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LAND USE COMMISSION  
STATE OF HAWAI'I  
CONTINUED HEARING  
A10-789 A&B PROPERTIES, INC.(WAI'ALE) Maui)  
\_\_\_\_\_}

TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on for a Public Hearing  
at Maui Arts & Cultural Center, Alexa Higashi Meeting  
Room, One Cameron Way, Kahului, Maui, Hawai'i, 96732,  
Hawai'i, commencing at 10:20 a.m. on April 4, 2012,  
pursuant to Notice.

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

## A P P E A R A N C E S

## COMMISSIONERS:

KYLE CHOCK

THOMAS CONTRADES

NORMAND LEZY (Chairman)

CHAD McDONALD

JAYE NAPUA MAKUA

ERNEST MATSUMURA

EXECUTIVE OFFICER: ORLANDO DAVIDSON

ACTING CHIEF CLERK: RILEY HAKODA

STAFF PLANNERS: BERT SARUWATARI, SCOTT DERRICKSON

DEPUTY ATTORNEY GENERAL: SARAH HIRAKAMI, ESQ.

AUDIO TECHNICIAN: WALTER MENCHING

Docket No. A10-789 A&amp;B PROPERTIES, INC. (WAI'ALE)

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

For the County: MICHAEL HOPPER, ESQ.  
Deputy Corporation Counsel  
WILLIAM SPENCE, DANNY DIAS

For the State: BRYAN YEE, ESQ.  
Deputy Attorney General  
ROBYN LOUDERMILK,  
Office of Planning

## INDEX

1		
2	PUBLIC WITNESS TESTIMONY	PAGE
3	Michael Lee	7
4	Nick Harders	15
5	Hanalei Fergerstrom	16
6	Hannah Bernard	21
7	Lucienne de Naie	27
8	Dick Mayer	34
9	His Highness Kukini	40
10	Johanna Kamaunu	44
11	Kaneloa Kamaunu	47
12	Clare Apana	52
13	Pono Kealoha	60
14	David Taylor	63
15	DOCKET WITNESSES	
16	JO-ANN RIDAO	
17	Direct Examination by Mr. Hopper	71
18	JADINE URASAKI	
19	Direct Examination by Mr. Yee	81
20	Cross-Examination by Mr. Matsubara	88
21	Redirect Examination by Mr. Yee	91
22	RODNEY FUNAKOSHI	
23	Direct Examination by Mr. Yee	93
24		
25		

1           CHAIRMAN LEZY: (Gavel) Good morning.  
2 This is a meeting of the State of Hawai'i Land Use  
3 Commission. The first item on the agenda is the  
4 adoption of minutes from the March 15-16, 2012  
5 meeting. Commissioners, any revisions? Hearing none,  
6 do I have a motion? ..... anyone?

7           COMMISSIONER McDONALD: Move to accept.

8           CHAIRMAN LEZY: This is what happens when  
9 you have just a month left on your term. (Laughter)

10          COMMISSIONER MATSUMURA: Second.

11          CHAIRMAN LEZY: Thank you. All in favor?  
12 (aye) All opposed? Passed. Tentative meeting  
13 schedule, please, Mr. Davidson.

14          MR. DAVIDSON: You have the tentative  
15 meeting schedule with, as you will note, very  
16 significant items, second meeting in May and into  
17 June. So as always please contact Riley with any  
18 conflicts regarding the schedule. Thank you.

19          CHAIRMAN LEZY: Thank you. The next item  
20 on the agenda is the continued hearing on Docket No.  
21 A10-789 A&B Properties, Inc., Wai'ale, Petition to  
22 Amend the Agricultural Land Use District Boundary into  
23 the Urban District for approximately 545.229 acres at  
24 the Wailuku and Waikapu, county of Maui, state of  
25 Hawai'i TMK:3-8-05: portion of 23 and 37, 3-8-07:71,

1 portion of 101 and 104. Parties, appearances, please.

2 MR. MATSUBARA: 'Morning, Mr. Chairman,  
3 members of the Commission. Benjamin Matsubara and  
4 Curtis Tabata on behalf of Petitioner A&B Properties,  
5 Inc.

6 CHAIRMAN LEZY: Good morning.

7 MR. HOPPER: Good morning, Mr. Chair,  
8 members of the Commission. Michael Hopper with the  
9 Department of Corporation Counsel representing the  
10 Maui County Department of Planning. With me is Danny  
11 Dias as well as William Spence, planning director.

12 CHAIRMAN LEZY: 'Morning.

13 MR. YEE: Good morning. Deputy Attorney  
14 General Bryan Yee on behalf of the Office of Planning.  
15 With me is Rodney Funakoshi and Robyn Loudermilk from  
16 the Office of Planning.

17 CHAIRMAN LEZY: Good morning. Let me  
18 update the record on this docket. On February 21,  
19 2012 the Commission received written correspondence  
20 from Abraham Freeman.

21 On March 29, 2012 the Commission received  
22 Maui County's Amended List of Witnesses and Exhibit 8.

23 On April 2, 2012 the Commission received  
24 Office of Planning's First Amended List of Exhibits  
25 and Exhibits 12 through 16.

1           On April 3, 2012 the Commission received a  
2 memorandum from the State Commission on Water Resource  
3 Management regarding this docket matter.

4           Let me describe our procedures for today.  
5 I'll first call for those individuals desiring to  
6 provide public testimony to identify themselves. All  
7 such individuals will be called in turn to our witness  
8 box where they'll be sworn prior to their testimony.

9           After completion of the public testimony  
10 portion of the proceedings we will move into the  
11 docket matter. I'll give opportunity for the parties  
12 to admit to the record any additional exhibits. After  
13 the admission of exhibits, the County of Maui Planning  
14 Department and the State Office of Planning and the  
15 Petitioner will continue presentation of their  
16 respective cases. For the information of the parties,  
17 closing arguments will be held after submission of the  
18 proposed Decisions and Orders.

19           I also note for the parties and the public  
20 that from time to time I'll be calling for short  
21 breaks. Are there any questions regarding our  
22 procedures for today?

23           MR. MATSUBARA: No questions.

24           MR. HOPPER: No, Mr. Chair.

25           CHAIRMAN LEZY: Is there anyone who wishes

1 to provide public testimony on this matter? I'm sorry  
2 Mr. Davidson, you have the list.

3 MR. DAVIDSON: We have four signups, Chair.  
4 First, Michael Lee followed by Nick Harders followed  
5 by Hanalei Fergerstrom followed by Hannah Bernard.

6 CHAIRMAN LEZY: Good morning.

7 THE WITNESS: Good morning.

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

11 THE WITNESS: I do.

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

14 THE WITNESS: My name is Michael Kumukauoha  
15 Lee. I reside at 91-1200 Keaunui Drive, unit 614,  
16 'Ewa Beach, Hawai'i, 96701. The nature of my  
17 testimony is two-fold today, Commissioners. First, I  
18 am the kahu or keeper for the iwikupuna Alapa warriors  
19 of Kulu'u.

20 Because of my genealogical background as  
21 the sixth great grandson of Kahekilinui'ahumanu, the  
22 King of Maui, and the seventh great son -- great  
23 grandson of Kalaniopu'u, the king of the Big Island,  
24 it affords me what we call kuleana, the right to  
25 perform ceremonies to take care of spiritually in our

1 religion our Alapa iwi kupuna which we have done in  
2 December 21st of 2011 with a pule kapu -- pule kala  
3 ceremony.

4 And we also did the ceremony recently  
5 March 24, 2012.

6 My first testimony is to refute A&B's claim  
7 that it actually owns this property. The records from  
8 the land libers that are certified with the Bureau of  
9 Conveyances, and the records of the courts, the  
10 records of basically testimonies that are certifiable  
11 that are being entered, show that the Board of  
12 Education did a lease to F.A. Enders in 1879 for this  
13 property.

14 There is no way that A&B can claim that  
15 Mr. Cornwell, after selling to Claus Spreckels, a  
16 warranty deed which does not confer ownership under  
17 the law, that the Board of Education could have in its  
18 inventory this land portion known as the Union School  
19 at the time.

20 In the case of the matter of the boundaries  
21 of Pulehu Nui, the Supreme Court of the Kingdom of  
22 Hawai'i 4 Hawai'i Report 239 October 1879 decided that  
23 all royal patents were canceled in this matter. And  
24 that reverted this property back to the Board of  
25 Education.



1           The Board of Education did a lease to F.A.  
2   Enders which clearly states in no ambiguities for  
3   certified documents by the Bureau of Conveyances, that  
4   this property doesn't belong to Alexander & Baldwin.  
5   So they have no control over property that doesn't  
6   exist in their inventory based on certified documents  
7   that I'm presenting here to you now in my testimony.

8           To do anything less would be fraud or  
9   perjury. There's no statute of limitations when it  
10   comes to Land Court on fraud. There is no vested  
11   interest on theft. And clearly this is what it is in  
12   written testimonies that have been put down before you  
13   in this case.

14           If this Board decides in favor of A&B, it  
15   will be suborning perjury and fraud which you will be  
16   liable for under these certified documents that  
17   clearly refute A&B's claim that it owns it under a  
18   warranty deed which does not confer ownership. That's  
19   one point.

20           The second point. Article XII Section 7  
21   of the State Constitution that provides the highest  
22   law of the land, that Hawaiian native cultural  
23   practitioners have the right to practice their  
24   religion without being destroyed or removed. And part  
25   of it is the Alapa warriors that we have at the sand

1 dunes of Kahalu'u, three sections are my lineal family  
2 that are buried there. And as three sections of my  
3 lineal family, Judge Moon in his Supreme Court 2010  
4 decision said that lineal family members have direct  
5 standing within cases dealing with development.

6 So this is foundation of standing of  
7 eminent with this proceeding particularly for this  
8 development complex.

9 I've been recognized in several court  
10 proceedings in First Circuit Court as a Native  
11 Hawaiian cultural practitioner, and with the Land Use  
12 Commission for the Ho'opili project as well.

13 This smacks against the highest law of the  
14 land on several points. One, that A&B does not own  
15 the property as it claims. And two, this is going to  
16 cause imminent harm in foundation of standing to my  
17 family that is that buried there.

18 So I highly recommend that this Project be  
19 canceled because there will be a court challenge if it  
20 isn't. Thank you.

21 CHAIRMAN LEZY: Parties, questions?

22 MR. MATSUBARA: No questions.

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

25 COMMISSIONER MAKUA: Aloha.

1 THE WITNESS: Aloha.

2 COMMISSIONER MAKUA: Mr. Yee, do you have  
3 the Wai'ale Project?

4 THE WITNESS: I don't have it with me, no.

5 COMMISSIONER MAKUA: If it's okay I wanted  
6 to see because I have the maps that you included for  
7 us in here.

8 THE WITNESS: Right.

9 COMMISSIONER MAKUA: I just wanted to see  
10 if you could more closely show me where these are  
11 here.

12 THE WITNESS: Sure. I would ask for  
13 orientation for Clare Apana to assist me here. I know  
14 I could take you out there and show you where they  
15 are. But as far as orientation on the map I would  
16 need Clare to assist me on this. Is that okay, Chair?

17 CHAIRMAN LEZY: Sure. Could you take the  
18 microphone. (Ms. Apana looking at maps on wall)

19 MS. LOUDERMILK: (Addressing Ms. Apana)  
20 Why don't you pull off the first map because  
21 underneath that is the Project map.

22 CHAIRMAN LEZY: We just need to make sure  
23 that everybody's got a microphone.

24 MS. APANA: This is the large burial  
25 preservation. And you see Kamehameha extension

1 highway coming up. One of the family burials is in  
2 the Kamehameha extension road and are slated to be  
3 moved.

4 The other ones are as you come in from the  
5 old dump road, you come up and into the preservation  
6 this way. And there's one here, and there's another  
7 one up on the high bluff in this area.

8 There're also in preservation area 3 the  
9 ali'i burials with niho palaoa that was found. I'm  
10 not the sure where those burials are now, but those  
11 are royal burials. Those are ali'i burials also.

12 COMMISSIONER MAKUA: I'm kind of looking  
13 for where that part is to these where those areas are  
14 here on these maps.

15 MR. LEE: It's the original 1849 survey  
16 notes for the royal patent of Kuihelani 1996 LCA 420.

17 COMMISSIONER MAKUA: So where does this  
18 Project come in here on these original maps?

19 MS. APANA: This is Kuihelani Royal Patent.  
20 Is that relevant to what you're looking at?

21 COMMISSIONER MAKUA: I'm wondering where  
22 this Project is in where the royal patents are.

23 MS. APANA: You have to look at the older  
24 map to put them in there.

25 MR. LEE: This map is bifurcated, actually

1 trifurcated, in three places. So we have to attach  
2 them together. We have to pull them apart and attach  
3 them together to show where this outline from here.

4 MR. YEE: Chair Lezy, just for the record  
5 the map they're referring to is the Office of Planning  
6 Exhibit 16.

7 CHAIRMAN LEZY: Thank you.

8 MR. LEE: I understand what you're saying  
9 as far as where it is. Had we known we could have  
10 gotten a cartographer to take those and overlay it  
11 over the Project. But the basic claim for this  
12 Project that you have there, the Kuihelani royal  
13 patent is basically the foundation for the claim for  
14 the royal patent for this area. So it was reverted  
15 into what was called the Union School Board of  
16 Education property.

17 And this is the ground zero, point zero of  
18 this royal patent that is the primary cede source of  
19 where this land comes from. But this patent was  
20 canceled. All patents were canceled because of poor  
21 boundary notes that were done in this -- it came to  
22 the people of Pulehu Nui that sued Claus Spreckels for  
23 encroaching on their patents that they received when  
24 the Board of Education put up this land for sale in  
25 1875.

1           In 1879 the court canceled all patents in  
2 this area including this warranty deed which really  
3 does not confer ownership. So it reverted back. This  
4 entire property --

5           MR. DAVIDSON: Excuse me. I think you're  
6 covering ground you mentioned before so could we go on  
7 to the next witness if there are any additional  
8 questions.

9           CHAIRMAN LEZY: Before we move on, though,  
10 Commissioner Makua did your question get answered?

11           COMMISSIONER MAKUA: So you're saying that  
12 the whole entire area is what you're --

13           MEMBER LEE: Yes, is what I'm saying, the  
14 entire area. Oh, this is the actual stamped with all  
15 the stamps from the Bureau of Conveyances that need to  
16 be put in evidence as the source document from  
17 everything that was passed out is admissible in court  
18 as rules of evidence. So I need to have someone of  
19 your staff take that.

20           CHAIRMAN LEZY: You can give it to our  
21 clerk.

22           MR. DAVIDSON: Next witness Mr. Harders,  
23 followed by Hanalei Fergerstrom, followed by Hannah  
24 Bernard. Oh, and we are going to try to enforce a  
25 three-minute rule so we can complete our business

1 today. Thank you.

2 NICK HARDERS

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

5 THE WITNESS: Yes, I do.

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

8 THE WITNESS: I'm Nick Makaniole Harders,  
9 1422 Luna Place Wailuku -- or Waikapu, Hawai'i. I am  
10 the seventh generation of my family born and raised in  
11 Waikapu, a lineal descendant of the iwi kupuna at  
12 kulu'u.

13 I speak today on their behalf because they  
14 are very concerned about their future and the future  
15 of their resting place. Where they are today is their  
16 cemetery. So I ask why do you think you even have the  
17 right to build houses and put a road on my family's  
18 graves. Does that are sound right? No. That is a  
19 complete disregard for my culture.

20 Try and look at this from a Hawaiian  
21 perspective. Try to understand that they aren't just  
22 bones in the sand. They are my 'ohana, my family.  
23 And I can't sit on the side anymore watching you guys  
24 do what you want, only finding out about these things  
25 when you guys put up the black dust fence.

1 Don't underestimate the possibility of  
2 Hawaiians making wise choices with their own lands.  
3 Ola na iwi.

4 CHAIRMAN LEZY: Wait, just a moment,  
5 please. Parties, questions?

6 MR. MATSUBARA: No questions.

7 CHAIRMAN LEZY: Commissioners, questions?  
8 Thank you for your testimony.

9 MR. DAVIDSON: Hanalei Fergerstrom followed  
10 by Hannah Bernard followed by Lucienne DeNei.

11 THE WITNESS: Good morning, Commissioners.

12 CHAIRMAN LEZY: Good morning.

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

16 THE WITNESS: Yes, sir.

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

19 THE WITNESS: My name is Hanalei  
20 Fergerstrom. I'm from the Island of Hawai'i, aumakua  
21 Keawe. I am also a practitioner of the ancient  
22 Hawaiian religion, in specific the temple of Lono. I'm  
23 also an ia kupuna Ko'olau He'iau. I've come here  
24 because the iwi that's in question, the Alapa  
25 warriors, are from my island. They're my people.



1 They're my ancestors. And some of the testimony you  
2 heard this morning of the ali'i burials, they're also  
3 my burials.

4 I happen to come from both sides of this  
5 argument which makes it more fundamentally important  
6 that I come forth as a representative of both sides of  
7 the family *and* a representative of the Big Island.

8 I'm also the spokesperson for Na Kapuna  
9 Moku Keawe which we have all six districts of the  
10 Hawaii Island working together as a team to address  
11 such large matters as our kupuna iwi.

12 I have worked constantly in the courtrooms  
13 with kupuna. I was very involved with the Naoe  
14 Project that is, of course, not finished yet, which is  
15 littered with fraud, and I can almost certainly say  
16 will end up in federal court. But my greatest concern  
17 is to make sure that we are on the record being  
18 represented, that the Big Island is represented.  
19 Those are our bodies from our island.

20 You know, in looking at this I'm always  
21 trying to look at a way to broaden this picture so  
22 it's not us against you stuff. It doesn't work that  
23 way. It doesn't, doesn't help anybody.

24 But in looking at this whole area, you know  
25 there's -- it's littered with bodies all over the

1 place. Now, I can't go say, There's one here, one  
2 there," because I wasn't there at that time. But  
3 there's no, no question that during the exploratory  
4 pits that have been dug they found iwi. They found  
5 iwi almost every place they've dug.

6           Very unfortunately just a week ago we did a  
7 ceremony to remove some of the ea over there, it's  
8 really sad to see that these iwi have been exposed to  
9 the lepo po, the graves have been left open. I mean  
10 you've got a tarp. The pit's still open. Tarps are  
11 mangled up. You got iwi bodies exposed to the  
12 elements. It's, like, what is wrong with this  
13 picture? This is certainly not the way any of us  
14 would want our iwi to be treated.

15           So I'm looking at this and I'm going now,  
16 "What is the expense if we continue the way we're  
17 going with development?" What kind of expenses are we  
18 gonna run into as a state if we have to deal with all  
19 these kinda things? And given the, given the vastness  
20 of the area and the amount of known bodies, we're only  
21 talking about the Alapa. But you have to understand  
22 that Hawaiians were very practical when it came to  
23 burials. It was simply easier to put them in sand  
24 than it was to do rock. So you find many layers of  
25 graves there.

1           But -- and I think you've had testimony to  
2 this effect: I would certainly suggest to you that  
3 there may be a better use for that land that would be  
4 more viable for the island of Maui and for the state.  
5 And that's to have it as an open space area. And we  
6 can really avoid the inadvertent finds or destruction  
7 of known burial sites, and create an open space area  
8 for the island of Maui.

9           And so, anyway, in conclusion, I just want  
10 to make sure we're on record that Big Island did show  
11 up for our people. In doing these ceremonies, these  
12 religious ceremonies, I've come across a few people --  
13 I can only say it from hearsay because they're not  
14 here to speak for themselves -- but I understand there  
15 has been many problems with, I guess you could say,  
16 wandering ohani in this area that apparently Charley  
17 Maxwell, who was the kahuna over there -- or kahu over  
18 there -- spent a lot of time dealing with personal  
19 families who's having problems with strange spiritual  
20 type things happening in their property.

21           MR. DAVIDSON: Excuse me, sir, about 30  
22 seconds to conclude.

23           THE WITNESS: Okay. Even some of us today  
24 we're going to be addressing some problems that's  
25 happening at the school right next to where the dunes

1 are because they have all kinds of abnormalities going  
2 on there. But it's from a religious side and also as  
3 a warrior side that I present myself. Thank you very  
4 much.

5 CHAIRMAN LEZY: Parties, questions?  
6 Commissioners, questions?

7 COMMISSIONER MAKUA: I just wanted to  
8 clarify, you said when you folks went through the alea  
9 that you saw iwi.

10 THE WITNESS: Yes.

11 COMMISSIONER MAKUA: So you saw them  
12 exposed.

13 THE WITNESS: Yes.

14 COMMISSIONER MAKUA: At the project site.

15 THE WITNESS: Yes. And there's -- you can  
16 see where the exploratory pits were done. When they  
17 dug them they didn't bother covering them. They put a  
18 tarp over it and some pallets. I mean it's, like,  
19 certainly that can't be correct in nobody's mind.

20 A year ago when I was here and I first  
21 started to become familiar with that it was  
22 horrifying. I mean it was, it was so horrifying that  
23 anybody in their right mind would think that this was  
24 okay to do it in any culture.

25 COMMISSIONER MAKUA: And this is when?

1 THE WITNESS: This is a week and-a-half  
2 ago? A week and-a-half ago.

3 CHAIRMAN LEZY: Any additional questions?  
4 Thank you for your testimony, sir.

5 THE WITNESS: Thank you.

6 MR. DAVIDSON: Hannah Bernard followed by  
7 Lucienne de Nei followed by Dick Mayer.

8 THE WITNESS: Good morning. Aloha.

9 HANNAH BERNARD  
10 being first duly sworn to tell the truth, was examined  
11 and testified as follows:

12 THE WITNESS: I do.

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

15 THE WITNESS: My name is Hannah Bernard.  
16 My address is P. O. Box 790637, Paia, 96779. Good  
17 morning again. I'm the president of the Hawai'i  
18 Wildlife Fund, a non-profit based both on here on Maui  
19 and the island of Hawai'i. Our mission is to protect  
20 and perpetuate Hawaii's native wildlife and emphasis  
21 on marinelife.

22 I'm speaking to you today because our work  
23 in the ocean has led us mauka. Everything we do on  
24 land affects the sea, eventually. And in the  
25 interviewing 40 kupuna, leaders, elected officials,

1 fishermen and agencies of Maui in 2003, my colleague  
2 Ann Fielding and I sought to provide this group with  
3 the vehicle to address concerns about the health of  
4 our nearshore waters. One of the most important  
5 problems identified by these groups was the diversion  
6 of the streams, the loss of freshwater from our  
7 streams that doesn't make its way to the ocean like it  
8 used to.

9           Before the massive diversions this  
10 blue-green bridge used to provide millions of tons of  
11 biomass of aquatic life in the form of o'opu and  
12 'opae, native fish and shrimp, and there's this and  
13 insect larvae to the nearshore waters.

14           So in addition, this freshwater will bring  
15 nutrients to the area, the limu, seaweed beds. So in  
16 participating in a pule limu kala ceremony and  
17 learning experience for this land Pu'u One O Kahulu'u,  
18 I find myself before you today.

19           I've read nearly a thousand pages of  
20 documents handed you about this proposed Wai'ale  
21 development. And I know others have already spoken  
22 eloquently about their concerns such as freshwater  
23 sources and the still unsettled Na Wai Eha case,  
24 wastewater treatment, socio-economic issues, et  
25 cetera. So I'm not going to duplicate the testimony

1 of good folks like Hoku'ao Pellegrino, Lucienne de  
2 Naie, Dick Mayer, Clare Apana. But I agree  
3 wholeheartedly with what they said before you.

4 The development should not go forward as  
5 planned for many additional reasons I'll give you now.  
6 This area is the last remaining dune system that was  
7 once a massive one, as you probably know, that  
8 extended nearly all the way across the isthmus of  
9 Maui. Therefore, it's even more critical --

10 CHAIRMAN LEZY: Sorry. I need to slow you  
11 down.

12 THE WITNESS: Sorry.

13 CHAIRMAN LEZY: Our court reporter's  
14 getting crazy.

15 THE WITNESS: It is written. Does that  
16 matter?

17 CHAIRMAN LEZY: If you want to -- right.  
18 But if you want to sum -- more importantly, if you  
19 want to summarize your testimony we have your written  
20 testimony in front of us.

21 THE WITNESS: Right. The dunes system is  
22 worthy of protection because of its own intrinsic  
23 cultural and ecological value. And I know that even  
24 in the Cultural Impact Assessment for Wai'ale it was  
25 acknowledged that all the pu'uone or the sand dunes

1 are culturally significant features, even though this  
2 might not be reflected in other expert witness  
3 testimony.

4           In addition to being the site of one of the  
5 most significance battles of Maui's history, it's the  
6 resting place of the iwi kupuna, this habitat is also  
7 home to the endangered insect, the very special first  
8 insect of dubious distinction to be listed in the ESA,  
9 Blackburn's Sphinx Moth, which is also endemic or  
10 unique to Hawai'i. In fact it's so unique it's found  
11 only on Maui, the Island of Hawai'i and Kaho'olawe.  
12 And it had a much wider range at one time. But it  
13 evolved here. It's a Hawaiian insect.

14           So I spoke with the biologist who did the  
15 Wai'ale Flora and Fauna Assessment, and confirmed that  
16 there are several dozen host plants of probably around  
17 300 where this insect is utilizing this habitat.

18           And so I'm very concerned with the proposed  
19 EIS treatment to look for the moth eggs and they cut  
20 down the tree tobacco which is the new host plant for  
21 the species if no eggs are found. Not only is this an  
22 inadequate treatment, but it doesn't take into account  
23 the fact that this moth has an extended period of time  
24 in the leaf litter around these trees.

25           I've confirmed with Fish and Wildlife



1 Service that they're waiting for the Applicants to  
2 submit the required Habitat Conservation Plan for over  
3 a year now. They also produce a plan similar to the  
4 way Art Medeiros is recovering the Auwai dryland  
5 forest including such features as fire suppression,  
6 invasive plant removal, and 10-foot tall fencing to  
7 exclude access there and an endowment in perpetuity to  
8 pay for these features.

9 MR. DAVIDSON: If you could conclude in  
10 about 30 seconds.

11 THE WITNESS: Okay. So I have documents  
12 that I've submitted to you and then this map which  
13 comes from the Maui Island Plan which shows that this  
14 area, the area of development of Wai'ale, was  
15 originally expected to be in open space or park.

16 And I have another suggestion. And that is  
17 to mirror the Papo Haku sand dunes cultural and  
18 natural area reserve. And there is a plan that was  
19 produced by the State Department of Land and Natural  
20 Resources and OHA to manage that area, which is very  
21 similar to this one.

22 And in fact, we have given you a draft,  
23 very draft document, that's essentially taking momomi  
24 or the Papo Haku Sand Dunes area natural and cultural  
25 resource plan and seeding it into the context of this

1 area so that there is another option. And that this  
2 area should be absolutely protected in conservation  
3 easement.

4 And that's the law. That's the federal law  
5 according to the protection for the Blackburn's Sphinx  
6 Moth, at least 1/5 acre per 100 acres at minimum for  
7 conservation easement should be set aside in this area  
8 where the dunes are. And I think that's pretty  
9 much -- I do have some specific language for the  
10 conditions that are in my written testimony that would  
11 probably be the best to refer to for supporting the  
12 testimony.

13 CHAIRMAN LEZY: Thank you. Your written  
14 testimony and all the materials that you referenced  
15 have been made part of the record.

16 THE WITNESS: Thank you. And then this  
17 map -- I only have one of this Maui Island Plan map  
18 for reference, I'm sorry to say, but it shows the area  
19 that I'm talking about.

20 And in the green, the dark green and the  
21 light green, that's proposed park and open space. And  
22 I would say recommendation to go even further and make  
23 it a very strongly protected conservation easement for  
24 both the Blackburn's Sphinx Moth and the cultural  
25 resources in that area.

1           CHAIRMAN LEZY: That map is already in as  
2 an exhibit.

3           THE WITNESS: Good.

4           CHAIRMAN LEZY: Parties, questions?  
5 Commissioners, questions? Thank you for your  
6 testimony.

7           MR. DAVIDSON: Lucienne followed by Dick  
8 Mayer.

9           THE WITNESS: Good morning.

10                   LUCIENNE de NAIE  
11 being first duly sworn to tell the truth, was examined  
12 and testified as follows:

13           THE WITNESS: I do.

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

16           THE WITNESS: Luciene Denaie, P. O. Box 610  
17 Haiku, 96708. I'm testifying today on my own behalf.  
18 I want to point out I do have some credentials with  
19 this committee. I've been certified as an expert  
20 witness in front of the Commission in around 2003 on  
21 water resource issues based on the research that I've  
22 done for a 200-page report on Maui's water resources.

23           I'm sorry, I got caught in a traffic jam  
24 and didn't have time to print copies to distribute to  
25 you folks today. I can give you one copy of my

1 testimony. I also obviously served on the General  
2 Plan Advisory Committee as I've stated before. And I  
3 participated in the Wai'ale planning process in 2005.

4 I would like to address some of the  
5 statements that have been made during your witness  
6 examination.

7 One. Discussion with the county about the  
8 conformance of what is being proposed with the  
9 Community Plan. County's fine with it. That's  
10 extremely disappointing because people didn't really  
11 like Wai'ale that much. The compromise was to put in  
12 a protected area in the middle because our vision was  
13 a series of small towns in Maui surrounded by  
14 agriculture. Kinda hard to figure why Wai'ale would  
15 fit into that vision. That's why it needed something  
16 to kind of break it up.

17 It's very disappointing to me that A&B  
18 insists on changing history and calling this an  
19 extension of Kahului. This is the Waikapu Commons.  
20 It's in the ahupua'a of Waikapu.

21 And Kahului is kind of a figment of our  
22 imagination. It was a little railroad town. Now all  
23 of a sudden it goes all the way into historic areas  
24 that it really doesn't belong in.

25 So I would just like to point out that it

1 is possible that these bodies that reviewed this plan  
2 and gave its approval, the Maui Island Plan, if they  
3 had known that there was no possibility of having a  
4 large central area that was protected if there was not  
5 going to be 50 percent affordable housing, but instead  
6 25 percent, might have looked at it differently. So  
7 please just keep that in mind.

8 As to -- by the way, that whole 400 acres  
9 was offered to the county in 2004. I don't know if  
10 you're aware of that. The Wai'ale Project was going  
11 to be land further towards Waikapu direction from  
12 there. I have a map that shows that A&B was in  
13 discussion with the county in 2004.

14 It appears that A&B might want to get rid  
15 of the liability area that had the sand dunes, the  
16 burials, et cetera.

17 As to water issues. You were given a lot  
18 of information. I want to supplement your information  
19 because I would ask you to put a condition on this  
20 Project.

21 And that condition would be that if it  
22 proves that the water supply is not sufficient and  
23 available at the time the project district Phase I  
24 approval, the size of the Project should be adjusted  
25 downward to fit the water supply.

1           The reason I'm saying this is you've been  
2 given a lot of figures about: "Oh, well, it's not  
3 really going to use 1.9 million gallons. It's only  
4 gonna use 1.1 and the rest would be non-potable and  
5 somehow that will be supplied by a different system."

6           I don't know if anyone did the math, but  
7 that means each unit is going to use -- and this isn't  
8 counting any of the commercial units or the schools  
9 but just the housing units -- is going to use about  
10 431 gallons a day.

11           Now, is anyone going to enforce that? And  
12 Mr. Nance did not refer in his testimony that the  
13 1.9 million that was in the EIS -- and it was  
14 portrayed as potable water demand -- they had a  
15 separate demand for non-potable in the EIS, so it was  
16 as little confusing -- but that 1.9 million is an  
17 average. The peak demand is 2.8 million.

18           How much of that is actually potable  
19 demand? Because your water source must plan for your  
20 peak demand, not your average demand, as we all know.

21           So we are a little fast and loose with some  
22 of the numbers here, and we should get it clear  
23 especially if the preferred source is going to be the  
24 wells in Waikapu. If the demand is going to be  
25 upwards of 1.1 million in potable, say closer to 2,

1 and there's going to be another .9 million needed for  
2 the Waikapu Country Town Development --

3 MR. DAVIDSON: Excuse me, about 30 seconds  
4 to conclude.

5 THE WITNESS: -- you're going to be needing  
6 the entire output of the Waikapu aquifer. And this  
7 should be mitigated. If you're going to have two  
8 projects demand the entire aquifer, it should be  
9 mitigated by restoring stream flow in Waikapu Stream,  
10 A&B, the other subsidiary, has the ability to do that.

11 I also just want to point out that they  
12 have no permit -- they have no water use permit for  
13 the Wai'ale Treatment Plant. Mr. Nance was not clear  
14 about that. There's two parts to the process. I wish  
15 I had more time because I have knowledge that might be  
16 useful to you folks, but I can see you're in a hurry  
17 to rush towards decision.

18 So let me just sum up by saying that the  
19 water situation there is really less than clear, and  
20 A&B was the first to go and testify that the "Show me  
21 the water" bill should sunset in two years. And so if  
22 you're depending upon that to make sure that the  
23 county will have some say over whether there's  
24 available water for this Project, probably our friends  
25 at A&B will be back in two years and ask that that

1 bill sunset again. It squeaked through this time, but  
2 I think it's a little disingenuous to hold up on one  
3 and say, "Oh, this will take care of it," and the  
4 other side you're lobbying to get rid of the bill that  
5 you say is gonna take care of your water obligations.  
6 Thank you.

7 CHAIRMAN LEZY: Ma'am, I can assure you  
8 that nobody on the Commission is in any rush to do  
9 anything of the sort you mentioned. How much more  
10 time do you think you need to make your point?

11 THE WITNESS: Probably another minute or  
12 two.

13 CHAIRMAN LEZY: Go ahead.

14 THE WITNESS: Thank you very much. I would  
15 like to point out that the analysis of the wastewater  
16 situation has not been fully explained. Every  
17 wastewater treatment plant must have injection wells  
18 as per Department of Health rules. The reason being  
19 even if they do not intend to inject all their water  
20 but their intent is to reuse it, when it rains there's  
21 no place to send that water. So they must have  
22 injection wells as a backup.

23 So there will be injection wells. So just  
24 to make that clear. I don't think it was made clear  
25 in the testimony.



1           The Kahului Airport -- the Kahului Aquifer  
2     portion of this is discussing that the unlimited  
3     potential of this aquifer -- and it's not mentioned  
4     that it's actually in the underground control area  
5     where you're really not encouraged to develop sources  
6     of potable water.

7           These are areas where there are injection  
8     wells. There have been contaminated wells in this  
9     aquifer already. The county had a well just adjacent  
10    to Wai'ale, the Reynolds well that was closed for  
11    contamination.

12           There are some problems in this aquifer.  
13    It's a hit and miss. So just to look at that, if it  
14    doesn't work out with the Atherton Wells that somehow  
15    you could go to Kahului aquifer, it's not entirely  
16    proveable.

17           And most people feel that the main output  
18    of Kahului aquifer is water that is coming from the  
19    leaking reservoirs, from the ditch water, and from --  
20    shall I say it, dumping water, putting 14,000 gallons  
21    an acre on dry areas per day, which is far more than  
22    those acreages would need.

23           This information was gained during the  
24    contested case contest of Nawaieha. It's also  
25    interesting that Mr. Nance has told you that there's

1 far more ability of the Kahului aquifer to supply  
2 water, whereas exactly the opposite was referred to by  
3 A&B during the contested case. They said they had to  
4 cut down pumping in their Kahului aquifer F wells  
5 because the capacity just wasn't there.

6 They were asked to supplement the water  
7 that might be used for stream restoration with  
8 increased pumping on some of their wells that had  
9 large capacity like 20 to 40 million gallons a day.  
10 But they swore that they just couldn't do that because  
11 the source was diminishing.

12 So either it's one way or the other. And I  
13 just feel that you should tie this Project to water  
14 because there may not be a "show me the water" bill.  
15 And your condition will allow something viable to  
16 happen. Thank you.

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

20 MR. DAVIDSON: Dick Mayer followed by His  
21 Highness Kukini.

22 DICK MAYER  
23 being first duly sworn to tell the truth, was examined  
24 and testified as follows:

25 THE WITNESS: I do.

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

3           THE WITNESS: My name is Dick Mayer. I  
4 live at 1111 Lower Kimo Drive, Kula. At the time of  
5 the last meetings there was discussion about what the  
6 Maui Island Plan was saying. As you may know I'm the  
7 vice chair of the General Plan Advisory Committee,  
8 which is still constituted to recommend on the Maui  
9 Island Plan.

10           About the same date that you had that  
11 meeting the planning director issued the third --  
12 another map. This is the GPAC map. This is the one  
13 that had previously been done by the previous  
14 director. This is the present one. I'll pass this  
15 around after I conclude my testimony and you can see  
16 the three versions.

17           And this in large green area is the buffer  
18 that's been talked about on several occasions here,  
19 here and here very consistently. And we would like, I  
20 think members of the GPAC, and I think the county will  
21 also insist, that a park area or preservation area,  
22 open space area be preserved between Maui Lani and  
23 Wai'ale.

24           And some of that land encroaches, is on the  
25 plan of Wai'ale but not all of it going all the way

1 across this whole area.

2           Second item -- I've six items altogether --  
3 the total number of units. According to the appendix  
4 J of the EIS Page 14 it references, when it talks  
5 about traffic, that there will be 4,850 other units in  
6 nearby large projects: Waikapu Town Center, Maui  
7 Lani, the remainder Kealani and Pu'unani.

8           In addition, Wai'ale itself is requesting  
9 2550. In other words, there will be a total of 7,400  
10 units packed into this area. I'll come back to that  
11 number a little later in the testimony. But my main  
12 point is I want you to be aware of how many units are  
13 really unbuilt in this area or if this Project is  
14 approved will be built in this area and the  
15 implications for that very large number.

16           Next item. The reference was made to  
17 schools. And there's only an intermediate school  
18 being required in this area. Given that very large  
19 number of units I would urge the LUC to request from  
20 the DOE, as opposed to what the Applicant has said  
21 verbally without any documentation, what the plan is  
22 for the DOE to provide schools for these 7,400  
23 additional units at all three levels: elementary,  
24 intermediate, and high school.

25           And you should have a plan to locate --

1 know where those schools are going to be located, when  
2 they might be built by the DOE, because A&B is not  
3 building any schools, what the acreage needed for  
4 these schools may be and the funding that would be  
5 possible.

6 In other words, will there be adequate  
7 schooling for the children that are in this area? I  
8 think that's very important and maybe put down as a  
9 condition in addition to just the intermediate school  
10 they're asking for.

11 Next item. Last meeting I mentioned that  
12 A&B has several of the housing projects on Page 55 of  
13 your minutes last meeting. And I mentioned four  
14 housing projects that A&B has gained some titles for,  
15 or complete entitlements for. Commissioner McDonald  
16 correctly asked some explanation. And vice president  
17 Chun from A&B answered this. But he, I think, did a  
18 bait and switch.

19 When he discussed the projects he mentioned  
20 two that I had not mentioned at all and they were  
21 commercial projects, saying these two commercial  
22 projects are being built.

23 I mentioned only housing projects. And  
24 it's those four housing projects, some of them dating  
25 back into the mid '90s, that have not yet been built

1 by A&B even though they have these entitlements.

2 I'm urging you to consider that A&B has not  
3 built the housing projects that they so carefully  
4 asked the county or the state to get entitlements for.

5 Last item regarding mitigation measures.  
6 Mr. Chun on Page 74 of the minutes of your last  
7 meeting promised that all mitigation measures  
8 recommended by the consultants would be built. He was  
9 pressed on that by Mr. Yee. And he finally -- first  
10 said, "We are committed to them," and then finally  
11 said, "Yes, we will do them."

12 I call your special attention to the  
13 mitigation measures recommended by the consultants in  
14 their traffic study. They have a long list of them on  
15 Page 64 and 65 of the minutes from the last meeting.  
16 And excuse me, the Page 64, 65 of appendix J, a long  
17 list of mitigation measures.

18 I would ask for a special condition  
19 inserted into your final decision, if you approve this  
20 Project, that specifies that they have to complete  
21 those particular mitigation measures. They've also  
22 tried to sort of get around it, I think, by saying,  
23 we'll have a subsequent TIAR at a later date that may  
24 have other mitigation measures."

25 I would hope that it would not be a TIAR

1 that they are doing but the State DOT and/or the  
2 county together do the TIAR for these multiple  
3 projects, not just this one Project, but all these  
4 projects to see what the traffic mitigation needs will  
5 be and to hold A&B responsible for this.

6 I'm very concerned that the traffic issues  
7 have not been properly addressed. And given the 7,400  
8 units put into this area, plus the fact that since you  
9 met last time the mayor has announced he intends to  
10 have a hundred acre central baseyard for Maui put into  
11 this area. He's gone to the public and talked about  
12 and urges the county to buy the land for this  
13 baseyard.

14 And also what was not mentioned, was not  
15 referred to in the documents, there's a large  
16 industrial park that's being put in right in the  
17 middle of Wai'ale. If you look at that white space in  
18 the middle of the maps here you'll see a white space.  
19 That's an industrial park that has not yet been built.

20 The traffic from that project was not  
21 included even in the TIAR. It's a large 35, 40-acre  
22 parcel in addition to all the other development right  
23 in the middle of Wai'ale. So please add those  
24 conditions if you go ahead and approve them. Please  
25 look into them. I thank you.

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

4                   THE WITNESS: I'll pass this out, the maps  
5 are identified.

6                   CHAIRMAN LEZY: You can give that to our  
7 clerk.

8                   THE WITNESS: I will do that.

9                   MR. DAVIDSON: His Highness Kukini. The  
10 chief clerk has a signup sheet if anybody wants to  
11 sign up.

12                  THE WITNESS: Aloha.

13                  CHAIRMAN LEZY: Good morning. Aloha.

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

17                  THE WITNESS: So help me God.

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

20                  THE WITNESS: His Highness Kukini. No  
21 residence. They bus' up my house about five times.  
22 That's what they do, yeah? But I'm here, you know, on  
23 behalf and I likes what everybody say. They put the  
24 burials things around, then they remove 'em, then they  
25 continue construction, yeah. That is sad. As we went



1 on our way to Hana last, maybe two weeks ago, lotta  
2 water. This weekend we went out there, no water.

3 All these businesses, yeah -- and my  
4 grandfather came visit me 2001 and told me, "Boy, you  
5 going start now or what going happen?" I been to a  
6 lot of testimonies. All I ask 'nuf is enough digging  
7 up our ancestors, or kupunas putting 'em in plastic  
8 bags, into boxes, into the containers.

9 You know we here we work with all. We need  
10 respect. No matter what you guys do when you guys  
11 come here and just pick up the land, buy the land,  
12 sell 'em too. The land, first of all, ain't fo' sale.  
13 You know, a lot of you not from here, maybe from other  
14 places.

15 We wouldn't go to your places, dig up, put  
16 'em on the side of the road. We do have respect ovah  
17 here. We had a lot of aloha and still have. But as  
18 all these corruption continues nobody pilikia about  
19 our ohana, our ancestors, our family.

20 Everybody go down to their genealogy, yeah?  
21 We all want family. So what it gonna take to stop all  
22 of this? Lotta you come here, buy, destroy and move  
23 on. It's time to bring back what belongs to our  
24 people. We all can be one big happy family. We can  
25 do things right.

1           I went through a lot of court cases, see  
2 how corrupt it is. I ask God every day, yeah, how can  
3 we do right when wrong be put upon. Yeah? I thought  
4 our system was right, the laws was right. I served 18  
5 years with the military. I try to bring back, to give  
6 back to the people, our childrens, our kupuna,  
7 whatever left of them, the best time of their life,  
8 but everywhere you turn you got destruction going on,  
9 people digging up our iwis, no respect.

10           The federation notes, everybody know where  
11 that come from. But it's 'nuf destruction, 'nuf  
12 digging up our iwis, our ancestors. I know you guys  
13 get heart.

14           We all got hearts. But when we going start  
15 believing it and living it? It's not about bringing  
16 all the things here to destroy. Waihe'e Valley,  
17 watching this 8-inch pipe of PVC bringing out water.  
18 Come on. That was our backyard. It hurts. It does  
19 hurt.

20           Sometime I wish you guys was part of us or  
21 come from here to see the truth, to feel the truth. I  
22 mean 'nuf is enough, you know. I hope you guys do and  
23 make the right decision of all this testimony that you  
24 guys heard.

25           We cannot go, like, you know, four months

1 ago I had these two Germans came over from Germany, 70  
2 years old, 72 years old. They found me at the beach.  
3 I took them for a tour of that Garden of Eden. Then I  
4 took 'em down to Keanai Landing. Pop said, "Maybe you  
5 can help me." I already knew what he was going ask  
6 me.

7 So I said, "Bring it."

8 He said, "Maybe you can make the rest of my  
9 life here."

10 I said, "Pops, I sorry, but right now we're  
11 trying to get our lands back to take care our people.  
12 But when I get one house you can bring your suitcase  
13 and you guys can come over vacation."

14 We could understand. I couldn't go  
15 Germany, buy land or dig up places. I can't go Japan  
16 or China do the same or Korea. All I ask, do what is  
17 right. I respect all of you. Maybe you guys don't  
18 know me but I have heart for you guys all and know you  
19 guys can do the right thing. That's all we ask.  
20 That's all I have to say. Mahalo no.

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

24 THE WITNESS: Mahalo.

25 MR. DAVIDSON: Johanna Kamaunu followed by

1 Kanaloa Kamaunu. Those are the two final signed up  
2 witnesses.

3 THE WITNESS: Morning.

4 JOHANNA KAMAUNU

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

7 THE WITNESS: I do.

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

10 THE WITNESS: Johanna Kamaunu, 222 Waihe'e  
11 Valley Road. Kamaunu is K-a-m as in Mary-a-u-n as in  
12 Nancy-u. Thank you. As I was considering my  
13 testimony today because I'd already given testimony at  
14 a previous meeting, I couldn't help reflecting on the  
15 conversations and the testimonies that came after us,  
16 in particular the report from -- the archaeology  
17 report. And I guess there were a couple people that  
18 testified as to the community's interest in this.

19 I want to state that I'm a Native Hawaiian.  
20 I live in Waihe'e Valley. I intend to be there the  
21 rest of my life. But I'm being injured. I'm being  
22 injured by the plans there are coming forth today.  
23 Our valley is very rich in water. And there's always  
24 a need under water in Maui.

25 In 2010 Maui County created the Water Use

1 Development Plan. In that plan they languageed it such  
2 that kuleana representatives could be acknowledged at  
3 the beginning of an application procession. And we  
4 were pleased because that was the first time that  
5 kuleanas would be brought to the table of the  
6 discussion regarding water. That was December 2010.

7 This year Planning Department presented new  
8 language. And the language inevitably approved was  
9 that a water engineering report would not be required  
10 until just before approval. That practically  
11 eliminates us from the process of giving  
12 recommendations and being consulted on the use of  
13 water what would invariably come from our valley.

14 I tell you I'm being injured today because  
15 our auwais are not receiving the amount of water they  
16 used to receive, not even half the amount that used to  
17 be received. And if this continues we will no longer  
18 be able to grow our loi's -- grow our kalo. We will  
19 not be able to bring our land to the point where it  
20 was considered the bread basket of Maui.

21 I cannot speak for the rest of Maui. But I  
22 know that in Waihe'e we have enough land, we have  
23 enough water, we have an intact reef that we could  
24 feed ourselves. We could if we were left with our  
25 resources. But this plan for the Wai'ale Treatment

1 Plant, for the expansion of the Maui Lani, that will  
2 all impact us severely.

3           The other injury has been to my history.  
4 Every time an EIS gets completed it is based only on a  
5 partial study of the area. The law only requires, I  
6 guess, a minimum of 10 percent study. That means  
7 there's 90 percent that's not evaluated. How can you  
8 base a decision on our future on only 10 percent of  
9 the use of land? 10 percent. And it's real easy for  
10 me to look at a parcel of land and pinpoint ten areas  
11 that's not gonna have any significant impact.

12           I cannot in good conscience not come  
13 forward and tell you how this is going to impact us.  
14 That's why I'm here today. I'm sure there's other  
15 things I could be talking to you about, but right now  
16 it escapes me.

17           My main concern is that the water is going  
18 to be detrimental -- the use of water by this Project  
19 will be detrimental to us. I had thought at first it  
20 would only be detrimental to me and family. But I  
21 realized it's the entire ahupua'a of Waihe'e. Thank  
22 you.

23           CHAIRMAN LEZY: Parties, questions?  
24 Commissioners, questions? Thank you for your  
25 testimony.

1 MR. DAVIDSON: Kaneloa. Aloha.

2 CHAIRMAN LEZY: Aloha, morning.

3 KANELOA KAMAUNU

4 being first duly sworn to tell the truth, was examined  
5 and testified as follows: I do.

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

8 THE WITNESS: My name is Kaneloa Kamaunu.  
9 I come from Waihe'e Valley, 222 Waihe'e Valley, excuse  
10 me. And I'm here today basically reiterating the last  
11 testimony that I gave in Makena to maybe make more  
12 clarification of some of the statements I made.

13 I understand this is a legal process. I've  
14 been sworn in. We have a body of officials here to  
15 make decisions on some legal permits permitting these  
16 people to be able to participate in the use of their  
17 property along with the resources that they feel are  
18 theirs.

19 I feel I would have to look at this in a  
20 situation where we have two legal parties here and the  
21 public is one of those legal -- three, I should say --  
22 we have you, we have you and we have the public. But  
23 there's another one that's spoke about before this  
24 that's not considered. And that is the legality of  
25 the kuleanas. The kuleanas are in the law. They're

1 our laws for us, HRS 7-1. We know this is the  
2 gathering laws. We talk HRS 172-11,12.

3           These reiterate the entitlements of the  
4 people who have received Land Commission Awards and  
5 Royal Patents. These are not land patents. These are  
6 Royal Patents which means that legally we have to look  
7 at who we are.

8           We are separate from the process that is  
9 being taken upon here because this process talks about  
10 land patents or talks about things that are actually  
11 foreign to what I have or my kupuna received. The  
12 entitlements are tied to those. We're talking about  
13 water. We're talking about right-of-ways. We're  
14 talking about use of all resources that was entitled  
15 to my kupuna which is entitled to me.

16           Now, when I look at A&B do they have such  
17 entitlements? Their claims is that they have Royal  
18 Patent lands, they have lands that they're using.  
19 But, yet, do they really tie, as their statement or  
20 their claims to the property that they're holding  
21 legally and rightfully theirs?

22           And do they have the same type of  
23 entitlements that I have? If not, then they become  
24 secondary. Meaning that their claims are inferior to  
25 the claims that I have or have been entitled to.



1           Because when you talk about kuleana you're  
2 talking about allodial. When you talk about allodial  
3 you're talking about absolute owner. So each parcel  
4 that as their Land Commission Award, Royal Patent, is  
5 an allodial title which was given to only native  
6 tenants or native subjects.

7           Others had leaseholds and grants. So their  
8 entitlements are limited to the control of the king.  
9 Whereas, for kuleana he vested his rights, he gave  
10 those rights away to the kuleanas, which means that  
11 the kuleana, the person receiving these awards and  
12 entitlements, became the absolute owner and he was  
13 king of his own lands. Even the King respected that  
14 and understood that. Implementation of the pulimas  
15 was for the remembrance of the King. He understood  
16 his place.

17           So what we're saying here now, these  
18 entitlements for resources do they have a legitimate  
19 claims. Is the claim to what they're saying real?  
20 This is what has to be investigated first. We're  
21 looking at taking steps. We cannot go forward with B  
22 if A hasn't been cleared, which is what are the  
23 entitlements and how legit are the entitlements.

24           If the entitlements are not within the  
25 land, 'cause you're looking at mine comes from 1746

1 during the Mahele, where do they follow in? And what  
2 type of land tenure do they have? Is it an allodial  
3 title? Is it a grant? Is it a lease? Because every  
4 one has different entitlements. And some of them  
5 don't last forever.

6           So the question in here is whether or not  
7 their standing, or if they do have a standing, is that  
8 standing legal and lawful compared to the kuleana  
9 which is already verified and is legal and lawful and  
10 has a standing.

11           So now if you're gonna take the time to  
12 consider their proposal you have to consider our side.  
13 Our side is that we do have entitlements that is by  
14 law. It's been shown from the king up to now. There  
15 is no break in my entitlement.

16           So now if you're thinking of giving,  
17 permitting them to use such resources, then how do I  
18 get compensated? Where is the compensation? The  
19 county and state will be compensated by permits. What  
20 is the compensation for the true entitlements of a  
21 person like me who has kuleana, who is an absolute  
22 owner, who is actually the king of my own property?

23           So what I need last is: If you're taking  
24 resources from my area, then I need to know how is  
25 that compensation that you will be entitled to because

1 they have to pay for permits to do things? And where  
2 does that entitlement, where does that filter down to  
3 me? Or in what area of process of the circle am I  
4 placed in?

5 Because the question of liability, the  
6 question of legality and standing come into question.  
7 What is the standing of everyone? Is it a leasehold?  
8 Is it a grant? Is it an allodial title? We need to  
9 clear up all these factors first before a  
10 determination can be made.

11 And if we look at the iwi, if we go to the  
12 iwi they also have entitlements. Because in 1860 it  
13 refers to the sepulchre law. Any disturbance of such  
14 bodies for such people there is a fine for. There is  
15 a law.

16 So what I'm saying is if this is a legal  
17 process and this is supposed to be a lawful process,  
18 how far is this process going? Are we only going to  
19 mitigate certain parts or do we mitigate all things?  
20 I'm just trying to be fair. That's what I'm looking  
21 at. Where do I fall in? If I don't fall in this  
22 process, then this is not a legal and lawful process.  
23 Thank you. (Applause)

24 CHAIRMAN LEZY: Parties, questions  
25 Commissioners, questions? Thank you for your

1 testimony, sir.

2 THE WITNESS: Thank you.

3 CHAIRMAN LEZY: Let's move on to admission  
4 of the exhibits. (Ms. Apana:) "I would like to  
5 testify. I just received my documents."

6 CHAIRMAN LEZY: Step forward, please. Can  
7 you give the documents to our clerk.

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

11 THE WITNESS: Yes, I do.

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

14 THE WITNESS: Clare Apana, 260 Halenani  
15 Drive, Wailuku, Maui.

16 CHAIRMAN LEZY: Please go ahead.

17 THE WITNESS: Forgive me. I'm very nervous  
18 today. This is such an important culmination of the  
19 kuleana and work that I've done for so many years.  
20 Forgive me if I am unable to speak clearly.

21 CHAIRMAN LEZY: Take your time.

22 THE WITNESS: Thank you. It seems that in  
23 all these years that I've been trying to work with  
24 this Project, people choose to see what they want to  
25 see and not what is there. And as I have been

1 standing in protection of the iwi kupuna, in  
2 protection of the sand dunes, in protection of Maui  
3 and the water resources, it's almost as if I've become  
4 an invisible person and actually a person to be  
5 minimized.

6           From looking at the testimony of the  
7 cultural consultants, what is true about that is you  
8 do not have an interview of me. You do not have an  
9 interview of me that I have given. That cultural  
10 impact assessment is incomplete. And it's your duty  
11 to make sure that you protect my rights. You have not  
12 done enough to find out what are the cultural impacts  
13 to me.

14           I am a cultural practitioner on this land.  
15 I was called to this land. And I would have to say  
16 Kumu Taua, I fear for you. You said you would take on  
17 this mission of dealing with the iwi. And I fear for  
18 you, the deepest respect. They have not chosen you to  
19 be the one to represent them.

20           In our cultural practice that is very  
21 dangerous. I really fear for you. I hope that you  
22 will not be asked to do this as part of your job  
23 because life is precious and every minute of your life  
24 is precious.

25           I would like to make a comment about sand

1 mining. There is no sand mining permit in Maui. Yet  
2 the sand mining areas, the collection areas of Ameron  
3 and HC&S grow daily with sands that are brought from  
4 projects that are urban and are grading. And in those  
5 sands are often found our bones of our iwi kupuna.

6 I would like to ask you if you are not able  
7 to come to the conclusion that this company does not  
8 have any rights to this land, and that I will not be  
9 impacted by this development, that you make them  
10 strain, sift with fine screen every single part of  
11 sand that they are using in grading.

12 When they grade something it should be  
13 finely screened. Because in their own report there's  
14 an area where they had a pile of A&B sand where they  
15 were grading. And in these piles they found iwi. And  
16 out of those piles came 17 sets of iwi: Two niho  
17 palaoa, royal fish hooks, and adzes.

18 Every single piece of sand needs to be  
19 finely screened. Let's not make this about getting  
20 the sand. If you're really doing a development and  
21 you're not looking to make money on the sand, then you  
22 will be very conscious to make sure you do not take  
23 any of my ancestors' bones out of this Project.

24 Next, I'd like to say that in the history  
25 of Kakanelua, the Battle of Kakanelua, you have

1 qualified and accepted an as expert Lisa  
2 Rotunno-Hazuka. I have been trying to work with her  
3 since 2007. I brought her the history, talked about  
4 the battle, talked how in Hawaiian culture yes,  
5 families are there.

6           There are many instances with queens being  
7 taken off of the battle field and saved. There are --  
8 (outside noise) Pardon me? -- there are so many  
9 things that are wrong with your acceptance of her as  
10 an expert. I believe she has to or had to have her  
11 reports co-signed because she's not eligible to do  
12 that.

13           I have a letter here from 2007 where she's  
14 thanking me for bringing in, coming in and talking to  
15 her and saying that, "I know about the battle of Sand  
16 Hills but I've never heard of the name Kakanelua."  
17 And you took her expert testimony about this battle  
18 when someone like Hokuao Pellegrino gives you the  
19 mo'olelo *with* the land area.

20           He has been studying this as a cultural  
21 practitioner *and* his field of study and an expert.  
22 And you would take her testimony and accept it. I  
23 would ask you to please rethink that and look at it  
24 because that is not expert testimony.

25           And so I have written just a few things

1 because I have done very lengthy comments to you. And  
2 I actually, after the acceptance of the EIS, filed a  
3 lawsuit against this body. And that lawsuit was a  
4 half day late in time. And I had no mercy from the  
5 judge. Although your attorney failed to give me the  
6 motion. But it was okay for him. So you see what I'm  
7 up against. It's just me. It's just me.

8           If I'm going to protect this area, if you  
9 don't do your job in finding out what are the cultural  
10 impacts, I'm going to have to sue you. I'm going to  
11 have to find money to sue you. I can barely pay for  
12 the copying fees. But I will.

13           I show you this owl feather. (holding up  
14 feather) It was found at Kuihelani Avenue right at  
15 the property site. This is a Pueo feather. In 2010 I  
16 interviewed with the cultural impact assessment Hana  
17 Pono. I told them I was hiking in there in the  
18 Wai'ale area and I saw a Pueo on the ground. Do you  
19 see that in the cultural inventory assessment? Here's  
20 the feather. This is a great symbol. The owl is an  
21 embodiment of Tutu Pele. There are many places where  
22 there were owl heiau. This is an owl area. The  
23 lowlands are their habitat.

24           But as always I am minimized. You don't  
25 hear my voice. I'm standing here in front of you. Do



1 you hear my voice? Was I in that cultural impact  
2 assessment? Did you see anybody acknowledge the Pueo?  
3 Like the Pueo, you'd rather not see me, rather not  
4 hear me.

5 But what is in danger is my history, the  
6 history of this area, the history of Maui, the history  
7 of Hawai'i's significant battle, significant  
8 battlefield, cultural sites decimated by sand mining  
9 for the greed of sand mining, burial sites, burial  
10 areas.

11 It breaks my heart to see a young man cry  
12 because he can't save his own ancestor's burials  
13 because you hold all the power. You hold the power.  
14 Listen to me. Hear me. I'm standing here before you.  
15 I have the cultural practice of this land. And it is  
16 in great danger.

17 Because if you allow this developer to keep  
18 going the way it's going without consulting with the  
19 proper cultural representatives, we will have Maui  
20 Lani again where people have to have their houses  
21 blessed regularly; children hear things; the school  
22 has the floor coming up like there's a worm going  
23 through the cafeteria.

24 And how long has this been? Twenty years.  
25 Same sand dune. Same exact topography. Same M-O:

1 Let's get our right to build. Let's take the water  
2 and the rights. There are four wells on this property  
3 but let's take the water from Waikapu to go for this  
4 Project. And when we get our right to build we'll  
5 sand mine; take the sand out, hope there are no  
6 burials and if there are let's shove them into a  
7 preservation area. Then let's build. Let's build  
8 houses and schools for the kids.

9 Do you even realize what you're doing to  
10 our island? Do you even realize -- would you want to  
11 threaten your own children and family like that?

12 I live in the sand dunes. And I'm safe,  
13 but not everyone's like me. There are many  
14 disturbances. And I stand here before because I was  
15 called by the ancestors.

16 And I stand here before you because I want  
17 to see Maui developed in a good way. This area you  
18 have a model for a preservation. It should be  
19 preserved. This is all that's left to show that this  
20 great piece of history happened. This is all that's  
21 left of these great sand dunes, the largest in all of  
22 the islands.

23 And should we build so that children can  
24 have disturbances? Please, do your job, I know you  
25 can, and find out what are the cultural impacts. How

1 does it affect me? How does it affect every one of  
2 the people that testified before you and the people  
3 who are to come?

4 What are the cultural impacts of your  
5 decision? And I point to the Ka Pa'akai case vs. Land  
6 Use Commission. It outlines in a very nice way how  
7 you can do that. Thank you for your patience in  
8 allowing me to testify.

9 CHAIRMAN LEZY: Parties, questions?  
10 Commissioners, questions? Commissioner Makua.

11 COMMISSIONER MAKUA: I'm just curious, and  
12 believe me I, I hear you. I believe we all hear you.  
13 But you also had some pretty strong comments as far as  
14 our kuleana. I'm just curious. At the hearing we had  
15 to approve the EIS, you assured us then that if we  
16 approved it you would file to be an Intervenor in this  
17 docket. Did you?

18 THE WITNESS: I would have done that. I  
19 didn't get a notice that that was going to happen,  
20 that the Applicant had filed. I didn't have a notice.  
21 I have gotten them from the LUC for other things, for  
22 Kula Ridge, for various projects, for Kahoma, but I  
23 did not get one for this Project.

24 I had no idea that they had filed months  
25 before they were going to actually come to before you,

1 and before the time period that had elapsed when the  
2 EIS could be challenged. My only recourse was to file  
3 suit challenging the EIS. You make it very difficult.  
4 The rules make it very difficult.

5 I thank you for coming to the central part  
6 of Maui. That's helped us a lot today. But it's very  
7 difficult. I mean I had to come, as your staff knows,  
8 to your office to pick up the minutes to be able to  
9 view the expert testimony. It's not available on  
10 Maui. I have to go to Honolulu to get it. It is not  
11 user friendly for the public.

12 CHAIRMAN LEZY: Commissioners, other  
13 questions? Thank you for your testimony, Ms. Apana.  
14 Let's take a ten minute break.

15 (Recess was held 11:45-12:00)

16 CHAIRMAN LEZY: (Gavel) Morning.

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

20 THE WITNESS: I do.

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

23 THE WITNESS: My name a Pono Kealoha. Some  
24 of you are familiar with me. My address is the  
25 illegally occupied nation of Hawai'i. We've been

1 ongoing with cultural practice.

2 Can I see how many people here in the room  
3 have been participating in helping to take care of the  
4 iwi and setting up for the iwi in Wai'ale? We come  
5 from many different islands. This is how strongly we  
6 feel. You see me on O'ahu. This is like another  
7 Ho'opili case.

8 These are resources that belong to us that  
9 needs to be cherished that needs to be malama. I  
10 can't look at my kid and say I'm doing my kuleana  
11 while this is going on. This is a war against us,  
12 against the first people's here, and until you guys  
13 realize we're not second class citizens wearing a  
14 yellow star.

15 Please have it in your heart. I want to  
16 give my child some hope for their future children.  
17 Please think about us as living human beings just  
18 wanting to be pono with everybody. That's all we ask.  
19 Not putting ourselves above everybody, but at least  
20 having standing; not being a social triage where we're  
21 being systematically cut out of the system where we  
22 have no say at all, which is happening. And again  
23 this is genocide. Mahalo, aloha.

24 CHAIRMAN LEZY: Parties, questions?  
25 Commissioners, questions? Thank you for your

1 testimony, sir. Let's move on to parties' additional  
2 exhibits. Mr. Matsubara, do you have any additional  
3 exhibits you wish to offer?

4 MR. MATSUBARA: No further exhibits,  
5 Mr. Chair.

6 CHAIRMAN LEZY: County?

7 MR. HOPPER: Thank you, Mr. Chair. We have  
8 submitted Exhibit No. 8. We'll have to submit an  
9 Amended Exhibit List. We also submitted an Amended  
10 List of Witnesses just to clarify that Dave Taylor and  
11 Jo-Ann Ridao will not be testifying as experts. They  
12 don't have written testimony.

13 CHAIRMAN LEZY: Any objections to Exhibit 8  
14 from the other parties?

15 MR. MATSUBARA: No objections.

16 MR. YEE: No objection.

17 CHAIRMAN LEZY: Admitted. When do you  
18 think you'll be able to submit the Amended Exhibit  
19 List and Witness Lists?

20 MR. HOPPER: Well, the Amended Witness List  
21 has been submitted, but we will need to submit the  
22 Amended Exhibit List. That should be very soon, right  
23 after the hearing, in fact.

24 CHAIRMAN LEZY: Okay. Great. Thank you.  
25 Office of Planning.

1           MR. YEE: The Office of Planning would like  
2 to submit Exhibits 12 through 16, all of which are  
3 related to the Department of Transportation's  
4 testimony today. We appreciate the parties'  
5 understanding in this matter.

6           CHAIRMAN LEZY: Objections?

7           MR. MATSUBARA: None.

8           CHAIRMAN LEZY: County, objection?

9           MR. HOPPER: No.

10          CHAIRMAN LEZY: They're admitted.

11          MR. YEE: Just for the Chair's information  
12 we're not changing our Witness List but we will not be  
13 calling the Department of Education witness. It will  
14 be just the Department of Transportation and the  
15 Office of Planning.

16          CHAIRMAN LEZY: Thank you. Mr. Hopper,  
17 ready to proceed?

18          MR. HOPPER: Yes. The County will call  
19 David Taylor, director of the Department of Water  
20 Supply.

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

24          THE WITNESS: Yes, I do.

25          CHAIRMAN LEZY: Please state your name and

1 your business address.

2 THE WITNESS: My name is David Taylor. My  
3 business address is 200 South High Street in Wailuku.

4 DIRECT EXAMINATION

5 BY MR. HOPPER:

6 Q Mr. Taylor, what's your current position  
7 with the County of Maui?

8 A I'm the director of water supply.

9 Q And how long have you been in that  
10 position?

11 A Since January 2011.

12 Q What was your position with the county  
13 prior to that?

14 A I was the chief of the County's wastewater  
15 and recycled water division.

16 Q Are you familiar with the Wai'ale Project?

17 A Yes, I am.

18 Q Is the developer's estimated water demand  
19 of 1.87 million gallons a day an adequate estimate?

20 A It's consistent with our standards.

21 Q Have you had an opportunity to review the  
22 proposed water plans for the Project in both the EIS  
23 and the testimony provided by Mr. Nance?

24 A Yes, I have.

25 Q And what's your opinion of the option that



1 had been forwarded by Mr. Nance to the Commission?

2 A Are you referring to the wells in Waikapu?

3 Q Yes. Do you believe that that's a feasible  
4 option for this Project to provide water?

5 A Yes, I believe it's a feasible option.

6 Q Could you explain the requirements of the  
7 Chapter 14.12 of the Maui County Code.

8 A Chapter 14.12 of the Maui County Code is  
9 technically called the Water Availability Ordinance.  
10 It's commonly known as "show me the water." What it  
11 basically says in a nutshell is before subdivision is  
12 approved there has to be an adequate source of water  
13 available.

14 So it's an ordinance that says you can't  
15 get past the subdivision approval phase of development  
16 without an adequate water source.

17 Q And it's your understanding for this  
18 Project that the alternative provided by Mr. Nance is  
19 the preferred option to provide water to this Project  
20 at this stage?

21 A That is my understanding.

22 Q And the water availability ordinance that  
23 you spoke on, or the "show me the water", does that  
24 require verification of a long-term reliable source of  
25 water prior to the granting of a District Boundary

1 Amendment?

2 A No, it does not.

3 Q Has your department had discussions with  
4 the developers of this Project regarding water for  
5 this Project?

6 A Yes, we have.

7 Q And how it's going to be provided.

8 A Yes, we have.

9 Q Could you give a description of those  
10 discussions you've had to date?

11 A I think the discussions were summarized in  
12 a letter from the mayor to the developer, which says  
13 that our department is open to the concept of having a  
14 developer build the wells as described and dedicate  
15 them to the department.

16 Q Could you give a, if you could, brief  
17 understanding? I know there's been a testimony by  
18 Mr. Nance on this Project, but a brief description of  
19 what you understand to be Mr. Nance's option that he  
20 described in the testimony provided?

21 A There are -- I don't know the exact  
22 number -- there are a couple of wells that have been  
23 drilled in the Waikapu Aquifer that are owned by a  
24 private entity. The Waikapu Aquifer has, by the State  
25 Water Commission numbers, a sustainable yield of

1 3 million gallons a day. So more wells could be  
2 drilled on this other party's land.

3 So my understanding of the concept is that  
4 the Applicant in this process would make a deal with  
5 the current landowner and well owner to develop those  
6 wells, build a water system to serve the Project and  
7 eventually turn that over to the county in exchange,  
8 probably, for water source credits to serve the  
9 Project.

10 Q The "other developer" you're referring to  
11 that would be Mr. Atherton?

12 A That's correct.

13 Q The letter you referred to by the mayor's  
14 office, is that the letter in evidence as Exhibit 24,  
15 Petitioner's Exhibit 24?

16 A I don't have it in front of me but...

17 Q It's a letter dated January 6, 2012 from  
18 the Office of the Mayor.

19 A That sounds like what the letter is.

20 Q And does that letter summarize the  
21 current...

22 (document handed to witness)

23 A Yes, that's the letter I was referring to.

24 Q Sorry. And does that letter -- does that  
25 letter state the current status of the discussions

1 between the Department of Water Supply and the Project  
2 at this point?

3 A Yes, it does.

4 Q Has the county agreed to anything specific  
5 regarding the supply of water to this Project?

6 A No. The county hasn't agreed because any  
7 acquisition such as this would have to be approved by  
8 the County Council eventually. So we are not in a  
9 position to agree on it until there's something  
10 formally approved by the County Council.

11 Q Aside from the acquisition the developer to  
12 this point has not shown access to a reliable  
13 long-term source of water at this stage.

14 A That's correct.

15 Q Okay. So what would remain to be done in  
16 order for them -- would they need -- they would need  
17 to, based on Mr. Nance's testimony, come to an  
18 agreement with Mr. Atherton and secure the rights to  
19 use the water discussed in his testimony, correct?

20 A Yes, that's correct.

21 Q Okay. Do you believe, based on the plans  
22 submitted by Mr. Nance, that it would be feasible for  
23 the Project to satisfy the requirements of  
24 Chapter 14-1.2 of the Maui County Code as you  
25 described prior to subdivision approval?

1           A       Yes.

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

4                   CHAIRMAN LEZY: Petitioner?

5                   MR. TABATA: No questions.

6                   CHAIRMAN LEZY: Office of Planning?

7                               CROSS-EXAMINATION

8 BY MR. YEE:

9           Q       Just two brief areas. One of the  
10 testifiers talked about a sunset provision on the  
11 "show me the water" bill. Currently is there a sunset  
12 provision in the "show me the water" ordinance?

13          A       There's not.

14          Q       And then you testified that the Waikapu  
15 option is a feasible option to satisfy the county  
16 "show me the water" ordinance. And you would agree  
17 that Waikapu is certainly feasible from a resource  
18 analysis, right?

19          A       That's correct.

20          Q       I was wondering whether you're at a point  
21 in the process where you could say that the Waikapu  
22 wells are feasible from an economic analysis. Or is  
23 that part of the criteria that you used for  
24 feasibility?

25          A       I can tell you from our own analysis,

1 because we've looked at acquiring those wells  
2 ourselves, so we felt that development of those wells  
3 and adding those wells to our system is an option that  
4 we are open to if this doesn't happen.

5           So from our standpoint of economic analysis  
6 we think it's very feasible economically. And it's --  
7 I can't predict the future, but I would say if this  
8 Project doesn't go through it would probably move  
9 toward the top of our list to develop this Project  
10 ourselves at some point.

11           Q       So given that, it would also indicate that  
12 the operation costs would be acceptable or likely to  
13 be acceptable to the County of Maui.

14           A       They fit in with our current operational  
15 costs in that same order of magnitude.

16           MR. YEE: Thank you. Nothing further.

17           CHAIRMAN LEZY: Redirect?

18           MR. HOPPER: No, sir.

19           CHAIRMAN LEZY: Commissioners, questions?

20           Okay. Thank you very much for your testimony.

21           MR. HOPPER: The County calls Jo-Ann Ridao,  
22 Director of the Department of Housing and Human  
23 Concerns.

24           xx

25                               JO-ANN RIDAO,

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

3 THE WITNESS: Yes.

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

6 THE WITNESS: My name is Jo-Ann Ridao. I'm  
7 the Director of Housing and Human Concerns for the  
8 county of Maui. And my business address is 200 South  
9 High Street, Wailuku.

10 DIRECT EXAMINATION

11 BY MR. HOPPER:

12 Q Ms. Ridao, how long have you been in your  
13 position as Director of the Department of Housing and  
14 Human Concerns?

15 A I've been the director for about 15 months  
16 now. As David, I started in January of 2011.

17 Q And what was your position with the county  
18 prior to that?

19 A Prior to that I was the deputy director of  
20 the department.

21 Q Have you had an opportunity to review the  
22 Wai'ale Project?

23 A Yes, I have.

24 Q There was testimony earlier in this  
25 proceeding regarding a condition for the Maui Business

1 Park Phase 2 approval for A&B that required the  
2 Petitioner to provide lands to the county. And it was  
3 discussed as 50 acres to the county for various  
4 purposes including affordable housing, parks and a  
5 community center.

6 Could you give a brief summary of that  
7 requirement and your understanding of that  
8 requirement?

9 A Yes. My understanding of that requirement  
10 is that A&B will be providing 50 acres of land,  
11 40 acres of which will be for affordable housing,  
12 7 acres for a community center and 3 acres for park.

13 Q And specifically we're discussing a  
14 condition for the change in zoning for that Project?

15 A Yes.

16 Q And how much land must be dedicated for  
17 affordable housing purposes?

18 A Forty acres.

19 Q Okay. And what does that Project require  
20 regarding the location of the land for affordable  
21 housing?

22 A I wanted to read those conditions because  
23 they are pretty specific.

24 Q Certainly.

25 A The CIZ, the change in zoning condition,



1 states that "The property must be at the approximate  
2 location of the terminus of Kamehameha Avenue near the  
3 new Maui Lani Park and Pohmaika'i Elementary School."

4 It also states that, "The precise location  
5 of these lands shall be acceptable to the Department  
6 of Housing and Human Concerns and the Department of  
7 Parks and Recreation and that Alexander & Baldwin  
8 shall perform archaeological and topographical surveys  
9 of the land for the county's evaluation of the  
10 property's acceptability."

11 Q The Petitioner has estimated that the  
12 county could construct approximately 300 units on the  
13 40 acres that it must provide regarding the affordable  
14 housing land. Does this sound like a reasonable  
15 estimate to you?

16 A That does sound like a reasonable estimate  
17 to me. Our department uses approximately six to eight  
18 units per acre. So that is an estimate that would be  
19 reasonable to us.

20 Q Have you discussed the affordable housing  
21 land requirement based on this condition with the  
22 Petitioner?

23 A Yes, we have.

24 Q And in order to accept any land the Maui  
25 County Council must accept dedication, correct?

1           A       That is correct.

2           Q       And based on the condition your department  
3 would also have to approve of the location?

4           A       That is correct.

5           Q       You would also make a recommendation to the  
6 council on its acceptance of the land, correct?

7           A       Yes.

8           Q       Has your department committed to accepting  
9 land in any particular location in satisfaction of the  
10 condition for this Project?

11          A       We have not accepted any land location at  
12 this time.

13          Q       And you've had the opportunity, though, to  
14 see the conceptual site plan provided by the  
15 Petitioner in this docket, correct?

16          A       Yes, we have.

17          Q       Could you give a brief summary of your  
18 opinion on the proposed location in the conceptual  
19 plan.

20          A       Yes. I need to state that this has not  
21 been the first location that we looked at. We've  
22 talked about this for a couple of times. And  
23 primarily the location currently is something that I  
24 think the county would like to have more community  
25 input on.

1           We'd probably like to do some research and  
2 study on if there are any laws or regulations that  
3 will affect the site relative to the old dump site  
4 that is close by.

5           Q       So, again, to reiterate you have not --  
6 your department has not committed to this particular  
7 site --

8           A       No.

9           Q       -- as the affordable housing site.

10          A       We have not.

11          Q       And you would want to do additional  
12 community input and research on this area as well  
13 before coming to a conclusion on this site?

14          A       Yes, before we would make any  
15 recommendation, yes.

16          Q       In fact they would need to -- A&B would  
17 need to go through project district zoning and various  
18 other entitlements to deal with the specific location,  
19 correct?

20          A       Correct.

21          Q       Are you familiar with Chapter 2.96 of the  
22 Maui County Code regarding affordable housing?

23          A       Yes, I am.

24          Q       Could you give a summary what that law  
25 requires in general?

1           A       In general for this Project the law would  
2 require that any units that are built over -- I should  
3 say any units that are built are subject to the law.  
4 If the units, market units, are over \$600,000, then  
5 the developer would have to give back 25 percent. If  
6 the units, market units, are \$600,000 and above, then  
7 they would have to provide 50 percent in affordable.

8           Q       Basically that means 25 percent of the  
9 Project.

10          A       The total Project count.

11          Q       Right.

12          A       Yes.

13          Q       Now, A&B in their submittals to the  
14 Commission stated that -- just to reiterate on the  
15 law, though, an affordable housing agreement is  
16 finalized with the department that outlines based on  
17 the law specifically how they're going to satisfy  
18 their affordable housing requirement, correct?

19          A       That is correct.

20          Q       And that's done prior to subdivision?

21          A       That is correct.

22          Q       So there's no such agreement in place  
23 currently, correct?

24          A       There is no agreement.

25          Q       While that's not required, could you give

1 an estimate based on this Project's design on how  
2 much, how many affordable units will need to be  
3 provided?

4 A Yes. It is my understanding that the  
5 estimated number of units for this Project is 2250.

6 Q This is -- this is not counting the 300  
7 units that the county would be providing on 40 acres  
8 though, correct?

9 A Those would be additional, correct.

10 Q So a 2550 units without that, the 300  
11 provided by the county, correct?

12 A Correct. So based on that number A&B's  
13 requirement would be 563 affordable units.

14 Q That's based on 25 percent of the 2,250  
15 total units?

16 A Correct.

17 Q And then to reiterate, so this is not an  
18 issue of double counting where the county affordable  
19 units are also, again, count for the business park are  
20 not again being counted as affordable units for this  
21 Project, correct?

22 A That is correct.

23 MR. HOPPER: Thank you. I have no further  
24 questions.

25 CHAIRMAN LEZY: Petitioner?

1 MR. TABATA: No questions.

2 CHAIRMAN LEZY: Mr. Yee?

3 CROSS-EXAMINATION

4 BY MR. YEE:

5 Q Currently do you know what, what current  
6 requirement or determination of affordability is for  
7 the AMI?

8 A The affordability I believe for a family of  
9 4 AMI is 70,000, yeah, for a family of four.

10 MR. YEE: Thank you.

11 CHAIRMAN LEZY: Redirect?

12 MR. HOPPER: No.

13 CHAIRMAN LEZY: Commissioners, questions?  
14 Commissioner Makua.

15 COMMISSIONER MAKUA: What kind of stuck out  
16 to me when I first saw the Petition Area when we went  
17 to our site visit, is how the county housing areas are  
18 pretty much in the dunes. I'm wondering how you folks  
19 feel about that and how that's going to weigh into  
20 your decision.

21 THE WITNESS: I think that is a very good  
22 question. For the department we don't have any  
23 objection to the location. My concerns, as I stated  
24 earlier, are the location as it's in respect to where  
25 it's located next to the sand dune -- I mean --

1 COMMISSIONER MAKUA: The dump.

2 THE WITNESS: The old dump, yeah. And that  
3 I think I would like to get more information on as far  
4 as if there any rules or regulations as far as having  
5 housing in that proximity.

6 As far as the, site for the burials  
7 they're calling it, ah, what are they calling it?

8 COMMISSIONER MAKUA: They're calling -- I  
9 see a little portion, well, a portion is for the  
10 cultural preserve.

11 THE WITNESS: Yeah.

12 COMMISSIONER MAKUA: But I know on the  
13 side --

14 THE WITNESS: Cultural preserve --

15 COMMISSIONER MAKUA: -- on the sides is  
16 county housing.

17 THE WITNESS: Yeah. And this is only a  
18 personal, you know, feeling. It's not a feeling of  
19 the department. I personally don't have a problem  
20 with that because my Hawaiian family on the Big  
21 Island, our house is right next to our burials.

22 So it's not -- actually I see it as a very  
23 peaceful environment. I see it as a protection  
24 environment. So it's my way of thinking. It's not  
25 necessarily the county's perspective.

1           COMMISSIONER MAKUA: So you don't see a  
2 difference from you being able to care for your own  
3 kupuna.

4           THE WITNESS: Yes.

5           COMMISSIONER MAKUA: You don't see that  
6 being different from strangers being on other people's  
7 kupuna.

8           THE WITNESS: Well, you know, I kinda see  
9 this as a responsibility of our community. And the  
10 kupuna there are our community's kupuna. I think  
11 maybe I look at it as a different way. I don't see it  
12 as like a personal. I see it like that that's our  
13 community's responsibility to take care of our kupuna.  
14 And I hope that the people would be able to live in  
15 this community will be proud to live there be able to  
16 take care of that.

17           CHAIRMAN LEZY: Commissioners, any other  
18 questions? Thank you for your testimony.

19           MR. HOPPER: The County has no more  
20 witnesses, Mr. Chair.

21           CHAIRMAN LEZY: So, Mr. Hopper, you're  
22 resting.

23           MR. HOPPER: Yes, that's correct.

24           CHAIRMAN LEZY: Office of Planning?

25           MR. YEE: First witness will be Jadine



1 Urasaki Deputy Director of the Department of  
2 Transportation. For the Commission's information on  
3 the wall are enlarged maps, the site map with the red  
4 lettering is OP Exhibit 16. The map which would be  
5 rather hard for some of you to view because it's  
6 directly behind you, is a 5-mile radius map which is  
7 OP Exhibit 15.

8 JADINE URASAKI

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

11 THE WITNESS: Okay.

12 CHAIRMAN LEZY: State your name, your  
13 business address.

14 THE WITNESS: My name is Jadine Urasaki.  
15 I'm the deputy director for the Department of  
16 Transportation. Our business address is 869 Punchbowl  
17 Street, suite 511 Honolulu, Hawai'i 86813.

18 DIRECT EXAMINATION

19 BY MR. YEE:

20 Q Ms. Urasaki, what is your current position  
21 with the state?

22 A Deputy director for the Department of  
23 Transportation.

24 Q And was the DOT's written testimony, OP  
25 Exhibit 12, prepared by you or at your direction?

1           A       Yes, that is correct.

2           Q       Could you please summarize for the  
3 Commission your testimony in this case?

4           A       Sure. So Exhibit 12 that you should have,  
5 as Bryan had indicated, basically the State Department  
6 of Transportation recognizes the need for  
7 transportation system or state transportation system  
8 that supports the planned growth, which is consistent  
9 with and will accommodate the objectives of the state  
10 and the county of Maui.

11                   The proposed development abuts the state  
12 principal arterial, Kuihelani Highway, and is also in  
13 the proximity of the state principal arterial  
14 Honoapi'ilani Highway and our Kahalu'i Airport.

15                   The DOT provides some of our concerns to  
16 the Project as related to some of the impacts to our  
17 transportation system. There are two modes of  
18 transportation associated with this subject Petition  
19 that are of concern to the DOT.

20                   One is to our airports and the other is to  
21 our highways. We feel these effects need to be  
22 addressed through these land use conditions. The DOT  
23 is working with and through the State Office of  
24 Planning regarding the specific language for these  
25 conditions as well as the Petitioner.

1           Our concerns, just to summarize, with  
2   respect to our airports, Kahului Airport as you see on  
3   Exhibit 15, again, I know it's hard. But basically we  
4   are concerned that due to the proximity -- I take it  
5   back. That will be for the second part. That can be  
6   related just to note where the location of the airport  
7   runway is.

8           But we are concerned that due to the  
9   proximity of the Petition Area to the airport, again,  
10   we have flight operations in, at and out of the  
11   airport that may affect the Petition Area.

12           In order to address this concern the DOT  
13   feels that the Petitioner and any subsequent owners  
14   should be notified and formally disclose to all  
15   prospective buyers, developers and lessees of the real  
16   property in the Petition Area, that there is the  
17   potential for aircraft noise emissions, vibrations and  
18   other effects from the overflight of aircraft and  
19   other incidences of aircraft operations.

20           Second. And, again I guess going back to  
21   the exhibit. The Wai'ale development will require the  
22   construction of a new stormwater drainage system  
23   consisting of open swales, storm drains, detention as  
24   well as retention basins, and the possibility for an  
25   onsite wastewater treatment plant.

1           We are concerned that these improvements  
2 will have the potential to attract hazardous wildlife  
3 and threaten aviation safety. The Federal Aviation  
4 Administration or the FAA, has an advisory circular  
5 150-200-33B, Hazardous Wildlife Attractants on or Near  
6 Airports, and recommends a distance of 5 statute  
7 miles, which is shown on the exhibit. The circular  
8 red area that shows within the perimeter the  
9 development itself.

10           And basically we're saying that because of  
11 this they need to address how they're going to  
12 mitigate to ensure that the design, engineering,  
13 construction and operation of this development will  
14 not create any aboveground standing water.

15           To that regard we will work with the  
16 Petitioner to execute a Memorandum of Agreement to  
17 ensure that the FAA advisory circular conditions are  
18 met and that the new Project does not create a safety  
19 hazard to our aircraft operations.

20           The other division, which is our Highways  
21 Division, we note several concerns. Basically I'll  
22 summarize it. The revised Traffic Impact Analysis  
23 Report will have to be reviewed and accepted by the  
24 D&O prior to approval of a change in zone from the  
25 county of Maui.

1           The Traffic Impact Analysis Report should  
2 provide and validate all recommended mitigation  
3 measures for potential Project-related traffic impacts  
4 on state facilities to the satisfaction of the  
5 department.

6           On this Exhibit 16 here shows some of the  
7 accesses. On there we will limit the access to road  
8 C. It's further to the right of the exhibit. I think  
9 it's highlighted in green on your exhibit package as  
10 road C. And the existing intersection with East Waiko  
11 Road as they have identified in their Traffic Impact  
12 Assessment Report.

13           Other accesses are also shown in your  
14 exhibit, Road E access will not be allowed onto  
15 Kuihelani Highway. The third access as shown on  
16 there, which further to the left, again we would look  
17 at as soon as that agricultural access that's  
18 currently being used and when the land use changes we  
19 will shut that access off and allow them the access on  
20 road F.

21           Should note that the Petitioner has  
22 indicated that they will provide for North/South Road  
23 connectivity by establishing a road and right-of-way  
24 stubouts to extend the Kamehameha Avenue to the south  
25 boundary of Wai'ale.

1           They will fund and provide for the planning  
2 and design and construction of all traffic  
3 improvements required to mitigate the local and direct  
4 project-generated and our related traffic impacts and  
5 also our regional impacts.

6           Basically anything to do in mitigating the  
7 traffic issues and concerns of the department, we  
8 recommend the Petitioner address.

9           Additionally, noise traffic levels that  
10 currently exceeds the DOT's limits of the 66 decibel  
11 noise levels along Kuihelani Highway should also be  
12 addressed by the Petitioner with noise compatible  
13 planning and sound abatement measures for the exterior  
14 of such sensitive receptors as residences, parks,  
15 hospitals and schools to comply with our standards for  
16 the exterior of the Project sensitivity.

17           Similar to our airports we will work with  
18 the Petitioner on a Memorandum of Understanding or  
19 Memorandum of Agreement that would document the  
20 conditions and agree upon in terms of the phasing and  
21 the Traffic Impact Assessment Reports that would have  
22 to be provided.

23         Q       Just a couple follow-ups. You referred to  
24 the noise provision. Is that mitigation pursuant to a  
25 written policy guideline that the Department of

1 Transportation has adopted?

2 A Yes. That is correct. The Department of  
3 Transportation as well as with the Federal Highways  
4 Administration has adopted our noise policy and  
5 abatement guideline April 25, 2011. And that was also  
6 provided to the Petitioner.

7 Q And then because we haven't specifically  
8 addressed this issue in prior cases, is there a reason  
9 why you want a Memorandum of Agreement for your  
10 employees to use rather than carrying around a copy of  
11 the decision and order in this case?

12 A Yes. I think one of the changes is more on  
13 the Airport side. I think for Highways we've always  
14 had a Memorandum of Agreement, so that it was very  
15 clear as to the impacts.

16 The Airports Division similarly, I mean our  
17 staff, our operation staff out here they shouldn't be  
18 having to carry and looking for the large files. And  
19 so having that Memorandum of Agreement also makes it  
20 easier for them to make sure that there's compliance  
21 and it's happening from the development.

22 Also it can allow us to ensure that the  
23 conditions are being met and also with discussions  
24 with our partners at the Federal Aviation  
25 Administration.

1           Q       And, finally, just to conclude, you've  
2 expressed some of the concerns and analyses you've  
3 applied, but do you believe that these concerns can be  
4 resolved through appropriate conditions?

5           A       Yes.

6                   MR. YEE: I have nothing further.

7                   CHAIRMAN LEZY: Petitioner?

8                               CROSS-EXAMINATION

9 BY MR. MATSUBARA:

10          Q       Just a few questions. Ms. Urasaki, the  
11 thorough listing you have of the concerns the Airports  
12 in Hawai'i relates to topics that DOT intends for the  
13 Office of Planning to continue to discuss with the  
14 Petitioner in arriving at a Memorandum of  
15 Understanding which both parties will agree.

16          A       I think just to separate that. The DOT has  
17 extensive amount of concerns as shown in Exhibit 12.  
18 And that we're working with the Office of Planning to  
19 put in those conditions as part of the Decision and  
20 Order.

21                   That being said, there are provisions,  
22 concerns both related to Airports and Highways that  
23 have a Memorandum of Agreement or -- Memorandum of --  
24 yeah, Memorandum of Agreement that we would work in  
25 concert with the Petitioner, with you folks to ensure



1 that all of those concerns are captured. Like I said,  
2 our staff has been meeting with the Petitioner on all  
3 of these issues and concerns.

4 Q So the continued discussions relate both to  
5 the ultimate conditions that you will ask the  
6 Commission to include in the decision and order.

7 A Yes.

8 Q And also a Memorandum of Agreement which  
9 after discussions will be executed between the  
10 parties?

11 A Yes, that's usually our standard practice.

12 Q Thank you. Under paragraph 9 under the  
13 Highways Division, that relates to "Any significant  
14 changes in Project phasing and development shall  
15 require a revised TIAR.

16 And any additional mitigation required as a  
17 result of these changes to be provided in the updated  
18 TIAR which should be submitted to the DOT for review  
19 and approval."

20 That provision basically states a right  
21 that DOT always has, is that correct?

22 A That's correct.

23 Q Whenever there's a change in conditions in  
24 order to ensure that any plans or permits that are  
25 requested are designed to mitigate any traffic

1 concerns you have, you can request a TIAR.

2 A That is correct.

3 Q Or a revision to an earlier submitted TIAR.

4 A Yeah, a supplemental TIAR.

5 Q And until you provide acceptance or  
6 approval of that revision or TIAR, Petitioner is not  
7 able to proceed with Project development if he hasn't  
8 received your approval.

9 A That is correct.

10 Q Is there some logic to having the final  
11 revised TIAR close in time to the beginning of  
12 construction?

13 A Yes. I think one of our conditions was at  
14 the approval process. That we're saying versus a  
15 submittal process is that there would be no change.  
16 That's pretty much definitive as to how you're going  
17 to be proceeding with the Project. So we're basically  
18 going off something that is more finite.

19 Q Finite like, for example, would subdivision  
20 approval --

21 A Yes.

22 Q -- be one of those processes?

23 A That is correct.

24 Q It also would make sense that upon approval  
25 of the TIAR or the final revisions that are requested,

1 that at that point it makes sense to finalize the MOA  
2 because that way you'd be assured that what was  
3 provided to you in the TIAR or *revised* TIAR is  
4 incorporated in that MOA.

5 A That's correct.

6 MR. MATSUBARA: Thank you very much. No  
7 further questions.

8 CHAIRMAN LEZY: Mr. Hopper?

9 MR. HOPPER: No questions.

10 CHAIRMAN LEZY: Redirect, Mr. Yee?

11 REDIRECT EXAMINATION

12 BY MR. YEE:

13 Q Are you familiar that in the county land  
14 use process there's both a zoning approval and a  
15 subdivision approval typically?

16 A Yes.

17 Q With respect to the zoning type approval  
18 would you be looking for the acceptance of -- is that  
19 when the acceptance of the TIAR --

20 A TIAR, yes, that is correct.

21 Q But you mentioned the subdivision approval.

22 A That would be for the Memorandum of  
23 Understanding.

24 Q Thank you. Nothing further.

25 THE WITNESS: I mean "Agreement". Yeah.

1           CHAIRMAN LEZY: Commissioners, questions?  
2 Commissioner McDonald.

3           COMMISSIONER McDONALD: Hi, Ms. Urasaki.  
4 Thank you for your testimony. Just a quick question.  
5 I believe there's some discussion with regards to the  
6 runway extension at Kahului Airport.

7           If that goes through are there any  
8 additional concerns that could be raised by Airports  
9 Division with regards to that runway extension?

10          THE WITNESS: If that runway extension --  
11 right now I think that's very preliminary, premature  
12 for me to comment on that because it has not even gone  
13 through any environmental vetting out.

14          So I kinda would not like to preempt us on  
15 committing to anything until an EIS or environmental  
16 document is done to address whether or not there would  
17 be an impact or not.

18          COMMISSIONER McDONALD: Fair enough. Thank  
19 you.

20          CHAIRMAN LEZY: Commissioners, any other  
21 questions? Thank you for your testimony.

22          MR. YEE: Our next witness is -- and  
23 actually if I could pause for a moment. I apologize  
24 because I forgot about this. Could I have Ms. Urasaki  
25 qualified as an expert in the field of transportation?

1 CHAIRMAN LEZY: Yes.

2 MR. YEE: Thank you.

3 CHAIRMAN LEZY: Just for you. (Laughter).

4 MR. YEE: Thank you.

5 MR. MATSUBARA: No objections.

6 MR. YEE: We have previously submitted her  
7 resumé to the Commission.

8 CHAIRMAN LEZY: Just so the record's clear  
9 there were no objections, I assume.

10 MR. MATSUBARA: No objections.

11 CHAIRMAN LEZY: Morning.

12 RODNEY FUNAKOSHI

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

15 THE WITNESS: Yes.

16 CHAIRMAN LEZY: Please state your name and  
17 business address.

18 THE WITNESS: Rodney Funakoshi. Office of  
19 Planning, 235 South Beretania Street, Honolulu.

20 MR. YEE: We are not seeking to have Mr. --  
21 even though he may be an expert we're not seeking his  
22 qualification in this case.

23 DIRECT EXAMINATION

24 BY MR. YEE:

25 Q Mr. Funakoshi, what's your current position

1 or title?

2 A I'm the Planning Program Administrator with  
3 the Land Use Division, Office of Planning, Department  
4 of Business, Economic Development.

5 Q And was OP's written testimony, OP  
6 Exhibit 2, prepared by you or at your direction?

7 A Yes.

8 Q Could you please summarize the testimony  
9 and position of the Office of Planning in this case?

10 A Okay. Thank you. Overall the Office of  
11 Planning supports and recommends approval of the  
12 Petition subject to conditions of approval. And  
13 summarily the Project Area is consistent with  
14 standards for the Urban District. It is proximate to  
15 areas of trading and employment.

16 It is not consistent with the current  
17 Community Plan for the Wailuku/Kahului region which  
18 its current designation is Agricultural.

19 However, the Project is within the proposed  
20 Urban Growth Boundary on the Draft Maui Island Plan  
21 undergoing review by the Maui County Council.

22 Basic public services are available or  
23 will be provided by the Petitioner. Water  
24 availability is an outstanding issue. There's  
25 satisfactory topography and site drainage. It is

1 adjacent to Urban District lands.

2           The Petition is generally consistent with  
3 the Hawaii State Plan, in particular the promotion of  
4 economic opportunities, sustainability and affordable  
5 housing. It complements the Administration's  
6 priorities in the New Day Comprehensive Plan relative  
7 to workforce housing, jobs and economic opportunities  
8 and infrastructure improvements.

9           I will be going over the areas of state  
10 concern. Agricultural resources: Most of the  
11 Petition Area is rated E by the Land Study Bureau  
12 except for a small C rated portion along the northern  
13 boundary.

14           There are no Prime Agricultural Lands under  
15 the ALISH classification system. Petitioner intends  
16 to work with current lessees to relocate operations.

17           We do have a recommended condition relative  
18 to agriculture. These are fairly standard: That  
19 there not be interference with or restraint to the  
20 existing farming operations. And that purchasers be  
21 informed of the State's Right to Farm Act.

22           Water resources is a continuing concern.  
23 Source of potable water remains an unresolved issue  
24 that Petitioner should resolve as soon as possible  
25 given the Project size and scope.

1           Briefly, the 'Iao Aquifer is surface water  
2 management area in the Na Wai Eha area.

3           There is a proposed Wai'ale water treatment  
4 facility that has been proposed along with the  
5 Department of Water Supply with a capacity of 9 mgd.  
6 However, water use applications exceed available  
7 supply for the surface water source. And there's also  
8 a pending appeal of the Na Wai Eha decision.

9           Relative to the Kahului Aquifer there's  
10 only a 1 mgd sustainable yield. There is already  
11 substantial withdrawals, although most of these are  
12 for non-potable sources.

13           Potable withdrawals, given the Project's  
14 anticipated demand would approach the sustainable  
15 yield. Waikapu Aquifer, with a 3 mgd sustainable  
16 yield, appears to be very feasible except that the  
17 source is it not owned -- lands of the source are not  
18 owned by the Petitioner and an agreement with the  
19 landowner would be needed.

20           The Office of Planning is not recommending  
21 a condition, but the Petitioner could apprise the  
22 Commission how water supply needs will be met, at the  
23 earliest practical time. The County's water  
24 availability policy should help to ensure its  
25 availability prior to the development.



1           Relative to wastewater. An onsite  
2 wastewater treatment facility would be subject to the  
3 Department of Health wastewater rules. Injection  
4 wells are prohibited in the critical wastewater  
5 disposal area.

6           Further, the Department of Transportation's  
7 Airport concerns for avian impacts will also need to  
8 be addressed. We are, will be incorporating a  
9 condition for mitigating airport wildlife attractants.  
10 And in particular this is directed to any open or  
11 standing water areas.

12           Endangered species. The endangered  
13 Blackburn's Sphinx Moth and tobacco tree habitat have  
14 been identified in surveys of the area. And what we  
15 are recommending is to encourage formal consultation  
16 with the Division of Forestry and Wildlife and the  
17 U.S. Fish and Wildlife Service to develop a mitigation  
18 plan to avoid impacts to endangered species. This may  
19 include the need for a habitat conservation and  
20 incidental take, license and permit.

21           Archaeology. Archaeological Inventory  
22 Survey has been accepted by the State Historic  
23 Preservation Division. A preservation and data  
24 recovery plan including burials, has also been  
25 accepted by the State Historic Preservation Division.

1           A cultural preserve has been established to  
2 preserve burial features within five areas totaling  
3 30 acres. Our recommended condition would essentially  
4 be to comply with the State Historic Preservation  
5 Division's recommendations and that there be  
6 continuous monitoring during site excavation  
7 activities and the standard stop work provision if  
8 previously unidentified burials or historic sites are  
9 found.

10           Transportation. We concur with the  
11 Department of Transportation recommendations for  
12 Highways and Airports mitigation. Summarily we will  
13 not be reiterating all the detailed concerns of the  
14 Department of Transportation in the conditions  
15 themselves. But what we will be requiring is that  
16 there be an acceptable Traffic Impact Analysis Report  
17 prior to zone change approval by the County Council.

18           We would also want a Memorandum of  
19 Agreement executed prior to final subdivision approval  
20 that includes the Petitioner's responsibilities for  
21 funding and construction, schedule of improvements and  
22 TIAR updates phased proportional to any indirect or  
23 secondary impacts caused by the Project.

24           And to address the DOT's concerns also  
25 we'll be including a condition to attenuate highway

1 noise above 66 dBA for noise sensitive uses such as  
2 homes and schools proposed along Kuihelani Highway.

3 We'll also be incorporating an Airport's  
4 notification and disclosure condition to future  
5 developers and buyers of potential impacts such as  
6 noise and overflights from Kahului Airport.

7 On Civil Defense. There's a need to  
8 install two sirens in locations and timeframes to be  
9 determined by the State Civil Defense agency.

10 Schools. For the planned middle school on  
11 the site, an education agreement with the Department  
12 of Education needs to be executed prior to zone change  
13 approval. So we will be including a condition to that  
14 effect.

15 Solid waste. Per the Department of  
16 Health's recommendation a 300-foot buffer needs to be  
17 provided from the landfill boundary.

18 For stormwater management and drainage  
19 condition would be to implement Best Management  
20 Practices and low-impact development practices, to the  
21 extent feasible, for onsite stormwater recapture and  
22 reuse in site design and landscaping to control water  
23 quality and mitigating non-point sources of pollution.

24 Sustainability. We encourage the  
25 Petitioner to comply with its sustainability plan.

1           And affordable housing. Similarly need to  
2           comply with the county's affordable housing  
3           requirements.

4           And then, finally, infrastructure. Our  
5           condition would remain that we would recommend  
6           completing the backbone infrastructure for the Project  
7           within ten years from approval. That concludes my  
8           testimony.

9           MR. YEE: I have no further questions.

10          CHAIRMAN LEZY: Petitioner?

11          MR. MATSUBARA: Thank you, Mr. Funakoshi.  
12          No questions.

13          CHAIRMAN LEZY: County?

14          MR. HOPPER: No questions.

15          CHAIRMAN LEZY: Redirect?

16          MR. YEE: No.

17          CHAIRMAN LEZY: Commissioners, questions?  
18          I have to ask. No. Thank you for your testimony.

19          THE WITNESS: Okay. Thank you.

20          MR. YEE: That concludes the Office of  
21          Planning's case in this matter. We will rest.

22          CHAIRMAN LEZY: Thank you. Mr. Matsubara,  
23          rebuttal?

24          MR. MATSUBARA: No rebuttal.

25          CHAIRMAN LEZY: Petitioner rests its case?

1 MR. MATSUBARA: Petitioner rests.

2 CHAIRMAN LEZY: Given that the parties have  
3 completed presentation and have rested their cases,  
4 the evidentiary portion of this proceeding is deemed  
5 closed. I direct that the parties draft their  
6 individual proposed findings of fact, conclusions of  
7 law and decision and orders based upon the record in  
8 this docket and to serve the same upon the other  
9 parties and the Commission.

10 I remind the parties that the Commission  
11 has standard conditions which the Commission asks that  
12 the parties consider in preparing their proposed  
13 orders. A copy of the standard conditions is  
14 available from Commission staff.

15 To the extent feasible the parties are  
16 encouraged to stipulate to any portion or all findings  
17 of fact, conclusions of law and decision and order.  
18 Regardless of whether the parties pursue a partial or  
19 fully stipulated order, I direct that each party file  
20 its proposed submission with the Commission and serve  
21 copies on the other parties no later than close of  
22 business on April 25, 2012.

23 All comments and objections to the proposed  
24 orders shall be filed with the Commission and served  
25 upon the other parties no later than close of business

1 on May 2, 2012.

2 Any responses to the objections shall be  
3 filed with the Commission and served on the other  
4 parties no later than close of business on May 7,  
5 2012.

6 I ask that the parties consult with  
7 Commission staff early in this process to ensure that  
8 technical and non-substantive formatting protocols are  
9 adhered to.

10 Oral arguments will be scheduled after  
11 receipt of the parties' respective submissions. Are  
12 there any questions regarding our post-hearing  
13 procedures?

14 MR. MATSUBARA: No questions.

15 MR. YEE: Chair?

16 CHAIRMAN LEZY: Mr. Yee.

17 MR. YEE: Pursuant to HAR 15-15-34 with  
18 respect to waiver, the Office of Planning would  
19 respectfully ask that we be allowed to not file a  
20 decision and order in this case. We would certainly  
21 work with the Petitioner on any stipulations and that  
22 we be allowed to only file objections or responses.

23 CHAIRMAN LEZY: Petitioner, objections?

24 MR. MATSUBARA: No objection.

25 CHAIRMAN LEZY: County, objections?

1           MR. HOPPER: No. The County would ask for  
2 the same.

3           CHAIRMAN LEZY: Just to make sure, and I  
4 will say the Chair is inclined to allow it, but just  
5 to make sure we have a proper record can you  
6 articulate a good cause for the requested waiver.

7           MR. YEE: Happy to. First, the parties I  
8 think are, one, very close to an agreement on the D&O.  
9 So it is unnecessary, we believe, to submit different  
10 pieces of documents for your review.

11           We are certainly in agreement of the  
12 outcome. So any disagreement will be limited to  
13 probably particular language or wording of specific  
14 sections of the D&O. Consequently, because we are not  
15 in dispute there is no need to submit D&O's from each  
16 side. It would be most efficient for all concerned to  
17 deal with one document in your decision-making.

18           CHAIRMAN LEZY: Mr. Hopper, I assume you  
19 join in that explanation?

20           MR. HOPPER: Yes, Mr. Chair.

21           CHAIRMAN LEZY: Commissioners, any  
22 concerns? Hearing none, I find there's good cause for  
23 suspension of the rule on that point.

24           Before we adjourn I'd like to thank all the  
25 folks who provided public testimony here today. It's

1 very helpful to the Commission. We appreciate your  
2 taking the time to come and speak with us.

3 Parties, thank you also for presenting your  
4 cases in an efficient manner and for the help you  
5 provided to the Commission in understanding this case.  
6 With that we stand adjourned.

7 MR. MATSUBARA: Thank you.

8 MR. YEE: Thank you.

9  
10 (The proceedings were adjourned at 12:55 p.m.)  
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## C E R T I F I C A T E

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

That I was acting as court reporter in the  
foregoing LUC matter on the 4th day of April 2012;

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

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

DATED: This \_\_\_\_\_ day of \_\_\_\_\_ 2012

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