSUBARA: Mr. Chair, I'd like to
2 qualify Kumu Keli'i Tau'a as an expert in native
3 Hawaiian history, culture, and practices.

4 CHAIRMAN LEZY: Parties?

5 MR. HOPPER: No objection.

6 MR. YEE: No objection.

7 CHAIRMAN LEZY: Commissioners, questions?
8 He's admitted.

9 MR. MATSUBARA: Thank you, Mr. Chair. I
10 take a little bit of leeway. He has prepared written
11 testimony, but because of the public testimony in the
12 area of his concern, I'm going to ask him maybe
13 briefly summarize written testimony relating to the
14 report you did, perhaps with emphasis of interviews
15 which you may have conducted with lineal descendants
16 or inhabitants of the property.

17 THE WITNESS: I believe three of the people
18 that testified, yes, I did. Do I need to cite them by
19 name? Lucy Ann Hokuao.

20 Q Heather Greenwell?

21 A Heather Greenwell.

22 Q Clare Apana?

23 A Clare Apana were part of the studies because
24 Wai'ale not only stops at a certain point, but the
25 idea of Wai'ale and the whole corridor goes all the

1 way up to Wailuku and then 'Iao. The reason why I
2 refer to that is after King Kalaniopu'u brought his
3 top warriors to do warfare with the Maui warriors at
4 Kakanelua, one of the places that's cited in the
5 report, and readily defeated by King Kahekili's
6 warriors from Maui, two were sent back to inform the
7 King Kalaniopu'u that "not to try it again".

8 However, King Kalaniopu'u had another guy in
9 his back pocket. So when he went home that other guy
10 was King Kamehameha that we know well, who loaded his
11 ships and came back and did warfare again.

12 The story is he sent the Maui warriors up
13 the valley where Maui warriors climbed over the
14 mountain of Mauna Kahalawai -- many of you refer to it
15 as West Maui mountains -- and escaped to O'ahu.

16 So at that time when I hear about people who
17 are testifying, it's challenging to pinpoint if there
18 are any iwi or bones from those warfares that could
19 significantly identify the warriors that occurred
20 during that period of time. Am I going off the track
21 or...?

22 Q No. It's very helpful background. You
23 conducted interviews with individuals who had
24 association with the land in question?

25 A So my partners and I had privilege to

1 interview one of the them who sat in this seat
2 yesterday, Clare Apana. After the interviews she
3 asked if we would go and see the area, which I
4 personally drove her. And we walked on the area. And
5 I think Dan, somebody from A&B went to open up the
6 gates.

7 She pointed out different areas that were
8 marked I believe by the archeologist at the time was
9 Lisa. And I thought that that would satisfy her
10 desire for our sincere reporting of Wai'ale. But
11 evidently she didn't feel satisfied that we documented
12 three or four times that we tried to call her to sign
13 off on it. But she was either on O'ahu taking care of
14 her grandchildren or didn't make herself available to
15 do that.

16 The second was Hokuao Pellegrino who sat in
17 this chair yesterday. And he is a good friend of one
18 of our partners. In their interview he requested not
19 to be recorded. But the notes was taken and we
20 reported his concerns in our cultural assessment
21 report.

22 The other woman Lucienne deNaie, we
23 interviewed for the report. The only person that
24 lives within the area is Hokuao Pellegrino. And so we
25 stepped off the side just looking at him, but trying

1 to go to the community and interview others who lived
2 there who were knowledgeable of possible historical
3 events that were found or were claimed to be there.
4 So that's what we did in reporting.

5 Q Thank you very much.

6 MR. MATSUBARA: Kumu is available to answer
7 questions.

8 MR. HOPPER: No questions.

9 CHAIRMAN LEZY: Mr. Yee.

10 CROSS-EXAMINATION

11 BY MR. YEE:

12 Q There was a question raised as to whether
13 there was any effort to contact -- let me back up. I
14 believe the archaeologist testified that SHPD has no
15 record of any lineal descendants for the area.

16 Do you know whether you made any attempt to
17 try to identify or contact any of the lineal
18 descendants?

19 A We, as I pointed out, we tried to fulfill
20 the guidelines that are given to make contacts. But
21 aside from the Pellegrino name, the Cocketts -- I
22 can't remember this other name -- were the only elders
23 or kupuna that lived there that weren't willing to
24 talk and not wanting to be on tape. So we left it at
25 that.

1 Q And you know by this I was referring to
2 anyone who might have a claim to a connection to iwi
3 that might be found in the area.

4 A We weren't able to find anyone that had that
5 genealogical connection.

6 Q But was that part of the effort you made? I
7 understand you didn't find any. But did you try to
8 make some effort to identify any?

9 A That's always our goal.

10 Q Then we have testimony from the public
11 suggesting that there are untouched dunes. But the
12 archaeologist, Ms. Rotunno-Hazuka, testified that she
13 was not aware of any untouched dunes outside of, at
14 least the cultural preserve.

15 Are you aware of any untouched dunes outside
16 the cultural preserve?

17 A No, I'm not.

18 Q There was also a lot of testimony about the
19 value of the dunes to them, to the people, to the
20 public members who testified. Is there -- or what is,
21 if there is any, cultural value to the altered dunes
22 outside the cultural preserve?

23 A Any lands that are considered to be altered
24 has value. How the developer addresses the value
25 that's something that needs to be presented to

1 developers from Hawaii Nei. Today we coexist with
2 burials that we do not know might be right on our
3 property. But to learn to grasp, to be educated about
4 what needs to be done will assist all of us sitting
5 here to be able to coexist.

6 In the resumé that was pointed out that I'm
7 called upon to do a lot of blessings. And when I was
8 a high school teacher at Baldwin High School, despite
9 the flow of this study there were many, many students
10 who came in and reported that the night before they
11 found resting upon their chest were to make them lose
12 their breath and were not able to speak out or yell
13 out for help.

14 Only last week my daughter, who is residing
15 in Makawao, experienced the same thing. So she called
16 me to go give her a blessing to assist in the exorcism
17 of whatever spirits are hindering life upon Maui No Ka
18 Oi.

19 That's not usual because when my cousin, who
20 was a cultural expert, born on Ni'ihau who passed
21 away, her name was Benedyn. When I called her on one
22 occasion I said, "Hey 'cuz is the spirit moving up
23 there like it's moving on Maui?" She says, "It might
24 be more there than here."

25 I was able to make an assessment that I am

1 supportive of seeing our islands grow as long as they
2 take heed to the advice from those knowledgeable to
3 assist in building their buildings. So it's not upon
4 some grave site, some temple that would cause havoc to
5 all of us.

6 Just another quick example. Right down in
7 Kihei in a store, second floor having challenges. It
8 was a lomi lomi studies massage school. So I went in
9 and did a blessing. The side door opened and they
10 said, "We heard you were here. Can you come into our
11 building next door?"

12 So I went in and sat down. I asked them,
13 "What's up?" And they said, "We're experiencing
14 spirits." So I asked them to define what they were
15 experiencing. To make it short, I said, "Do you see
16 them?" And they just (pointing to ceiling). "There's
17 the father and the son and there's two daughters."

18 So I then told them, "What do you want to do
19 about it?" And they said, "We don't want them to
20 disturb our business." I said, "Well, they're
21 listening as you're telling me this. So do you want
22 them removed?"

23 And they said, "If it's good spirits they
24 can remain. If they're bad then please remove them."
25 As soon as I got up and started, (Chanting) "E hu

1 maika'i" the door opened by itself and just went
2 whoosh.

3 So my point is we need to at this point in
4 time, because we're being bombarded by other people
5 who want to come enjoy paradise, to be sensitive on
6 how buildings are built wherever it's built.

7 And utilize credible people who know what
8 they're doing so that the pathway that we construct
9 for all of us to continue to thrive upon and live at
10 will be clear of these type of challenges.

11 Q So to make sure I understand, I think you're
12 telling us that even on altered sand dunes there is a
13 value. But that we all need to be, to keep a balance
14 in how we develop to recognize, be sensitive to those
15 values, but still be able to move forward with our
16 lives.

17 A True.

18 Q For this particular case there is a
19 recommendation to have a cultural preserve. You're
20 aware of that, right?

21 A Yes.

22 Q Was that your recommendation or was that
23 from the archeologist? Do you know?

24 A Both.

25 Q Both. Do you believe that the cultural

1 preserve adequately addressed the need to preserve
2 this cultural value, this piece of Hawaiian history
3 for this Petition Area?

4 A I hope I'm not taking too much time, but the
5 way I explain answers is to tell stories, like I was
6 taught by kupuna. I was just telling Dan here that I
7 participate in an exciting new program at the college.
8 It's called the Institute of Hawaiian Music. It's
9 brand new.

10 So we're groping around on what to do to
11 make it credible, to make sure the students get
12 something from it. In the same way there are not
13 written answers. That's why the beautiful chant that
14 our kupuna wrote that, you know, look forward, look
15 towards -- the chants that (chanting) E ho maika 'ike
16 mai luna mai e. O na mea huna no'eau e. Look forward
17 to the knowledge that has been left. Onaumea hu na
18 no'i ke.

19 All of these valuable written things that
20 have been left from the past, bring those forth to
21 mend together so that we will be living in harmony in
22 paradise.

23 MR. YEE: Thank you for your testimony.

24 CHAIRMAN LEZY: Redirect?

25 MR. MATSUBARA: Just briefly.

1 REDIRECT EXAMINATION

2 BY MR. MATSUBARA:

3 Q Kumu, you prepared a Cultural Impact
4 Assessment for Wai'ale. In it you included
5 transcripts from several interviews. You interviewed
6 a Ron Jacinto?

7 A Yes.

8 Q He was also included. And you also
9 interviewed a Leslie Rida?

10 A Yes, that's the person.

11 Q As far as your search went, these were the
12 only individuals you could locate that had that
13 connection.

14 A Leslie could have.

15 Q Yes.

16 A Ron Jacinto owns Lojack Trucking Company.
17 So his testimony was rather sad because he was
18 transporting all the sand to different places that
19 ordered the sand. And they were able to find many
20 artifacts, bones, once they dumped at a location which
21 were, I believe, brought back. I didn't follow the
22 process.

23 Q One last question, Kumu. In your written
24 testimony in your final paragraph you have a section
25 called "Cultural Advice". And included within it your

1 recommendation is that in order to assure the cultural
2 integrity of the Project a qualified cultural
3 specialist should participate in various cultural
4 related activities.

5 Then you describe what it is. "Activities
6 would include the development and implementation of a
7 cultural orientation program for construction
8 personnel, advice concerning inadvertent finds, and
9 related protocol advice and assistance relating to
10 planned burial preserves within the Project, for
11 example signage, access, landscaping.

12 And also advice and assistance concerning
13 potential educational touch points to enhance the
14 Project's unique sense of place and advice and
15 assistance with project names. That's your advice.

16 A Yes.

17 Q And A&B has committed to doing it, and
18 you've agreed to assist them carrying this out, have
19 you not?

20 A Yes.

21 MR. MATSUBARA: Thank you very much.

22 CHAIRMAN LEZY: Commissioners, questions?

23 Thank you for your testimony, Sir.

24 MR. MATSUBARA: Next witness will be Tom
25 Nance.

1 TOM NANCE

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

4 THE WITNESS: I do.

5 CHAIRMAN LEZY: Please state your name and
6 your business address.

7 THE WITNESS: Tom Nance. Business address
8 is 560 North Nimitz Highway in Honolulu.

9 DIRECT EXAMINATION

10 BY MR. MATSUBARA:

11 Q Tom, at my request you prepared written
12 testimony with your attached curriculum vitae which
13 we've introduced as Exhibit 26. Is that correct?

14 A That's correct.

15 Q You did a report also which we've identified
16 as Exhibit 25 Potable Supply Alternative for A&B's
17 Wai'ale Community Project, is that not correct?

18 A That's correct.

19 MR. MATSUBARA: Mr. Chair, because of the
20 topic on this one, which is water, I'm going to ask
21 him to briefly summarize his report and his findings.

22 CHAIRMAN LEZY: Sure.

23 Q (Mr. Matsubara): If you could do that, Tom,
24 please. You've been accepted as an expert before this
25 body before, have you not?

1 A Yes, I have.

2 Q Is it in the neighborhood of 50, 60 times?

3 A Or so times, yes.

4 MR. MATSUBARA: I'd like to have Mr. Nance
5 qualified as an expert.

6 CHAIRMAN LEZY: Mr. Hopper?

7 MR. HOPPER: No objection.

8 MR. YEE: No objection.

9 CHAIRMAN LEZY: Commissioners? Accepted.

10 THE WITNESS: Thank you.

11 Q (Mr. Matsubara): Mr. Nance, please.

12 A My assignment on this Project was to put
13 some specifics to an alternative source of water
14 supply.

15 A&B has been looking at developing what's
16 called the Wai'ale Treatment Facility which would
17 utilize Waihe'e Ditch water treated to potable quality
18 and deliver it into the Department of Water Supply
19 system. But that alternative has some review and
20 approvals to go through. And its implementation may
21 not be timely for this Project.

22 So among the groundwater alternatives that
23 are possible, my study put some specifics to what I
24 believe to be the most expedient source or alternative
25 source of supply from groundwater.

1 First step, stepping back a little bit, is
2 if the Project was supplied by an all-potable system,
3 in round numbers that required supply would be
4 1.9 million gallons. It's an average day amount and
5 based upon applying the standards of the Department of
6 Water Supply.

7 But because potable resources in financially
8 proximity are relatively limited, the first thing I
9 did is say that this thing really needs be supplied by
10 a dual system because beneath the Project Area is
11 groundwater that is very close to potable quality but
12 certainly excellent as a non-potable source of supply.

13 So if you split the 1.9 million gallons a
14 day of an all-potable system into the potable and
15 non-potable, that split is about 1.9 is potable and .8
16 is non-potable.

17 The water system that I laid out would be
18 developed in conjunction with the Waikapu Country Town
19 project. It would consist of wells that tap into the
20 Waikapu Aquifer ultimately for both projects needing
21 five wells, one of which would be standby.

22 Two wells have already been drilled in that
23 area. They've been drilled, cased and pump tested with
24 excellent results. What I'm recommending for these
25 wells is 500-gallon a minute pumps, but they were

1 actually test pumped at substantially higher rates
2 than that.

3 As a matter of the sustainable yield, these
4 wells would tap into the, what's known as the Waikapu
5 Aquifer with the Waikapu Country Town project. The
6 total supply for both projects from these wells would
7 be 2 million gallons a day.

8 At present the aquifer's sustainable yield
9 as set by the Water Commission is 3 million gallons a
10 day. So ultimately it would take -- these wells would
11 utilize two-thirds of what is the current sustainable
12 yield.

13 But it's kind of important to put out that
14 as in a whole bunch of other areas where at the time
15 those sustainable yields were adopted, hydrologic data
16 was very limited and a rather simplistic method
17 applied to develop sustainable yield.

18 Since then much more sophisticated rainfall
19 recharge calculations have been made. And for this
20 particular aquifer, this more current and more
21 accurate recharge calculation is more than twice the
22 recharge that the 3 million gallons a day of
23 sustainable yield was based on.

24 The non-potable system would utilize wells
25 within the Project site, relatively shallow, tapping

1 into what's known as the Kahului Aquifer. Depending
2 on whether the Project's wastewater is delivered to
3 the county Kahului plant or is treated on site, if
4 it's treated on site it would be treated to a tertiary
5 quality, R1 quality. And it would provide maybe
6 around .3 MGD of the .8 of the non-potable supply. It
7 would be separate from the rest of the non-potable
8 system and utilized on parks and areas like that.

9 With or without this wastewater treatment
10 supply, wells would be drilled into the Kahului
11 Aquifer to provide what is definitely going to have
12 chloride levels lower than 200 milligrams per liter
13 and satisfactory for non-potable uses.

14 That's hopefully a quick enough summary of
15 my report.

16 MR. MATSUBARA: Thank you. Mr. Nance is
17 available for questions.

18 CHAIRMAN LEZY: Mr. Hopper.

19 CROSS-EXAMINATION

20 BY MR. HOPPER:

21 Q Thank you, Mr. Nance, for your testimony.
22 You explained in your written testimony and also
23 stated today that the Wai'ale Water Treatment Facility
24 Plan that that may not be timely for the Wai'ale
25 Project.

1 Could you provide any more detail as to why
2 that may not be timely, what approvals are required,
3 things of that nature?

4 A Well, it's a project that would be done in
5 conjunction with the Department of Water Supply. But
6 to be honest I haven't been involved in that project
7 so I'm not really the right person to tell you what
8 all the approvals that would be necessary.

9 Q Essentially there are a substantial number
10 of approvals and other factors that may result in that
11 plan not being able to be implemented during the
12 10-year buildout period for this Project?

13 A That's a possibility, sure.

14 Q So the so-called alternative you presented,
15 is that essentially you believe the most feasible plan
16 at this stage versus the Wai'ale treatment facility?

17 A On the assumption that Wai'ale treatment is
18 not timely, yes.

19 Q And the wells you've identified in the
20 alternative, who owns those wells currently?

21 A I'm not sure who the owner is, the owner of
22 that Waikapu Country Town. I think it's Atherton, I
23 believe.

24 Q So not A&B?

25 A No, it's not A&B.

1 Q Do you know any of the current status of the
2 discussion between A&B and the owner of those wells?

3 A Only that it's ongoing but I don't know
4 specifics.

5 Q And do you know anything about any type of
6 agreement A&B would be entering into for the use of
7 those wells?

8 A I do not.

9 Q Could such an agreement -- I understand
10 you're not familiar with anything specific -- but
11 could such an agreement include the eventual
12 dedication of the wells to the county of Maui for
13 operation?

14 A It is possible, yes.

15 Q Now, you also described this plan as a
16 collaborative effort with the Waikapu Country Town
17 project. Which should that project not be able to
18 proceed, either it's not approved or it's not approved
19 timely, along with the Wai'ale Project, do you believe
20 that through this plan it would still be possible to
21 provide water as you've outlined for the Wai'ale
22 Project?

23 A Yeah. As long as the agreement with the
24 landowner was reached.

25 Q Are you familiar with the county of Maui's

1 water availability policy generally, Chapter 14.12,
2 also known as the 'Show Me the Water' bill?

3 A Yes.

4 Q It requires that a developer prior to
5 subdivision approval and, in fact, prior to
6 construction plan submittal, provide, basically show
7 that it has access to a long-term reliable source of
8 water.

9 Do you believe that this Project prior to
10 getting subdivision approval, would be able to show
11 that access based on the plan you've prepared?

12 A Yes. But it would be actually more than
13 just the plan I prepared. As a practical matter in
14 implementing that policy which requires the Department
15 of Water Supply's review for other projects, what
16 we've done is gone through the process with the State
17 Department of Health to get these wells certified for
18 drinking water use. And having passed that milestone
19 the county has taken that as also having met the
20 requirements of this Show Me the Water ordinance.

21 Q So you believe it's possible for that to
22 happen prior to subdivision approval and timely within
23 the ten-year buildout period proposed for this
24 Project.

25 A Yes, particularly since the first two wells

1 have already been drilled and pump tested.

2 Q To your knowledge what is the current status
3 of the Project's discussions with the county regarding
4 the water supply?

5 A I haven't been a part of those discussions.

6 Q Do you know if there's been any sort of
7 final agreement reached with the county of Maui at
8 that stage to supply water?

9 A I don't know that.

10 MR. HOPPER: Thank you very much.

11 CHAIRMAN LEZY: Mr. Yee.

12 CROSS-EXAMINATION

13 BY MR. YEE:

14 Q Mr. Nance, were you involved in the original
15 EIS development regarding the Kahului Aquifer and
16 Wai'ale Surface Water Treatment Facility options?

17 A For this Project or for the treatment
18 facility?

19 Q For this Project.

20 A I was not involved.

21 Q Were you involved in the Wai'ale Surface
22 Water Treatment Facility generally?

23 A No.

24 Q Okay. I'm going to be asking you a few
25 questions. And if you don't know the answer about

1 those that'd be fine if you could just let me know.
2 But you've testified that you're anticipating a 1.9
3 MGD demand or average daily demand for potable water,
4 correct?

5 A No, that was the total water requirement.
6 If it were an all potable system the potable system
7 would have to provide that.

8 Q Oh, okay. What's the amount that you would
9 need if you include non-potable?

10 A Well, the split of the 1.9 is 1.1 for
11 potable and 0.8 for non-potable.

12 Q The Kahului Aquifer sustainable yield is
13 approximately 1 MGD currently?

14 A No.

15 Q What is the sustainable yield for the
16 Kahului Aquifer?

17 A We're going to split hairs here, Bryan, but
18 yes, the Water Commission has adopted a sustainable
19 yield of 1. The aquifer has been pumped for decades
20 at more than 45 million gallons a day and is currently
21 being pumped in excess of 25 million gallons a day
22 with no adverse water quality consequences.

23 So as a practical pragmatically demonstrated
24 sustainable yield, including the recharge that comes
25 from HC&S it's in excess of 25. But the adopted

1 regulatory sustainable yield is 1.

2 Q Is the Kahului Aquifer within the
3 groundwater management area -- within a groundwater
4 management area?

5 A It is not.

6 Q And the Kahului Aquifer, is that
7 distinguishable from the 'Iao Aquifer?

8 A It is.

9 Q And the 'Iao Aquifer is adjacent, correct?

10 A A portion of the makai end of the 'Iao
11 Aquifer is, yes.

12 Q Water from the 'Iao Aquifer for new projects
13 is unlikely.

14 A It is unlikely. There is a remaining
15 unallocated supply of .9 which a lot of people,
16 including the Department of Hawaiian Home Lands, are
17 after. So I agree with your statement it's not
18 likely.

19 Q If a wastewater treatment facility is built
20 onsite with injection wells, does this have any impact
21 on the availability of potable water?

22 A For this Project no. I mean what I've
23 outlined is the potable water would come from the
24 Waikapu Aquifer. And if there were, in fact,
25 wastewater disposal wells, they would be into the

1 Kahului Aquifer.

2 Q What I meant was would it impact the ability
3 to draw water from the Kahului Aquifer?

4 A The disposal? It would not.

5 Q If there are potable water wells in the
6 vicinity of the wastewater treatment facility, would
7 you have any mitigation recommendations?

8 A Let's go back to your other question. We do
9 not anticipate, even if the treatment system is on
10 site, we wouldn't utilize wastewater disposal -- I
11 mean with the hypothetical question you're probably
12 not planning to do that. It would be reused both on
13 the Project site and if there's an excess, on other
14 A&B lands.

15 There's no intention to put wastewater
16 disposal wells within the Project Area. So let's go
17 to your present question. Could you repeat that.

18 Q Actually, let me go back to that then
19 because I read some of the documents, and I think
20 injection wells are noted in some of the documents.
21 So are you telling us that if a wastewater treatment
22 facility is built onsite there will not be any
23 injection wells?

24 A Not wastewater injection wells. There very
25 well may be stormwater injection wells, but not

1 wastewater.

2 Q Okay. With respect to the -- and you
3 haven't analyzed, then, the likelihood of being able
4 to draw enough water from the Kahului Aquifer for this
5 particular Project.

6 A I believe I have.

7 Q From the Kahului Aquifer?

8 A For the non-potable supply.

9 Q You're right. That's correct. You haven't
10 analyzed the ability to draw potable water from the
11 Kahului Aquifer for this site.

12 A That's not been -- I mean it's possible and
13 I can explain, but it's not what I'm suggesting is the
14 best option for this Project. There are at present
15 one, two, three, seven wells in the near vicinity that
16 are actually certified for drinking water use: Three
17 of them in the Maui Lani project, two at Consolidated
18 Baseyards, and two that are in the process of being
19 outfitted to supply another A&B project.

20 In this particular area two of those wells
21 are actually in this Project site, the two Wai'ale A&B
22 wells. We might be able to get potable quality
23 groundwater beneath the site, but it's not my first
24 choice or not my recommendation to A&B. The best
25 choice I believe is to pursue the wells up in the

1 Waikapu Aquifer.

2 Q Why is it not your first choice?

3 A Well, two things. One, is that we may or
4 may not have potable quality. We'd have to drill
5 wells to demonstrate that. Two. Elevations across
6 the Project site don't provide sites for reservoir
7 storage. So if we were to rely on wells on site, we'd
8 have to deal with reservoir storage either on site at
9 grade with pump delivery which, for a project this
10 size, is not particularly a good deal.

11 Whereas, if we go up into the Waikapu
12 Aquifer, get already demonstrated potable quality
13 water and have reservoir sites as well to provide the
14 gravity delivery to the Project. So it's just all
15 around a much better layout of a water system for the
16 Project.

17 Q With respect to the Wai'ale surface water
18 treatment facility, this is impacted, I assume, by the
19 Na Wai Eha decision?

20 A It would be, yes.

21 Q Just briefly, as I understand it, and this
22 is a very complicated area so please correct me if I'm
23 wrong. But the Na Wai Eha decision established inflow
24 standards for a variety of streams that feed into the
25 Waihe'e Ditch and Spreckels Ditch, is that correct?

1 A That's also my understanding, yes.

2 Q And there was initially, I guess, a hearings
3 officer who made initial recommendations for the
4 instream flow standards?

5 A Yes.

6 Q Do you know who the hearings officer was?

7 A Dr. Miike.

8 Q Then that recommended decision went before
9 the Commission -- the Water Commission, correct?

10 A Yes.

11 Q And they amended the recommended instream
12 flow standards and essentially reduced some of the
13 instream flow standards, or maybe eliminated some of
14 the instream flow standards.

15 A That's not a question I can answer.

16 Q Okay. You don't know --

17 A I don't know what the change that was
18 actually adopted.

19 Q Okay. And then that decision by the Water
20 Commission, in any case, is on appeal to the courts.

21 A That's my understanding.

22 Q But as of today the Water Commission
23 decision is the latest decision we have on that
24 question.

25 A It is.

1 Q Assuming the decision is upheld and that the
2 Water Commission needs to move forward then with their
3 work on these streams, I take it that they need to
4 establish the appurtenant rights to the affected
5 streams, correct?

6 A I can't answer that question either.

7 Q Oh, okay. Wouldn't they also -- well, do
8 you know whether they would be normally reviewing
9 claims for existing water uses?

10 A I really can't answer that very accurately.

11 Q Well, I mean my understanding is at some
12 point the Water Commission is going to be asked to
13 make allocations for the remaining waters from the
14 streams. Is that your understanding?

15 A But I think -- I think the instream flow
16 standards have already basically sorted that out in
17 terms of all the diversions that are occurring, set
18 quantities for them. So I'm not sure what further
19 work needs to be done.

20 Q If you take the existing uses, do you know
21 whether that exceeds the available water, exceeds the
22 available water for allotment?

23 A I can't answer that question. I don't know.

24 Q Do you know whether there's, if all the
25 existing uses were allowed, do you know whether

1 there's any water available for new uses?

2 MR. MATSUBARA: Mr. Chair, I just have an
3 objection of relevancy on the issue relating to the
4 Water Commission's decision, the impact, effects and
5 so on as it relates to Mr. Nance's testimony today.

6 MR. YEE: It relates to the Petitioner's
7 proposal for the Wai'ale Surface Water Treatment
8 Facility which I believe is asking or suggesting it
9 will pull 9 MGD from the Waihe'e Ditch. And that was
10 affected by the Na Wai Eha decision.

11 CHAIRMAN LEZY: Where are you intending to
12 end up with this, Mr. Yee?

13 MR. YEE: That the pulling 9 MGD of new uses
14 from the Waihe'e Ditch for purposes of the Wai'ale
15 Surface Water Treatment Facility is unlikely.

16 MR. MATSUBARA: I think Mr. Hopper asked
17 questions in those areas in regard to its availability
18 during buildout time period and was answered by
19 Mr. Nance.

20 CHAIRMAN LEZY: I'll let you continue,
21 Mr. Yee. But maybe you could try to drive to that
22 point.

23 MR. YEE: Sure.

24 Q We're sort of at that point when I was
25 asking: Is there any available water from allotment

1 for any new uses? Do you know?

2 A I don't know specifically. I think what
3 would have to happen is that existing uses would have
4 to be converted to a new use.

5 Q So you would have to convert 9 MGD of
6 existing uses to a new use in order to allow for the
7 Wai'ale surface water treatment?

8 A That's my understanding how I read the
9 decision.

10 Q Fair to say that you cannot simply -- an
11 individual cannot transfer their allotment to another
12 person. That decision has to be made by the Water
13 Commission.

14 A That goes through the Water Commission,
15 that's correct.

16 Q And the water that is given up by any entity
17 is available for claim by any person, right?

18 A I believe that's also true.

19 Q Okay. Now, you talked about the Waikapu
20 wells, that there are two existing wells that have
21 already been basically built.

22 A That's correct.

23 Q Do you know whether there's any commitment
24 of that water for any other use? Or let me put it
25 differently. Why doesn't someone just build a well?

1 A I believe they had in mind doing this
2 Waikapu Country Town project.

3 Q When you say "this Waikapu Country Town
4 project" that's not part of the Petition Area?

5 A That's correct. It's on the Atherton land.

6 Q Do you know how much -- or how much is then
7 going to be available for other uses other than the
8 Waikapu Town project?

9 A Well, as that plan is presently configured
10 it needs about .9 MGD if it were not going to have a
11 dual system with using non-potable water. So that .9
12 adds to the A&B Wai'ale Project's 1.1. So the wells
13 up there need to be providing about 2 million gallons
14 a day for both projects.

15 Q So you were estimating about .5 MGD per
16 well -- I'm sorry. How much were you -- well, I
17 thought I had read that you were estimating about .5
18 MGD for each well.

19 A No. What I was recommending is 500 gallon a
20 minute pumps. The size of the well pumps is an
21 infrastructure hardware sizing criteria that looks at
22 max day rather than year 'round averages. All the
23 numbers I've been giving you up to now have been year
24 'round averages.

25 Q So how many wells would be needed for just

1 the Waikapu Town Project?

2 A Probably two or three if they're standby.

3 Q So for just the Town Project you'd need the
4 two existing wells and maybe an additional well as a
5 standby.

6 A Right.

7 Q And then you would need two more wells and
8 maybe sharing a standby well for the present A&B
9 Project?

10 A In general round numbers yes.

11 Q You know for the Kula Ridge Project I know
12 you gave us a cost estimate to demonstrate
13 feasibility. Are you at that point in your analysis?

14 A No. I haven't attached cost to it, but
15 clearly it's much shallower than Kula Ridge, far less
16 cost.

17 Q I understand there's not -- well, I should
18 just ask the question. There are no current draws
19 from the Waikapu Aquifer?

20 A That's correct.

21 Q So the entire sustainable yield's available
22 for use subject to your groundwater management
23 criteria.

24 A Yeah. Waikapu Aquifer, like Kahului, is not
25 a groundwater management area. But if actual pumpage

1 were to approach the current regulatory sustainable
2 yield of 3 MGD, it might be considered for such.

3 Q And then you mention that you had some
4 thoughts about the 3 MGD sustainable yield figure for
5 Waikapu. Do you think -- do you have an understanding
6 that the sustainable yield for the Waikapu Aquifer is
7 a range of 3 to 6?

8 A No, it is not. It's 3.

9 Q It's 3.

10 A The regulatory sustainable yield.

11 Q And then based upon the 2007 Vana Report you
12 said it could be around 6.

13 A It may be. If you took the same methodology
14 the Water Commission uses to establish sustainable
15 yields, the recharge calculation in the Engott & Vana
16 Study is more than twice the recharge that was the
17 basis of the 3 MGD.

18 So simply on that basis you would -- if you
19 accept the more recent USGS recharge calculation you'd
20 be looking at a sustainable yield that might be as
21 high as 6.

22 Q And in any case regardless of numbers you're
23 suggesting it's probably more than 3.

24 A I believe it is, yes.

25 Q Are you familiar with the new rainfall that

1 was done for CWRM?

2 A Yes.

3 Q And that generally indicates that rainfall
4 is lower than previously estimated?

5 A For the period beginning somewhere in the
6 1970s yes.

7 Q As you incorporate these studies that will
8 tend to put a lower -- a pressure on the sustainable
9 yields to be lower.

10 A It may. If in using these more recent
11 rainfall updates, depending on their temporal
12 occurrence and the like and the computer recharge done
13 drops, then, yes, that's gonna be a state-wide issue.

14 Q And I tried to use the word "pressure" to
15 indicate that we don't know exactly what the number of
16 changes may or may not be.

17 A That's correct.

18 Q Just that it will tend to lower, put
19 pressure to lower the sustainable yields.

20 A That's a fair statement.

21 Q So then you would have to then incorporate
22 those two both the 2007 Vannet Study as well as the
23 2011 DLNR rainfall study and come up with a new number
24 for Waikapu Aquifer?

25 A That's correct. It will start in aquifers

1 that actual use is much closer to the sustainable
2 yield, then sort of pick them sequentially based on
3 the pressures applied by current and prospective uses.

4 Q I take it you don't know whether there are
5 any other demands or proposals to use the Waikapu
6 Aquifer for anything other than either the Wai'ale
7 Project or the Waikapu Town project?

8 A Well, the three wells that were drilled that
9 are probably in excess of a mile to the south of the
10 two that we've been talking about, smaller casing for
11 a project that has a modest use. I don't know whether
12 it's going to proceed or not or possibly used for
13 irrigation. I just don't know.

14 Q So based upon, I guess -- do you know
15 whether or not the Waikapu Aquifer, even assuming a
16 3 -- MGD is capable of providing the demands upon it
17 for the various projects that are likely to come up in
18 the near future?

19 A Well, the only one that I know about is the
20 one I just referred to and I think it could
21 accommodate both.

22 MR. YEE: That's all the questions I have.
23 Thank you.

24 CHAIRMAN LEZY: Redirect? None.
25 Commissioners, questions? Commissioner Judge.

1 COMMISSIONER JUDGE: 'Morning, Tom.

2 THE WITNESS: Good morning.

3 COMMISSIONER JUDGE: I had a question just
4 in the scenario that the county water, through the
5 surface water doesn't go. And for some reason the
6 wells up in Waikapu, there's no agreement or something
7 goes wrong there.

8 I heard you talking about the Kahului
9 Aquifer and the discrepancy between the stated
10 sustainable yield of 1 and the common knowledge or
11 practical knowledge of it's greater than that.

12 THE WITNESS: Mm-hmm.

13 COMMISSIONER JUDGE: Even though it's not
14 the first choice because of the topography and the
15 storage issues, would you say that it would still be
16 possible to find water from the Kahului Aquifer for
17 this Project if everything else fell through?

18 THE WITNESS: Yes. Just to give you a
19 little bit of numbers. When the state comes up with a
20 stainable yield of 1 they've looked at a rainfall
21 recharge of only a portion of the aquifer being 2.

22 The aquifer has numerous other sources of
23 recharge that are not included in the calculation:
24 Surface runoff of Haleakala, surface runoff of West
25 Maui Mountain, subsurface flow from Haleakala,

1 subsurface flow from West Maui Mountain, in addition
2 to possibly 25 to 30 million gallons a day of
3 irrigation return by HC&S.

4 But if you turned off HC&S tomorrow and
5 didn't replace it with any other use for that water,
6 essentially that 30 million gallons a day of recharge
7 would go away, but so would 25 to 28 million gallons a
8 day of pumping go away. And you'd be left with the
9 rainfall recharge which this Vannet Study we've been
10 talking about, is about three times higher than the
11 state's number.

12 And all of these other sources which aren't
13 taken into account in the sustainable yield numbers,
14 they just draw lines on the boundaries. And in many
15 cases the boundaries are just lines on a paper and not
16 physical boundaries to flow.

17 So if you look at HC&S aside, other sources
18 of recharge: HC&S disappears, the remaining pumpage is
19 going to be 3 million gallons a day going to 4 or 5
20 maybe. But sources of recharge are substantially
21 greater than that. So I think if that's what they had
22 to resort to, the water is there. You can't guarantee
23 that it wouldn't need some polishing by reverse
24 osmosis to get saline water to the drinking water
25 range.

1 COMMISSIONER JUDGE: But there's some other
2 wells. I'm looking at your figure one. There's some
3 other wells in close proximity, some actually on the
4 project site that have been established as?

5 THE WITNESS: Drinking water wells.

6 COMMISSIONER JUDGE: Drinking water wells.

7 THE WITNESS: Yeah. If you're referring to
8 the two that's on the site and then there's two in
9 east -- no, west in Consolidated Baseyards, those are
10 very small capacity wells but they all produce
11 drinking water quality.

12 COMMISSIONER JUDGE: What's the 521, the one
13 that's right along the highway 04 and 05?

14 THE WITNESS: Can you show me? I don't have
15 those by...okay. 04 and 05 are the two drinking water
16 quality wells that are gonna supply the other A&B
17 project, the industrial -- actually off Dairy Road.
18 So the two that are in the middle of the Project, 59,
19 29, 02 and 03 those are the Consolidated Baseyard's
20 wells. The other two are -- so actually within this
21 Project site there's four wells presently producing
22 drinking water quality.

23 COMMISSIONER JUDGE: So that would lead one
24 to believe that there's potential for more, if need
25 be.

1 THE WITNESS: If need be? I'm not
2 guaranteeing it.

3 COMMISSIONER JUDGE: Right.

4 THE WITNESS: Step away it might get
5 slightly brackish. But the supply is there possibly
6 needing a little polishing. But the supply is there.

7 COMMISSIONER JUDGE: Thank you.

8 CHAIRMAN LEZY: Commissioners, any other
9 questions? Thank you for your testimony, Mr. Nance.
10 Let's take a break.

11 (Recess was held. 10:20-10:40)

12 CHAIRMAN LEZY: Mr. Matsubara.

13 MR. MATSUBARA: Mr. Tabata will be handling
14 this.

15 MR. TABATA: Our next witness is Keith
16 Niiya.

17 KEITH NIIYA
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 and
22 your business address.

23 THE WITNESS: Keith Niiya. My business
24 address is Austin Tsutsumi & Associates, 501 Sumner
25 Street, suite 521, Honolulu, Hawai'i.

1 CHAIRMAN LEZY: Mr. Tabata.

2 MR. TABATA: Thank you.

3 DIRECT EXAMINATION

4 BY MR. TABATA:

5 Q Keith, would you please state your title and
6 your place of employment.

7 A I am the chief traffic engineer with Austin
8 Tsutsumi & Associates.

9 Q And did you prepare the Traffic Impact
10 Analysis Report which is Petitioner's Exhibit 9J?

11 A Yes.

12 Q And did you also prepare the TIAR addendum 1
13 which is Petitioner's Exhibit 9J1?

14 A Yes.

15 Q And your written testimony and curriculum
16 vitae are Petitioner's Exhibit 27, correct?

17 A That is correct.

18 Q And your qualifications and experience as a
19 traffic engineer is included in your curriculum vitae,
20 correct?

21 A That is correct.

22 MR. TABATA: Chair, we request that
23 Mr. Niiya be admitted as an expert in the field of
24 traffic assessment.

25 CHAIRMAN LEZY: Mr. Hopper?

1 MR. HOPPER: No objection.

2 CHAIRMAN LEZY: Mr. Yee?

3 MR. YEE: No objection.

4 CHAIRMAN LEZY: Commissioners? He's
5 admitted.

6 MR. TABATA: Thank you.

7 Q Mr. Niiya, prior to your testimony today I
8 showed you what is OP's Exhibit No. 2. Do you have it
9 in front of you?

10 A Yes, I do.

11 Q Could you please turn to Page 18 for us.

12 A Okay.

13 Q I direct your attention to OP's proposed
14 Condition No. 2 which is entitled Highway and Road
15 Improvements. Do you see that?

16 A Yes, I do.

17 Q Please go to the, I believe it's the
18 second-to-last sentence.

19 A Okay.

20 Q That second-to-the-last sentence reads that,
21 "The accepted TIAR shall be submitted for county
22 review prior to final zoning approval."

23 Would that requirement be feasible as a
24 requirement for the Petitioner?

25 A No, I don't think so.

1 Q Thank you. Now, the last sentence in that
2 proposed condition talks about updating the TIAR every
3 five years. Would that requirement be feasible?

4 A No. I think it puts an undue burden on the
5 Petitioner.

6 Q Thank you.

7 Mr. Niiya is available for questions.

8 CHAIRMAN LEZY: Mr. Hopper.

9 CROSS-EXAMINATION

10 BY MR. HOPPER:

11 Q Thank you. Regarding that your written
12 testimony you did state that the TIAR would need to be
13 updated as the Project comes forward for subdivision
14 approvals to reflect the traffic conditions at the
15 time of that approval, correct?

16 A That is correct.

17 Q And so that would outline the specific
18 requirements of the Maui County Subdivision Ordinance
19 and requirements of the Department of Public Works,
20 correct?

21 A That is correct.

22 Q So a condition requiring that the review and
23 approval of the Department of Public Works and that
24 the Petitioner shall comply with the requirements of
25 the Maui County Code and the Director of Public Works

1 would be an appropriate condition?

2 A Yes. I would think so.

3 MR. HOPPER: Thank you. I have no further
4 questions.

5 CHAIRMAN LEZY: Mr. Yee.

6 CROSS-EXAMINATION

7 BY MR. YEE:

8 Q You note in your written testimony at the
9 end that the Department of Transportation informed you
10 that the location of the intersection between Road E
11 and Kuihelani Highway would not be allowed. Do you
12 remember that?

13 A Yes.

14 Q And A&B acknowledged the point what your
15 written testimony said?

16 A That is correct.

17 Q When you say you acknowledge the point what
18 did you mean by that?

19 A We've had a meeting with State DOT. I think
20 it was January 18th of this year. At that meeting it
21 was agreed upon that Road E could go away and that
22 it's possible to have another connection to Kuihelani
23 Highway and Road F, which is further away or more
24 south from Waiko Road.

25 Q Do you recall if the request was to ensure

1 that the intersections are at least a half mile --
2 there's a separation of approximately a half mile?

3 A Around a half mile basically. But I mean,
4 you know, they were saying get it as far away from
5 Waiko Road as possible.

6 Q And that's a general reference point in
7 engineering to try to keep intersections roughly a
8 half mile or more away from each other on the
9 highways?

10 A It depends on the classification of the
11 roadway. In this case you want to try and get it as
12 far away so that the turn pockets,
13 acceleration/deceleration lanes are, they're able to
14 improve the intersection and put it in.

15 Q So that's to ensure traffic flowing safely.

16 A Traffic flows safely.

17 Q Thank you. Then you mentioned that the
18 update of the TIAR during subdivision and construction
19 phase -- and I just want to ask a few questions about
20 the timing of the revised TIAR. You're aware that
21 what we have before the Land Use Commission is a
22 conceptual design, correct?

23 A That is correct.

24 Q So as projects move forward the conceptual
25 design may change and aspects of the Project may be

1 changing during the design process, right?

2 A That is correct.

3 Q Those changes could be significant for
4 traffic flow if you move a significant use from one
5 area to another?

6 A That is correct.

7 Q So when do you think the conceptual design
8 becomes more formalized in the land use process or
9 more certain in the land use process?

10 A It can change at any time. I mean, you
11 know, right now you have to go through zoning. And
12 then, you know, for what I understand they're gonna do
13 a project district.

14 So maybe it's more appropriate at the
15 project district level where they start doing the
16 engineering work and laying out all the roadways,
17 seeing what can or can't be developed.

18 Q In this case it's going to be a project
19 district zoning that the Project's going to go
20 through, correct?

21 A That's my understanding.

22 Q In other projects it might be a zone
23 request.

24 A That's correct.

25 Q But either the project district zoning or

1 the zone request, that's when you think the design
2 will be firm enough that a TIAR, the acceptance of a
3 TIAR would be a fairly good spot to make sure at least
4 the TIAR is accepted?

5 A Well, you know, it depends. Like in this
6 case if they're going through zoning I don't know how
7 much engineering A&B is going to be doing and laying
8 it out.

9 My understanding, and I've been through this
10 several times, it's a long drawn out process. So to
11 me it wouldn't be fair to have A&B do all the
12 engineering up front and looking at sizing the
13 roadways and everything. But generally we've done it
14 and sized the roadways so that at least a right-of-way
15 is set aside for the improvement.

16 Q And I'm getting to the question of not so
17 much the revision of a TIAR but the acceptance of the
18 TIAR by DOT. So typically a TIAR is not accepted at
19 the LUC stage, correct?

20 A That's correct.

21 Q Okay. But it would be appropriate, if I
22 hear you correctly, to have the TIAR accepted by the
23 project district zoning approval.

24 A That is -- I mean that probably is a better
25 point, yes.

1 Q And this Project is going through a project
2 district zoning approval?

3 A That is my understanding.

4 Q Then with respect to revisions of the TIAR
5 your concern about the five year requirements, but it
6 is generally true that if there are significant
7 changes in a project which would affect the
8 conclusions and traffic flow, that a revised TIAR
9 would then be appropriate.

10 A That would be correct.

11 Q So you would say that instead of having a
12 specific five year requirement there should be a more
13 general description of when --

14 A Right.

15 Q -- a TIAR should be revised.

16 A Right. And if you read the condition it
17 says over here "Any updates required by the State
18 Department of Transportation," I think would be an
19 adequate condition.

20 MR. YEE: Thank you. I have no further
21 questions.

22 CHAIRMAN LEZY: Redirect?

23 MR. TABATA: Thank you.

24 REDIRECT EXAMINATION

25 BY MR. TABATA:

1 Q Mr. Niiya, in your direct exam I asked you
2 if it was feasible to have a TIAR accepted prior to
3 final zoning approval. Now, I'm not sure if you
4 understand that the project district zoning process is
5 going to be in the zoning process.

6 So there's not going to be project district
7 zoning and then subsequently -- or excuse me -- it's
8 not going to be project district zoning after the
9 zoning process. They're one in the same.

10 A Oh, okay.

11 Q In other words, that is zoning.

12 A Okay.

13 Q The project district zoning process.

14 A Okay.

15 Q I just wanted to see does that change what
16 you just said in answering the State's questions?

17 A Yes, it does change it. I guess my
18 understanding of the process is you go to the
19 county -- I mean after this you have county zoning
20 process. Then after that my understanding was you
21 could go back and do the project districting rezone,
22 specifically certain portions of the development.

23 At the zoning part, you know, lotta times
24 the county or the developer won't go through and do
25 all the engineering work related to the project. It

1 would be after they get their zoning that most of the
2 projects and developers do the engineering work. And
3 that would be more appropriate.

4 After they do all the engineering work, do
5 all the final designs, at that point it would probably
6 be better and more problematic (sic) to do the update
7 to the TIAR. That way, you know, the improvements
8 that are recommended in the TIAR assess the impact
9 from the project.

10 MR. TABATA: Thank you. No more questions.

11 CHAIRMAN LEZY: Commissioners, questions?
12 Commissioner Heller.

13 COMMISSIONER HELLER: Yes. In your written
14 testimony on the fourth page there's a section headed
15 Future Year 2022 With Project. And below that a
16 couple paragraphs down it talks about: In some
17 instances Level of Service E or F are anticipated and
18 minor movements to intersections.

19 THE WITNESS: Yes.

20 COMMISSIONER HELLER: Can you just elaborate
21 a little bit on what you mean by minor, what is
22 considered a minor movement to an intersection?

23 THE WITNESS: Okay. When you have an
24 intersection, say a cross or a T intersection, say,
25 like Kamehameha Avenue that will be extended to the

1 project, you have a project road that intersects
2 Kamehameha Avenue.

3 What happens is that because your traffic is
4 moving in the north/south direction that's your major
5 movement; the side street sometimes will get to the
6 point where there's too much traffic on Kamehameha
7 Avenue for the left turn to come out. These are low
8 volume streets so it doesn't warrant installation of a
9 traffic signal.

10 A lot of times you'll just have to wait
11 until there's a break in the traffic and then you'll
12 be able to come out.

13 COMMISSIONER HELLER: And you were saying
14 that some of those may result in Level of Service E or
15 F at those intersections.

16 THE WITNESS: That's correct. You would
17 have to wait a little bit longer than normal to make,
18 like, a left turn out.

19 COMMISSIONER HELLER: Is there any potential
20 mitigation other than a traffic signal?

21 THE WITNESS: Other mitigations later on
22 down the road there might be the possibility of them
23 putting in a 'round about. But, again, if you start
24 putting a 'round about you're gonna start impeding the
25 flow on Kamehameha Avenue, this example, and then

1 allowing the guy to come out.

2 So that's the kind of things that we would
3 have to work with the county to see if it -- and do
4 our analysis at that point in time to see if that's an
5 appropriate improvement.

6 COMMISSIONER HELLER: So basically your
7 bottom line is that having a few of those sort of
8 minor movements at Level of Service E or F is a small
9 enough concern that you wouldn't recommend actually
10 doing anything to fix it.

11 THE WITNESS: No. And, you know, drivers
12 are smart because these are all local people that live
13 here. They will find out another way to get out.
14 We're only talking about the major roads.

15 There may be some minor local roads or other
16 major roads that they could come around to get out to
17 where they're going. It's not like it's a detour to
18 Maui that we're talking about. These are people that
19 have been dealing with development. They'll find a
20 way to get out.

21 COMMISSIONER HELLER: Thank you.

22 CHAIRMAN LEZY: Commissioners, any other
23 questions? Commissioner Judge.

24 COMMISSIONER JUDGE: Could you elaborate a
25 little bit more on that situation where road E doesn't

1 connect, how would you change the development to
2 handle that connection? I didn't quite understand
3 that.

4 THE WITNESS: Okay. Do you have
5 Petitioner's Exhibit 35?

6 COMMISSIONER JUDGE: Yes.

7 THE WITNESS: There was a map that we
8 included as part of the Petitioner's Exhibit 35.

9 COMMISSIONER JUDGE: Okay, I see it.

10 THE WITNESS: Where the X is on the south
11 side of Waiko Road is where road E was originally. It
12 now shows road F curving down to intersect Kuihelani
13 Highway further south.

14 COMMISSIONER JUDGE: So basically Kamehameha
15 Avenue would go all the way through and become your
16 access point.

17 THE WITNESS: That's correct.

18 COMMISSIONER JUDGE: And that road E would
19 not.

20 THE WITNESS: It would not. Yes, that's
21 correct.

22 COMMISSIONER JUDGE: All right. Thank you.

23 CHAIRMAN LEZY: Commissioners, any other
24 questions? Thank you for your testimony.

25 MR. MATSUBARA: The final witness today is

1 Grant Chun.

2 GRANT CHUN

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

5 THE WITNESS: Yes.

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

8 THE WITNESS: My name is Grant Chun. My
9 business address is 11 Pu'unene Avenue, Kahului, Maui.

10 DIRECT EXAMINATION

11 BY MR. MATSUBARA:

12 Q Grant, what's your title and
13 responsibilities at A&B Properties, Inc. as it relates
14 to this practitioner Project?

15 A My title is vice president at A&B
16 Properties, Inc. And my duties as it relates to this
17 property is to engage in the planning and outreach and
18 entitlement process that's necessary in order to bring
19 this Project to the community.

20 Q Could you give the Commission a brief
21 background of the Master Planning process and how the
22 plan evolved over time?

23 A Sure. Be happy to. As what was shared with
24 the Commission yesterday, we embarked on a series of
25 community-based workshops in 2005. These workshops

1 involved more than a hundred individuals from Kahului,
2 Wailuku, Waikapu as well as from various community
3 groups, government and education.

4 It was a very enjoyable, very enlightening
5 process. And it was good for us to really hear about
6 the ideas folks had as far as what may very well be
7 the last phase of Kahului Town.

8 As someone who grew up in Kahului through
9 this process for me it was very interesting to come to
10 the understanding that this Wai'ale area actually
11 represents what was envisioned back in the '40s and
12 '50s as the final phase of Kahului.

13 So from way back in that era it was imagined
14 that this entire area, including Maui Lani, as well as
15 the area immediately to the south of us, south of the
16 Waikapu Stream, would constitute sort of the
17 southernmost boundary of Kahului.

18 The Wai'ale area is described as a key urban
19 growth corridor in all three versions of the Maui
20 Island Plan. These versions were prepared by the
21 County's General Plan Advisory Committee, the Planning
22 Department as well as the Planning Commission.

23 The description of the area provided in
24 these documents was instrumental in how the plan has
25 evolved to this point. We really strive to come up

1 with a conceptual plan that honors the spirit and
2 intent of the Maui Island Plan.

3 There have been some refinements. And there
4 no doubt will be some refinements to mapping that will
5 have to be addressed through either the General Plan
6 update process and/or the Community Plan and zoning
7 processes on the local level based on information that
8 has developed since the various maps were produced.

9 And we fully anticipate being able to work
10 cooperatively with planning officials here locally to
11 ensure that that occurs.

12 In terms of those, that evolution and what
13 is fed into refinements that have occurred over time
14 since 2005, primarily as a result of the General Plan
15 Advisory Committee in its work on the Maui Island Plan
16 the Project Area is actually 200 acres smaller than
17 what was worked with back in 2005 because, of course,
18 the southern boundary of the plan was moved northward
19 to the stream by the General Plan Advisory Committee.
20 So that was a key element in the necessity of defining
21 the conceptual plan.

22 Also the plan was refined to accommodate for
23 cultural preserve areas as you're aware, which have
24 been identified subsequent to that early '05 work.
25 And as was indicated previously, the work that's

1 occurred since then includes an Archaeological
2 Inventory Survey as well as an accepted preservation
3 and burial treatment plan approved by SHPD.

4 Also the plan has been adjusted to
5 accommodate for the location of land donations that
6 are required by another entitlement, 40 acres, for
7 county affordable housing, a 3-acre neighborhood park
8 as well as a 7-acre community center site.

9 And the location of these sites has had to
10 be adjusted over time as well because of the
11 identification of the appropriate preservation and
12 preserve areas for the Project Area.

13 Also worth mentioning is we did have
14 representation at our workshops by officials from the
15 Department of Education. We have had several meetings
16 with their planning branch since then. The middle
17 school site, which is situated in this new
18 neighborhood, is consistent with the needs anticipated
19 by the department.

20 Through our community workshops it was
21 apparent that into the future Central Maui will
22 continue to be the primary center of population and
23 employment for our island. This fact, of course, was
24 acknowledged by the growth projections by the Maui
25 Island Plan.

1 So given our land holdings in Central Maui
2 we felt we were kind of, like, automatically a part of
3 the formula and conversation as far as how do we
4 recognize and accommodate for the growth that's
5 anticipated in a way that we hope is an asset to the
6 community.

7 As a point of clarification I think it would
8 be appropriate for me to mention that while Wai'ale is
9 a part of the Waikapu ahupua'a, as some of you may
10 recall from the site visit that occurred, there's a
11 reason I think why so many of our workshop
12 participants and folks that came here yesterday to
13 testify, actually are folks who, like me, grew up in
14 Kahului and lived there and have their businesses
15 there.

16 Because in terms of its terrain and climate
17 and topography and elevation and connectivity and its
18 ambience it really feels like a natural extension of
19 Kahului.

20 It's separated from what is commonly
21 referred to by local people here as Waikapu by the old
22 landfill which was closed 25 years ago, by a very
23 large drainage retention basin, and by topography
24 which actually has Waikapu sitting quite a bit higher
25 in elevation on the mountainside than on Wai'ale.

1 And also by the overall topography of the
2 vicinity that includes hundreds of acres between
3 Wai'ale and Waikapu which we don't actually even own.
4 A lot of that acreage is owned by the successors in
5 interest to Wailuku Sugar Company.

6 So there's a lot of lands that kind of
7 intervene between our Project site and what is
8 referred to commonly as Waikapu here on Maui.

9 Our vision for Wai'ale is very much in
10 keeping with the vision for Kahului Town that's
11 existed since the '50s. This will be a community of
12 local families who will have the opportunity, we hope,
13 to live and work and raise their families there.

14 This part of our island, for those of you
15 not from here, is generally not where you'll find your
16 second home buyers, your offshore buyers.

17 And we see it as a very logical extension of
18 the community that's been established here over the
19 decades. And we fully anticipate satisfying the
20 County's requirements for affordable workforce housing
21 onsite within the Project. We see that as very much a
22 fit for what we're trying to achieve here at Wai'ale.

23 Q Have you also had discussions with the
24 Department of Education in regard to the school
25 facilities that will be required for the Project?

1 A Yes, we have.

2 Q And the type of school, the location of the
3 school has all been in conjunction with planning,
4 meetings conducted with the Department of Education,
5 is that correct?

6 A Yes, that's correct.

7 Q Going back to your previous comment. The
8 segment of the market of Maui residents you're
9 designing your residential product for is the
10 workforce group, is that correct? This is workforce
11 housing you're looking at?

12 A Yes.

13 Q Thank you. In regard to a question that
14 arose yesterday in regard to the buffer on the
15 landfill it is A&B's intent to work with the
16 Department of Health and satisfy their buffer distance
17 requirements and other requirements they have in
18 regard to uses within that buffer area, is that
19 correct?

20 A Yes. If I may just clarify. I did catch a
21 misstatement yesterday. The buffer that's allowed for
22 is not a hundred feet. It's a hundred yards. I think
23 Mr. Witten used the term "feet".

24 Q Which is 300 feet?

25 A Yes.

1 Q Another question that arose was in regard to
2 the willingness of A&B to provide additional space or
3 facilities, if necessary, for the wastewater treatment
4 plant if that became necessary.

5 Would that be something that A&B would
6 consider as the planning process evolves, as the
7 development goes on?

8 A Yes. In working with county and other
9 processes that are required here locally we'd be open
10 to that.

11 MR. MATSUBARA: Thank you. Mr. Chun is
12 available for questions.

13 (Mr. Spence is now present)

14 CHAIRMAN LEZY: Mr. Hopper.

15 CROSS-EXAMINATION

16 BY MR. HOPPER:

17 Q Thank you, Mr. Chun. Could you once again
18 go over with Mr. Witten -- I asked the same question
19 of Mr. Witten -- but what additional entitlements you
20 believe the Project would require prior to
21 construction?

22 A Oh, well, subsequent to Land Use Commission,
23 hopefully affirmative action by the Land Use
24 Commission, we need to return to the county. Once the
25 General Plan has been adopted hopefully reflecting,

1 continue to reflect this Project within the Urban
2 Growth Boundaries, we still need to attain a Community
3 Plan Amendment as well as a zoning change for the
4 Project site.

5 Q As discussed yesterday the various uses as
6 outlined in your conceptual plan may change based on
7 the further entitlements such as the zoning, the
8 decision on the Community Plan and other county
9 requirements?

10 A Yes.

11 Q Could you -- you gave some background on the
12 50 acres that's going to be dedicated to the county
13 pursuant to the condition from another project. And
14 there are some proposals for lands, where those lands
15 would be situated.

16 However, has there been any final agreement
17 with the county as to where those spaces would be
18 within the Project Area?

19 A No. We've been working on sort of an
20 ongoing basis with the directors of Housing and Parks
21 on those locations but there's not a specific
22 determination in place at this point.

23 Q And would not the County Council have to
24 accept the dedication of that land in satisfaction of
25 the condition?

1 A Yes.

2 Q So if the land is either unsuitable or the
3 county for whatever reason determines it wants to
4 change this plan, it would need to change based on the
5 County Council and the department's actions?

6 A Yes.

7 Q Okay. You went over the draft Urban Growth
8 Boundaries. I know you heard the testimony yesterday
9 about the draft Urban Growth Boundaries. Is it your
10 opinion that this Project is consistent with the draft
11 Urban Growth Boundaries of -- I know there were
12 several different plans -- but is it your position
13 that this is consistent with the draft Urban Growth
14 Boundaries?

15 A Yes.

16 Q And is it also your position that this
17 Project is consistent with not only the growth
18 boundaries by the Maui Island Plan as a whole?

19 A Yes.

20 Q When those boundaries are adopted and when
21 the Maui Island Plan is adopted, you'll be required to
22 comply with whatever boundaries are adopted in that
23 plan, correct?

24 A Correct.

25 Q You're aware of the County's workforce

1 housing policy as you've discussed and as Mr. Witten
2 discussed yesterday, correct?

3 A Yes.

4 Q And you have given an estimated unit count
5 based on the affordable housing ordinance as required
6 today. You also recognize, though, that a workforce
7 housing agreement must be entered into with the
8 Department of Housing and Human Concerns prior to
9 subdivision approval, correct?

10 A Correct.

11 Q And that that agreement would specify the
12 method by which you would satisfy the County's
13 affordable housing requirements, correct?

14 A Right.

15 Q In addition you're also familiar with the
16 County of Maui's water availability ordinance, also
17 known as the Show Me The Water bill?

18 A Yes.

19 Q And are you aware that that will require the
20 Project to show access to a long-term reliable source
21 of water prior to subdivision approval?

22 A Yes.

23 Q Details about the open space. I noticed the
24 large 65-acre proposed park area that makes up a large
25 portion of the buffer. Could you explain the

1 background behind that park area?

2 A Well, back in 2005 I guess the question
3 posed in the community workshops was essentially if
4 this was the last phase, the last increment, if you
5 will, of the town of Kahului, what are the community
6 amenities that we would like to see, we as a group, we
7 as a community would like to see reflected there.

8 And so pretty much across the board the
9 concept of additional recreational areas was, came out
10 through the process. So it's through that early point
11 in the planning it was envisioned that this acreage
12 would accommodate for a regional recreational
13 facility.

14 Q And you're familiar with the park dedication
15 requirements of the Maui County.

16 A I am, yes.

17 Q Would that large 65-acre portion be used to
18 satisfy that? Or would the Project use the other
19 areas in the conceptual plan area to satisfy the
20 requirement?

21 A Well, that's to be worked out with the
22 director of parks as far as their, the department's
23 preference on that topic.

24 Q So the department may have a preference
25 based on the orientation of the parks and the

1 dedication requirements. And that's something you
2 would need to agree with based on the parks ordinance
3 and the department prior to subdivision approval?

4 A Yes.

5 Q And based on those discussions of county
6 ordinances have you read the conditions proposed in
7 the Department of Planning's written testimony?

8 A Yes, I have.

9 Q And would you see a problem with complying
10 with any of those conditions?

11 A Um, no. I don't see a problem complying
12 with those conditions.

13 Q Just a few follow-up questions from my
14 questions to Mr. Nance. Could you give an update on
15 the current status of the discussions with the Waikapu
16 Town Center project and Mr. Atherton with respect to
17 the use of those wells for the Project?

18 A Sure. We've had some very productive
19 positive meetings with Mr. Atherton. He has been very
20 open with us in terms of sharing information
21 concerning the wells that are there and the resource
22 that's available there.

23 And we are working towards arriving at a
24 mutually beneficial understanding that will help to
25 provide supply for these lands.

1 Q And even if that project doesn't go forward
2 or doesn't go forward in a timely manner, you would
3 need to comply with the County's water availability
4 requirements prior to subdivision approval, correct?

5 A Yes.

6 Q Looking in the long term for those wells,
7 would A&B's preference be to dedicate those wells to
8 the county of Maui if possible over time?

9 A Yeah, that's generally what is deemed the
10 preference. It's not always what occurs. But the
11 hope is always to allow the -- to create a scenario
12 where the system becomes part of the public system.

13 Q That would be in conjunction with the, of
14 course, the owners of the well?

15 A Yes.

16 Q So given that, you believe you can satisfy
17 the County's water availability requirements prior to
18 subdivision approval?

19 A Yes, we do.

20 Q At this stage the county, though, has not
21 received any final agreement with the county regarding
22 the water supply for this Project, correct?

23 A Correct.

24 Q Okay. Thank you. I have no further
25 questions.

1 CHAIRMAN LEZY: Mr. Yee.

2 CROSS-EXAMINATION

3 BY MR. YEE:

4 Q Mr. Chun, will you be implementing either
5 the mitigation measures recommended by your
6 consultants or better mitigation measures which you
7 might identify in the future?

8 A I'm sorry. Could be a little more specific.

9 Q Will you be implementing the mitigation
10 measures recommended by your consultants in the EIS or
11 something better, if you can identify something better
12 in the future?

13 A Yeah. Our intention is to work with the
14 proposed mitigation measures that have been suggested
15 in our EIS.

16 Q When you say "intention" is that to be
17 distinguished from a commitment?

18 A Well, I mean I think there is some fleshing
19 out to do through the process as far as specifics with
20 regard to mitigation. But I mean, you know, we are
21 committed to working to achieve mitigation as
22 reflected in the EIS document.

23 Q I understand that sometimes your, the EIS
24 does not have a specific mitigation measure. So if it
25 doesn't have one it doesn't have one. But if there is

1 a specific mitigation measure listed in your EIS are
2 you committing to do those mitigation measures?

3 A Well, I don't have it in front of me. But,
4 yeah, I guess, yeah, we are. That's the intention.

5 Q I just get nervous when people start to make
6 a statement and then backtrack.

7 A If I could just clarify.

8 Q Sure.

9 A You know, I hesitate to be so unequivocal
10 and answer your question with a yes or no. Because
11 you know the state of the world today is that
12 technology and the sorts of mitigation that become
13 available over time, over very short periods of time
14 evolve very quickly now. And so I just wanted to --
15 I'm not trying to evade your question. I just want to
16 make that clear.

17 Q And I had originally asked: Either the
18 mitigation measures recommended by your consultants in
19 the EIS or a better mitigation which you might
20 identify in the future.

21 A Okay. Thank you.

22 Q So the answer to that would be yes.

23 A Yes.

24 Q Now, you heard Mr. Witten's testimony
25 regarding that there are a number of feasible

1 opportunities for a variety of mitigation measures to
2 reduce energy, potable water use and to impose, to put
3 on low-impact development measures, but that this was
4 at too conceptual of a stage to give me a specific
5 mitigation measure. Do you remember that testimony?

6 A Yes.

7 Q Oka. Your engineer, however, did give us at
8 least one Best Management Practice which is a type of
9 low impact development for drainage. Do you remember
10 that as well?

11 A Mm-hmm, yes.

12 Q Do you remember her testifying that that was
13 her recommendation to you?

14 A Yes, I do.

15 Q Is that one of the recommendations that you
16 would be -- similar to what you had testified
17 earlier -- would that be one of the mitigations you
18 will be imposing unless you find something better?

19 A Yeah. As we go through the design process
20 and engineering occurs and the recommendations are
21 more fleshed out, and to the extent that the
22 recommendations are in concert with what are referred
23 to today as Best Management Practices, yes.

24 Q Are there any other specific energy savings,
25 potable water reduction or low impact development

1 mitigation measures that you can identify for the
2 Commission today? Or is it still too conceptual to
3 give us the specifics?

4 A I think it's still too conceptual.

5 Q Have you had discussions with the Federal
6 Fish and Wildlife the State Department of Fish and
7 Wildlife regarding endangered and threatened species
8 in the Project?

9 A Yes, we have.

10 Q And do you know what the status of those
11 discussions are?

12 A Well, off the top of my head I haven't
13 participated personally, but I know that the folks in
14 our organization who have that interface have
15 frequently and as a matter of regular part of their
16 work often regularly successfully arrived at protocols
17 that are workable.

18 Q So the status is that you're still in
19 discussion with them.

20 A Yes.

21 Q Okay. You mentioned that you were -- you
22 had meetings with the Department of Education. And
23 you've, I guess, come to understand their consensus
24 about the location of the school, the middle school,
25 is that right?

1 A Yes.

2 Q Are you aware the Department of Education is
3 still looking for an educational contribution
4 agreement?

5 A Yes, we are.

6 Q What is the status of that discussion?

7 A We're aware that they require this agreement
8 to be established. And we fully anticipate complying
9 with their requirement.

10 Q Do you know if the land for the middle
11 school is intended to be the entire contribution by
12 A&B or if there was an additional monetary
13 contribution expected?

14 A I believe there will be an additional
15 contribution expected.

16 Q You're aware that the county is asking that
17 a wastewater treatment facility be constructed rather
18 than a connection to the existing county wastewater
19 system.

20 A Yes, I'm aware of that.

21 Q Are you prepared at this point to make a
22 commitment about that issue?

23 A It's the -- I really hesitate when you use
24 the word "commitment", Mr. Yee. But it is the -- at
25 this point it seems like the most logical, feasible

1 alternative. And as we proceed with the specific
2 design of the Project to the extent that remains the
3 case, yes.

4 Q You heard Mr. Nance testify that if a
5 wastewater treatment facility is constructed that
6 there will be -- the wastewater will be reused rather
7 than injected?

8 A Yes, I did.

9 Q Is that a commitment you can make if a
10 wastewater treatment facility --

11 A That's what we anticipate occurring, yes.
12 If a wastewater treatment is constructed within the
13 site.

14 Q So you anticipate a reuse rather than
15 injection but you're not sure yet.

16 A Correct, yes.

17 Q I heard your testimony regarding the Maui
18 Island Plan, consistency with the Maui Island Plan.
19 My question is: Hypothetically if there is revision
20 to the Maui Island Plan which affects the Petition
21 Area so that some part of it or some aspect of it is
22 no longer consistent, what happens then?

23 A We would need to refine our plan in the
24 context of the county entitlements to achieve
25 consistency with the General Plan.

1 Q Would it be your intent that the District
2 Boundary Amendment, however, would remain in urban
3 even if it is inconsistent with the Maui Island Plan?

4 A Yes. But I should clarify that we don't
5 anticipate the actual boundary being changed. It's in
6 every version of the plan.

7 And to tell you the truth, absent the
8 inclusion of this urban growth area the plan is not
9 going to hit its expectations as far as projected
10 units required in the planning period.

11 Q You know, that's a fair point because there
12 are different aspects of the Maui Island Plan. I
13 should have been clearer.

14 If for some reason the Urban Growth Boundary
15 changes and that some portion of this property is not
16 within the Urban Growth Boundary, the likelihood is
17 then you're not going to be able to put in urban uses
18 on that portion of the property, right? The County's
19 not going to let you do that, right?

20 A Yes, correct.

21 Q But it would be classified, assuming you get
22 a positive decision from the LUC, the land would be
23 classified as urban, right?

24 A Correct.

25 Q Do you intend to come back to the LUC or do

1 you intend to just leave it in urban?

2 A Well, that's a hypothetical a little bit
3 hard for me to addresses at this point.

4 Q Have you ever reviewed the Office of
5 Planning's proposed conditions in this case?

6 A Yes. I'm familiar with those.

7 Q I'm going to go over those conditions. And
8 hopefully I'm going to try to make it relatively easy
9 to remember what the concerns were. We have met, A&B
10 has met with the Office of Planning regarding these
11 conditions, right?

12 A Yes.

13 Q Okay. So you didn't have any problems with
14 Condition 1 regarding affordable housing, right?

15 A Correct.

16 Q You do have a concern on Condition 2 about
17 the timing of the TIAR updates.

18 A Yes. We anticipate that our counsel will be
19 able to work with the Office of Planning to resolve
20 that.

21 Q The rest of the conditions you were okay
22 with.

23 A Yes.

24 Q You had concerns about Condition 3 because
25 you don't yet have a form for that --

1 MR. MATSUBARA: Let me just raise a point of
2 clarification or information. We're continuing to
3 discuss with the Office of Planning the language of
4 four conditions, all the rest of these other 16
5 acceptable. But we're continuing to still discuss
6 matters. And we continue to exchange language
7 modification.

8 So I don't know whether this discussion to
9 elicit, through cross-examination an agreement when
10 we're in the process of wordsmithing three of the
11 remaining conditions is appropriate.

12 That's the only reason I raise the question
13 because we're continuing to talk about it.

14 MR. YEE: I'd be willing to accept just the
15 identification of the conditions that are at issue.

16 MR. MATSUBARA: Okay. We can go over those.

17 Q (Mr. Yee) Can you list to me what are the
18 four conditions that you have concerns about without
19 getting into the specifics of those concerns?

20 A I believe they are Conditions 2, 3, 7 and
21 11.

22 Q And actually you have some concern about 6,
23 correct?

24 MR. MATSUBARA: I believe you agreed to
25 allow the civil defense to make the determination when

1 the sirens get put out. So we're okay.

2 Q (Mr. Yee): Okay. Well, for the
3 Commission's information that is correct. The
4 condition you have before you they had concerns with.
5 And we reached agreement. But I just wanted to point
6 out with respect to the only document you have in
7 front of you they're in disagreement with Condition 6.
8 Thank you, Mr. Chun.

9 THE WITNESS: Thank you, Mr. Yee.

10 CHAIRMAN LEZY: Redirect?

11 MR. MATSUBARA: No redirect.

12 CHAIRMAN LEZY: Commissioners, questions?
13 Commissioner McDonald.

14 COMMISSIONER McDONALD: Thank you for your
15 testimony. Just a clarification. We heard testimony
16 yesterday with regards to A&B's previously entitled
17 permitted projects. I believe there are maybe about
18 six. I could be mistaken. Could you provide the
19 Commission maybe a status of where these projects
20 might be?

21 THE WITNESS: Sure. Absolutely. I'd be
22 happy to. We've been working on a number of different
23 projects as probably surfaced through the testimony
24 yesterday. You know, we are a large landowner on this
25 island with lands in several different areas upon the

1 island of Maui. So we do have a number of projects,
2 not all of which required entitlements per se.

3 We have some redevelopment of existing urban
4 lands that are in the older section of Kahului Town.
5 I think one of the projects that was referred to was a
6 condominium project referred to as Ka'aina O Kane
7 which is on an existing entitled parcel right in the
8 middle of Kahului.

9 And actually the status on that is it's
10 fully entitled. Has its SMA permit. We actually went
11 to market on the units at Aina O Kane. It fell
12 victim, of course, to the market situation.

13 In Kahului the market is very, very local.
14 And the reservations that we had, the folks that had
15 entered into reservations with us were depending upon
16 the market to sell their own homes so they could
17 downsize. And that market went away.

18 So at some point we know it will be viable.
19 Again it's a local project and we have to time it so
20 that it's suitable for the marketplace.

21 Another project that we worked on that was
22 referenced, I think, in testimony yesterday is a
23 subdivision at Hali'imaile. That's a 68-acre
24 single-family subdivision area, again fully entitled.
25 The hurdle for that project is water. It's located in

1 the Upcountry region of Maui which has some particular
2 challenges in terms of water supply. We have been
3 working for several years now actually with the County
4 Department of Water Supply in identifying alternatives
5 that might be suitable to free that project up. That
6 project is also one that is aimed at our local
7 community.

8 Until recently the fellow who went through
9 the laundry list referenced the Kahului Airport Hotel,
10 which I'm glad to say is in construction. Hopefully
11 you folks can stay there at future meetings. It's a
12 Courtyard by Marriott property.

13 Another project that's been entitled for
14 quite sometime, which was on hold but it's in full
15 swing now an under construction, is our Maui Business
16 Park light industrial area located right off of Dairy
17 Road in Kahului. It's a full scale site work. It's
18 been kind of exciting for our community actually.

19 It's been -- a lot of folks are off the
20 bench because that project has begun. So we chip
21 away. But it is a true statement that we have several
22 projects that we're working on at any given time.

23 COMMISSIONER MAKUA: What about North Kihei?

24 THE WITNESS: North Kihei, it has its urban
25 designation. It's before the County Council still.

1 It's not zoned yet. We got through the Maui Planning
2 Commission and are at the committee level in review at
3 the Maui County Council for zoning. That is also
4 primarily a single-family local housing project but it
5 also has a multi-family component as well as a small
6 neighborhood/commercial type area within the project
7 site.

8 COMMISSIONER McDONALD: Thank you.

9 THE WITNESS: Thank you.

10 CHAIRMAN LEZY: Commissioners, any
11 additional questions? Thank you for your testimony,
12 Mr. Chun.

13 THE WITNESS: Thank you.

14 MR. MATSUBARA: That concludes the
15 Petitioner's witnesses except for rebuttal witnesses
16 that may be necessary.

17 CHAIRMAN LEZY: Thank you. Mr. Hopper, are
18 you prepared to proceed?

19 MR. HOPPER: Yes, I am, Mr. Chair. The
20 county of Maui would like to call William Spence.

21 WILLIAM SPENCE
22 being first duly sworn to tell the truth, was examined
23 and testified as follows:

24 THE WITNESS: I do.

25 CHAIRMAN LEZY: Please state your name and

1 your business address.

2 THE WITNESS: My name is William Spence.

3 I'm the Planning Director for Maui County. My
4 business address is 250 South High Street in Wailuku.

5 DIRECT EXAMINATION

6 BY MR. HOPPER:

7 Q Mr. Spence, you said you're the planning
8 director. Could you give a brief history of your work
9 experience prior to your position as planning
10 director.

11 A I was a staff planner in the Maui Planning
12 Department for ten years from 1992 to 2002. From
13 that, before become planning director -- between the
14 time of becoming planning director I was a land use
15 consultant where I represented mostly small landowners
16 through the entitlement process.

17 MR. HOPPER: Based on the resumé submitted
18 by Mr. Spence and his work experience I would request
19 that he be admitted as an expert in the field of
20 planning.

21 MR. MATSUBARA: No objections.

22 MR. YEE: No objection.

23 CHAIRMAN LEZY: Commissioners? Admitted.

24 Q (Mr. Hopper): Are you familiar with the
25 Wai'ale Project, Mr. Spence?

1 A Yes, I am.

2 Q Could you please summarize the written
3 testimony of the Planning Department.

4 A The Planning Department is in support of
5 this District Boundary Amendment with conditions as
6 proposed in our testimony.

7 Q Could you give some background and describe
8 what is the Maui Island Plan?

9 A The Maui Island Plan is our General Plan for
10 the island of Maui. I believe in 2004 the County
11 Council adopted a new process for our General Plan.
12 It included a lot of new provisions -- well, if you
13 were familiar with our old General Plan, it was about
14 60 pages. Didn't say a whole lot, with no maps and no
15 details what, a lot of conflicting details where the
16 county should be going.

17 The adoption of this new process requires a
18 lot more specificity and gives direction to the
19 different departments and to developers, whatnot, in
20 which direction the county should be going.

21 Q Can you describe what are Urban Growth
22 Boundaries within that plan.

23 A The Urban Growth Boundaries are a
24 requirement of this new process. They are -- there's
25 a number of reasons for including them, including

1 providing predictability of where district boundary
2 amendments are going to take place, including
3 providing the landowner/community development
4 community predictability in where they can propose
5 development to provide our line agencies some kind of
6 direction on where they should be investing their CIP
7 funds, to let the residents know what's coming.

8 In some ways it's very similar to the Urban
9 District that this body deals with all the time.
10 You're either in that district for -- in this case
11 you're either in the boundaries or you're outside and
12 that dictates your permissible uses.

13 Q And the Urban Growth Boundaries are required
14 by the county ordinance that sets out what needs to be
15 in the Maui Island Plan, correct?

16 A Yes. There are two kinds of boundaries for
17 the Maui Island Plan. One of them is the urban
18 boundary for higher density, more urban type uses.
19 And a Rural Growth Boundary where the uses would be
20 much less dense and on a much lower scale.

21 Q Could you give a bit of a history behind the
22 process of adopting the Maui Island Plan to date,
23 where it's gone and where it is currently?

24 A The proposed Maui Island Plan has been
25 through a very long process. It started with the

1 General Plan Advisory Committee, a group of 25
2 individuals representing different segments of the
3 community. They were supposed to spend 180 days, I
4 believe, in reaction to a draft document sent to the
5 planning director at that time, proposed changes to
6 that or, you know, whatever agreements.

7 They were also sent a draft set of Urban
8 Growth Boundary maps. And they reviewed those and
9 made recommendations to those that once their
10 recommendations were pau they were sent to the
11 Planning Commission where they did a similar review.
12 And then now we're up to the Maui county council. We
13 have a specific committee just for the General Plan.

14 And we are currently, I would say, we're
15 probably more than two-thirds through making that
16 review.

17 Q So through this process, Director Spence,
18 and as required by the ordinance, there will be
19 recommendations made to the county council by the
20 General Plan Advisory Committee and the Planning
21 Commission and the planning director, correct?

22 A That's correct.

23 Q And the plan is not finalized and the
24 boundaries are not considered finalized until the
25 county council adopts those, correct?

1 A That's correct.

2 Q You stated they're at the committee stage
3 right now reviewing the plan, and would have to agree
4 on the plan, have that move to first and then second
5 reading, then have that adopted as an ordinance,
6 correct?

7 A That's correct.

8 Q The plan does not only include boundaries.
9 It's actually a plan that includes a lot of language
10 describing various projects and other issues related
11 to growth in Maui County, correct?

12 A That's correct. The document is intended
13 not just to show where development can go but what the
14 characteristics of that development are. And when
15 considering, you know, District Boundary Amendments or
16 changes in zoning it's intended to provided the
17 decision-making bodies with some direction.

18 Q And was the Wai'ale Project, to your
19 knowledge reviewed by the General Plan Advisory
20 Committee or the Planning Commission?

21 A This particular Project has been reviewed
22 all the way through the process from the General Plan
23 Advisory Committee, Planning Commission. It is now in
24 front of the General Plan Committee with the county
25 council. The planning directors, two subsequent or

1 previous planning directors have also been taking a
2 look at this Project.

3 Q What were the recommendations of the GPAC,
4 Planning Commission and currently the director?

5 A all the way through this process there has
6 been support. There's a recognition that there is
7 going to be this Project in place.

8 This is an appropriate location for urban
9 density uses. And that has been really consistent
10 throughout the process with all the different
11 reviewing bodies both by the community, by commission
12 and by the planning directors and planning staff.

13 Q What sort of concerns were raised by the
14 GPAC and the Planning Commission during the review of
15 this Project?

16 A I believe that the commission has heard
17 quite a bit of testimony regarding one of the
18 separation between existing towns, say, Waikapu and
19 Kahului. This has its -- Wai'ale has its own identity
20 and it's not just kind of a melting in of more urban
21 sprawl, but a separation so that different towns keep
22 their identities.

23 There's a concern over building on the sand
24 dunes and also a concern over the burials within those
25 dunes.

1 Q And you believe the Project as designed has
2 addressed those concerns?

3 A I believe so. I know that there's more
4 detail to be worked out during the zoning process,
5 Community Plan process. But by and large, yes. I
6 think these concerns have been addressed.

7 Q Can you explain why the department is in
8 support of this District Boundary Amendment even
9 though it currently does not conform to the existing
10 Community Plan designation?

11 A The Community Plan was, for this area, was
12 adopted about 10 years ago. The proposed projects
13 within that Community Plan area have either become
14 unfeasible or the concepts outdated. So, you know, as
15 planning theory goes on and planning processes
16 continue this becomes much more a logical extension of
17 the urbanized area on Maui.

18 Q And this Project will be required to obtain
19 a Community Plan amendment prior to construction,
20 correct?

21 A That's correct.

22 Q And you believe that the Maui Island Plan,
23 the draft language and the reviews that have been
24 going on, is perhaps a more up-to-date indication of
25 the planning for this area than the Community Plan?

1 A Yes. And as the Petitioner's representative
2 pointed out, they went through quite a considerable
3 community engagement process of what should be done
4 with this property. The previous community plan,
5 though it certainly engaged the community, I believe
6 the Petitioner has done a much more thorough job in
7 particularly with people right in that area.

8 Whereas the Community Plan as a whole is
9 much broader and people would not, not be as directly
10 influenced or interested in this particular Project.

11 Q Yesterday there were some questions raised
12 regarding if the draft Urban Growth Boundary maps were
13 adopted as written would this Project be able to
14 proceed with those maps in place, without having those
15 maps amended.

16 Do you believe that the Project could
17 proceed if -- again, I should clarify. There's three
18 different maps. If the planning director-recommended
19 map were to be adopted by council -- and again this is
20 all subject to council approval -- do you believe that
21 the Project could proceed based on the map as it
22 currently is drawn up?

23 A Yes. This Project could proceed. And as
24 I'm understanding the testimony that took place
25 yesterday, there is concern over the green space noted

1 on the various maps. This green space, according to
2 the draft plan, can be moved through the approval
3 process on the county level. That can take place
4 either in the adoption of the plan, the Community Plan
5 level or through the zoning level. And I would, if I
6 could, I'd like to read out of this provision in the
7 plan indicating that kind of flexibility.

8 MR. HOPPER: Mr. Chair, since the entire
9 plan is not an exhibit I would ask that Mr. Spence be
10 allowed to read the portions and we could provide
11 those portions as an exhibit to the Commission after
12 Director Spence has read from them.

13 CHAIRMAN LEZY: Mr. Matsubara?

14 MR. MATSUBARA: No objection.

15 CHAIRMAN LEZY: Mr. Yee?

16 MR. YEE: No objection.

17 CHAIRMAN LEZY: Commissioners? That's fine.

18 THE WITNESS: Thank you, Commissioners.

19 This is coming -- what I'm going to read is a
20 description of this area, at least a portion of it.
21 This comes out of -- it's a draft plan. Of course, it
22 hasn't been adopted yet, but out of section chapter 8
23 which is the directed growth section.

24 And the description of the green areas that
25 you've seen on the various maps that have come before

1 this body: The map says, "The district boundaries of
2 park, specific location of recreational uses and the
3 precise amenities will be defined during the
4 Wailuku/Kahului Community Plan update and the Wai'ale
5 Project review and approval process." And that is
6 referring to the county process of obtaining zoning or
7 community plan amendment.

8 So the intent of this plan is that there be
9 open space buffers, that there be a separation between
10 the different towns, that there be a protection of the
11 burials.

12 However, the maps in here, at least the
13 indication of where those spaces are supposed to be,
14 have yet to be determined through the county
15 processes.

16 Q (Mr. Hopper): Mr. Spence, I also want you
17 to distinguish between the Urban Growth Boundary
18 itself and the green space shown on the draft plan.
19 Mr. Mayer provided an exhibit to the Commission
20 yesterday.

21 Those maps themselves that Mr. Mayer
22 provided are a matter of record. They're in the draft
23 EIS as Figures 5-1, 5-2 and 5-3. Figure 5-3 is the
24 recommendation of the General Plan Advisory Committee.
25 You're familiar with that map, as recommended?

1 A Yes, I am.

2 Q In that map those red lines are the Urban
3 Growth Boundaries themselves as required by the Maui
4 County code, correct?

5 A That's correct.

6 Q And you can see that it's drawn around such
7 that the green space's actually outside the draft
8 Urban Growth Boundary, correct?

9 A That's correct.

10 Q However, in both the Maui Planning
11 Commission recommendation and the planning director
12 recommendation though that green space is still there,
13 the Urban Growth Boundary is no longer drawn in the
14 same manner as it was as recommended by the General
15 Plan Advisory Committee, correct?

16 A That's correct.

17 Q Again this is all subject to county council
18 approval. And whatever plan they approve the
19 Petitioner must comply with, correct?

20 A That's correct.

21 Q Could you give, however, an explanation to
22 your knowledge and, of course, you're director so this
23 is your recommendation, as to why the Urban Growth
24 Boundaries were drawn so as to not exclude that green
25 space from the boundaries -- or to include the green

1 space basically?

2 A Okay. The General Plan Advisory Committee
3 map shows that the green space is excluded from the
4 Urban Growth Boundary. The planning director at that
5 time, Mr. Jeff Hunt, felt that was fairly restrictive
6 and noted that green space, that protective area,
7 green space, was not necessarily scientifically
8 located.

9 There was -- there was no particular studies
10 done. There was no, no Archaeological Inventory
11 Survey done that would show the precise location of
12 the burials.

13 So rather than, say, "okay this is hard and
14 fast" and then find out later on, that oh, these green
15 spaces are in the wrong location and they should
16 really be preserving something else, but just include
17 the whole thing within the Urban Growth Boundary.

18 And, you know, when we go through the zoning
19 in a much more detailed approval process we can locate
20 that green space appropriately.

21 Q And it would be the Maui county council
22 who's required to grant a change in zoning for this
23 Project, correct?

24 A That's correct.

25 Q And there's also the Maui county council

1 that will be adopting the Maui Island Plan as well,
2 correct?

3 A That's correct. And it's also the Maui
4 county council who will be approving a community plan
5 amendment.

6 Q Yes. Good point. Thank you. And then,
7 finally, does the county of Maui have any plans to
8 designate this parcel as Important Agricultural Lands?

9 A No, they are not.

10 MR. HOPPER: Thank you. I have no further
11 questions.

12 CHAIRMAN LEZY: Mr. Matsubara?

13 MR. MATSUBARA: Thank you, Mr. Spence. I
14 have no questions.

15 CHAIRMAN LEZY: Mr. Yee?

16 CROSS-EXAMINATION

17 BY MR. YEE:

18 Q If the Land Use Commission approves the
19 District Boundary Amendment, the Petition Area would
20 be inconsistent or the urban Petition Area will be
21 inconsistent with the Community Plan as it exists
22 today, correct?

23 A Yes, that's true.

24 Q As I understand your testimony it would be
25 consistent, however, with the current draft plan

1 recommended by you to the county council.

2 A It's a consistent -- it would be consistent
3 in a draft plan. And it has been throughout the
4 process.

5 Q Okay. I guess my question is: What should
6 happen if the Land Use Commission approves the
7 District Boundary Amendment, and then the Maui Island
8 Plan as finally approved is somehow inconsistent with
9 that District Boundary Amendment? What do you think
10 should happen then?

11 A Well, since ultimately the zoning approval
12 process, Community Plan approval process is on the
13 county level, the Petitioner can only go forward with
14 that portion that is consistent. I'm not sure that
15 answers your question.

16 Q Would the county be satisfied leaving the
17 land in urban?

18 A Yes.

19 MR. YEE: I have no further questions.
20 Thank you.

21 CHAIRMAN LEZY: Redirect?

22 MR. HOPPER: No, Mr. Chair. This was,
23 unfortunately, the only witness that was available for
24 the county today. We had informed the parties, and --

25 CHAIRMAN LEZY: I asked if you had any

1 redirect.

2 MR. HOPPER: Oh, I thought you said -- no.

3 No, Mr. Chair.

4 CHAIRMAN LEZY: Commissioners, questions?

5 Okay. And I assume by your apology that you do not

6 have another witness lined up today?

7 MR. HOPPER: No, Mr. Chair. We do have

8 other witnesses. However, they're unavailable today

9 with our apologies.

10 CHAIRMAN LEZY: Well, that being the case,

11 unavoidable, I would say for future reference,

12 however, we ask that the parties try their best. This

13 is now the second meeting in a row I believe where

14 we've had to adjourn early because of the

15 unavailability of witnesses.

16 So for future reference I'd ask, please,

17 that the parties make an extra effort to have their

18 witnesses lined up so that the Commission can get its

19 business done in a timely manner. Anything else

20 before we adjourn?

21 MR. MATSUBARA: Nothing further. Thank you.

22 CHAIRMAN LEZY: Commissioners? Okay. All

23 right. Thank you very much.

24 (The proceedings were adjourned at 12:00 p.m.)

25 --oo00oo--

1

2

C E R T I F I C A T E

3

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

6

7 That I was acting as court reporter in the
8 foregoing LUC matter on the 17th day of February
9 2012;

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

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

15

16 DATED: This _____ day of _____ 2012

17

18

19

20

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

23

24

25

26

