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LAND USE COMMISSION
STATE OF HAWAI'I

HEARING)
A12-796 WAIKO INDUSTRIAL INVESTMENT, LLC)
)
)
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TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on for a Public Hearing
at Courtyard Maui Kahului Airport, Haleakala Room 532
Keolani Place, Kahului, Hawai'i 96732, Hawai'i,
commencing at 9:30 a.m. on February 21, 2013, 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 J.K. CHOCK, CHAIR

RONALD HELLER, VICE CHAIR

CHAD McDONALD, VICE CHAIR

SHELDON R. BIGA

LANCE M. INOUE

ERNEST MATSUMURA

EXECUTIVE OFFICER: DAN ORODENKER

STAFF PLANNER/CHIEF CLERK: RILEY HAKODA

STAFF PLANNERS: SCOTT DERRICKSON/BERT SARUWATARI

DEPUTY ATTORNEY GENERAL: SARAH HIRAKAMI, ESQ.

AUDIO TECHNICIAN: WALTER MENCHING

Docket No. A12-796 Waiko Industrial Investment, LLC

(Maui)

For the Petitioner: GREGORY GARNEAU, ESQ.

Landowner's Representative: CHARLES JENCKS

For the County:

JAMES GIROUX, ESQ.

Deputy Corporation Counsel

PAUL FASI, Planner

For the State:

BRYAN YEE, ESQ.

Deputy Attorney General

RODNEY FUNAKOSHI

OP Planning Program Administrator

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1 CHAIR CHOCK: Everyone, I'd like to call
2 this meeting to order. The first item on the agenda
3 is the adoption of Minutes for February 7th and 8th.
4 Do we have a motion to approve?

5 COMMISSIONER McDONALD: So moved.

6 COMMISSIONER BIGA: Second.

7 CHAIR CHOCK: Moved and seconded. Any
8 opposed? Minutes are approved. If our executive
9 officer could walk us through the tentative meeting
10 schedule.

11 MR. ORODENKER: Thank you, Mr. Chair. Our
12 next meeting is scheduled for March 7th on Maui,
13 continued hearings on Waiko Industrial Investment if
14 necessary. March 8th is on O'ahu, Kunia Loa Farmlands
15 site visit and meeting.

16 And March 21st, and 22nd is also reserved
17 for additional Waiko hearings if necessary and any
18 other Maui matters that may come before the
19 Commission.

20 April 4th and 5th is acceptance of the Maui
21 R&T EIS, once again here on Maui.

22 And April 18th is O'ahu, Ko'olina
23 Development boat launch ramp status report.

24 CHAIR CHOCK: Thank you very much, Dan.
25 Before we get started with our first item of business

1 I want to acknowledge our hard-working staff: Riley,
2 Holly, Sarah, everyone, Dan, for the diligent job you
3 guys always do in getting us here and on time. I know
4 it's very difficult trying to manage nine
5 Commissioners. So I just wanted to make sure I said
6 the appropriate thank you's.

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1 This a hearing on A12-796 Waiko Industrial
2 Investment. Will the parties please identify
3 themselves for the record.

4 MR. GARNEAU: Good morning, Mr. Chair,
5 Members of the Commission. My name is Greg Garneau.
6 And I'm appearing on behalf of the Waiko Industrial
7 Investment, LLC. Present with me this morning is
8 Mr. Charley Jencks seated to my right. He's the
9 landowner's representative.

10 MR. GIROUX: Good morning. James Giroux
11 on behalf of -- with corporation counsel on behalf of
12 the Department of Planning. With me is Paul Fasi,
13 planner.

14 MR. YEE: Good morning. Depty Attorney
15 General Bryan Yee on behalf of the Office of Planning.
16 With me is Rodney Funakoshi from the Office of
17 Planning.

18 CHAIR CHOCK: Let me briefly update the
19 record in this docket. On September 13, 2012 the
20 Commission received this Petition for district
21 boundary amendment, a full-sized tax map and a \$500
22 application fee.

23 September 17th the Commission received
24 Petitioner's Affidavit of Mailing Exhibits A. and B.

25 September 26 the Commission mailed a

1 comment letter to Petitioner's attorney, OP, county
2 and the Marlin New Management, Inc.

3 October 1 the Commission received e-mail
4 correspondence from Petitioner's attorney regarding
5 ownership and management issues.

6 On October 9th the Commission received
7 Petitioner's First Amendment to Petition for DBA filed
8 September 13, 2012 Appendix J through 1 and Exhibits 9
9 through 11.

10 On October 17 a Pre-Hearing Notice was
11 mailed to the parties. And on the same day a Deemed
12 Complete Notice was mailed to the parties and the
13 developer.

14 On October 24th, an updated and corrected
15 Pre-Hearing Notice was mailed to the parties.

16 On October 29th, an acknowledgment letter
17 regarding the Pre-hearing Notice was received from the
18 Petitioner by the Commission.

19 On November 2nd a pre-hearing meeting was
20 conducted and a Pre-hearing Order was mailed on
21 November 8th to the parties.

22 November 13 the Commission received and
23 granted a time extension from OP on behalf of OP and
24 the County to file their Position Statements on
25 November 21.

1 On November 19 the Commission received Maui
2 County Planning Department's Position Statement.

3 On November 21 the Commission received
4 County Witness and Exhibit Lists and County's Exhibits
5 1, 2 and 4; OP's Witness and Exhibit Lists and OP's
6 Exhibits marked 1, 3 through 5 and 8.

7 On the same day the Commission received
8 Petitioner's Witness and Exhibit Lists, Exhibits 1
9 through 51 and a request for time extension from
10 November 21 to December 31 to file exhibits and
11 written testimony.

12 On November 23 the Commission granted
13 Petitioner's time extension request.

14 On November 28 the Commission mailed an
15 agenda notice for the December 6 LUC meeting to the
16 Parties, Statewide and Maui mailing lists.

17 On November 29 the Commission mailed an
18 amended Agenda Notice for the December 6th LUC meeting
19 to the parties.

20 On November 30 the Commission received OP's
21 testimony in support of the Petition with conditions;
22 Petitioner's written direct testimony of witnesses and
23 Exhibits 28, 32, 34, 36, 39, 41, 43, 45, 47 and 49;
24 Petitioner's Rebuttal List of Witnesses and Rebuttal
25 list of Exhibits and a letter from Petitioner

1 requesting a time extension to file Rebuttal Exhibit
2 52, the written direct testimony of David A. Nobriga.

3 On December 3, the Commission received Maui
4 County's testimony of William Spence and Kyle Ginoza,
5 and Amended List of Exhibits to County Exhibit 3.

6 On December 6 the Commission conducted a
7 site visit to the Petition Area.

8 December 10th the Commission received
9 Petitioner's withdrawal of Petitioner's Rebuttal List
10 of Witnesses, Rebuttal List of Exhibits filed on
11 November 30.

12 On January 22, 2013 the Commission received
13 Petitioner's affidavit of mailing Notice of Hearing
14 and Exhibits A through C.

15 On January 25th the Commission received
16 Petitioner's Notice of Appearance of Counsel.

17 On February 4th the Commission received
18 Petitioner's Affidavit of Publication from Maui
19 Publishing Company, O'ahu Publications, West Hawaii
20 Today, Hawai'i Tribune-Herald and the Garden Island.

21 February 13th the Commission mailed a
22 February 21 through 22 LUC agenda to the parties and
23 the Maui, Kaua'i and statewide mailing lists.

24 Let me briefly describe our procedure for
25 today. First, I'll call those individuals desiring to

1 provide public testimony on this matter to identify
2 themselves. All such individuals will be called in
3 turn to our witness box where they will be sworn in.
4 A 3-minute time limit on testimony will be enforced.

5 After completion of the public testimony
6 staff will provide its map orientation. I'll then
7 give the opportunity for parties to admit their
8 exhibits to the record. After admission of exhibits
9 the Petitioner will begin its case. Once completed
10 with its present it will be followed by Maui County
11 and OP.

12 Parties will then present closing arguments
13 starting with the Petitioner. Chair would also like
14 to note for the parties and the public that from time
15 to time I will be calling for short breaks. Any
16 questions before we get started, parties?

17 COMMISSIONER HELLER: Mr. Chair.

18 CHAIR CHOCK: Commissioner Heller.

19 COMMISSIONER HELLER: Yes. I've put a
20 disclosure on the record in other dockets, but I just
21 want to make sure it's on the record in this docket as
22 well.

23 In my law practice I represent taxpayers in
24 real property tax appeals, among other things. So in
25 some of those cases my client would be against the

1 county of Maui in terms of the property tax dispute.
2 I just wanted to note that for the record. If anybody
3 has any problems with my participation in this case
4 now would be the time to speak up.

5 CHAIR CHOCK: Parties, any objections?

6 MR. GARNEAU: No objection.

7 MR. GIROUX: County has no objection.

8 MR. YEE: No objection.

9 CHAIR CHOCK: Thank you, Commissioner
10 Heller. Parties, any questions before we get started
11 today? Petitioner?

12 MR. GARNEAU: No questions.

13 MR. JENCKS: No questions.

14 MR. GIROUX: No questions.

15 CHAIR CHOCK: Do we have anybody signed up
16 to provide public testimony this morning?

17 MR. ORODENKER: Thank you, Mr. Chair.
18 Roderick Fong followed by Perry Artates and then Randy
19 Piltz. Those are the three that are signed up.

20 CHAIR CHOCK: May I swear you in before we
21 begin? Your name and address for the record?

22 THE WITNESS: Name is Roderick Fong.
23 Address is 495 Hukiliki Street, Kahului, Maui.

24 CHAIR CHOCK: Do you swear to tell the
25 truth?

1 RODERICK FONG

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

4 THE WITNESS: Yes.

5 CHAIR CHOCK: Proceed.

6 THE WITNESS: Mr. Chairman, and Members of
7 the Commission, my name is Roderick Fong of Fong
8 Construction Company and one of the principal owners
9 of the Project.

10 I'm here to give a brief testimony, to give
11 an understanding of how this Project evolved. In the
12 1950's our construction company was the first to lease
13 lands on Kahului's Dairy Road from A&B Properties.
14 This property is the current location of Ford's Truck
15 Repair Service across from the Maui Marketplace.

16 In the 1970's we leased another Kahului
17 4-acre property from A&B where Kmart is located as an
18 additional storage construction yard.

19 In the 1980's we were asked to vacate that
20 property, that Kmart property, for its development,
21 and relocated to this property, to this A&B property
22 that's in reference today along Waiko Road.

23 Since then we have been on this property
24 operating under the County's Special Use Permits and
25 Conditional Use Permits and renewed every five years.

1 In the 1990's our industrial lease on Dairy
2 Road skyrocketed. So we worked to acquire the
3 Consolidated Baseyard on Waiko Road to work with other
4 companies to be able to operate their businesses on
5 more affordable industrial lands.

6 Consolidated Baseyards was completed about
7 six years ago with about 35 lots. This Waiko property
8 is an expansion of that Consolidated industrial
9 project. This concludes my testimony and I'll be
10 happy to answer any questions about the history of
11 this Project.

12 CHAIR CHOCK: Thank you. Parties, any
13 questions for this testifier?

14 MR. GARNEAU: None.

15 MR. GIROUX: County has no questions.

16 CHAIR CHOCK: Bryan?

17 DIRECT EXAMINATION

18 BY MR. YEE:

19 Q Thank you. Mr. Fong, I understand you're a
20 principal of Waiko Industrial Investment, LLC. But
21 would Mr. Charles Jencks be your representative to
22 speak on behalf of Waiko Industrial Investment, LLC in
23 this matter?

24 THE WITNESS: Actually I'm a minor...

25 MR. YEE: I should have said a principal.

1 THE WITNESS: I'm a principal but I'm a
2 minor shareholder, holder, or whatever. So Waiko
3 Industrial would be the major property owner of this
4 property.

5 MR. YEE: But you're not here to speak on
6 behalf of Waiko Industrial Investment, LLC, though.

7 THE WITNESS: If I'm asked to a question
8 they can't or if they need me.

9 MR. YEE: Okay. I think that's fine.
10 Nothing further.

11 CHAIR CHOCK: Commissioners, any questions?
12 Thank you for your testimony.

13 THE WITNESS: Thank you.

14 MR. ORODENKER: Perry Artates followed by
15 Randy Piltz.

16 PERRY ARTATES
17 being first duly sworn to tell the truth, was examined
18 and testified as follows:

19 THE WITNESS: Yes, I do.

20 CHAIR CHOCK: Your name and address for the
21 record.

22 THE WITNESS: My name is Perry Artates. I
23 95 Lono Avenue, Suite 104 Kahului, Hawai'i. Chairman
24 Chock and Committee members. I'll try to make a
25 snapshot in brief of my support for this Project. But

1 the history of where Mr. Fong entertained as Fong
2 Construction, that's the first company I worked for
3 back in 1982 under the dad, Mr. Dan Fong.

4 And he gave me an opportunity to be a
5 member of the Operating Engineers Union. But today I
6 speak on behalf of our trade, the Operating Engineers
7 Union, and those that we are receiving an influx of
8 unemployment that has been drastically coming through
9 our office.

10 Speaking on behalf of that we need to
11 foresee in sustaining future work in our industry.
12 And sustaining work for our industry, which is the
13 Operating Engineers, is the trend of the next trade in
14 being able to have the opportunity to work in this
15 type of project.

16 Yes, we do support all types of projects,
17 but we want them to be union friendly too because
18 that's how they have the better wages to sustain their
19 families here in Hawai'i as all know.

20 The legacy of Fong Construction has molded
21 me into how I can be before you today. I started with
22 Fong Construction as a laborer in 1982. In 1984 I
23 joined the Operating Engineers Union. And I can
24 sustain myself and say I'm proud to be a member of the
25 Operating Engineers Union for 29 years.

1 But what I'm saying to you also is securing
2 the future work of our working families in the future
3 with this type of Project. Of course, it gives
4 opportunity for local businesses to look at reasonable
5 leases that they can entertain.

6 So in behalf of the families, the working
7 families of our industry, I ask for your support
8 because of the ones that goin' feel the impact is our
9 families that have been coming through our doors right
10 now. It's outrageous right now.

11 So with this being said, Mr. Chair, I
12 appreciate the time allowing me to testify in support
13 of this project in Waiko, LLC.

14 CHAIR CHOCK: Thanks for your testimony.
15 Parties, any questions?

16 MR. GARNEAU: No questions.

17 MR. GIROUX: County has no questions.

18 CHAIR CHOCK: Commissioners? Commissioner
19 Biga.

20 COMMISSIONER BIGA: Mr. Artades, is there
21 an agreement as far as having the Operating Engineers
22 having an agreement where if this Project does move
23 through that the local contractors here will be
24 utilized?

25 THE WITNESS: Commissioner Biga, no. I

1 think it's where we know who our investors are. And
2 they belong to our signatory unions. So I don't think
3 so they would try to defray from not letting us have
4 the opportunity to utilize our signatory contractors.
5 The history of, of course, like what Mr. Fong said,
6 he's a signatory contractor to the Operating Engineers
7 as well as the other parties so forth.

8 COMMISSIONER BIGA: And you understand my
9 concern because there's many projects that move
10 through Maui. Unfortunately it's not used by the
11 local residents that are on Maui.

12 THE WITNESS: We have past practice that we
13 put up our credibility before any Planning or Land Use
14 Commission or so forth. We had our taste of moving
15 projects forward and getting bite in the back
16 afterwards. We keep that as a check in case they
17 going to ask us to lobby or testify in their behalf.

18 COMMISSIONER BIGA: Thank you very much.

19 CHAIR CHOCK: Thank you. Commissioners,
20 any other questions? Thank you for your testimony.

21 THE WITNESS: Thank you, Chair Chock.

22 MR. ORODENKER: Randy Piltz.

23 RANDY PILTZ

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

1 THE WITNESS: Good morning -- (pause) I do.
2 (Laughter). You swear to tell the truth?

3 CHAIR CHOCK: Your silence means consent.
4 (laughter) Name and address for the record.

5 THE WITNESS: My name is Randy Piltz. I
6 live at 376 West Waiko Road which is in Waikapu. As a
7 resident of Waikapu I'm on the mauka side of Waiko
8 Road. This Project is on the makai side of -- I'm
9 sorry, on Honoapi'ilani Highway.

10 I've gotta tell you that my dad and
11 Roderick's dad were in construction at the same time.
12 I come from a construction family. I'm concerned that
13 we need to promote areas where construction people can
14 locate their businesses. And this particular Project
15 will bring more.

16 I happen to have been on the Planning
17 Commission when Central Maui Baseyard came to our
18 purview. This is just an extension of that particular
19 project. I feel that we need more places where
20 business can locate at reasonable rates.

21 Being a resident of Waikapu I also am on
22 the board of the Community Association. I don't speak
23 on their behalf. I work for the County of Maui and I
24 don't speak on their behalf either. I speak as a
25 person that, a retired construction company.

1 My family started their business in 1942
2 and I took over the business in 1973. I look at
3 construction today and it's very difficult. Also it's
4 difficult for construction companies, businesses to
5 locate in an area that's reasonable for them to rent.

6 I would hope that your Commission would
7 allow this Project to move forward for the betterment
8 of the people here on Maui. I don't believe it's a
9 very big project. It will be something that we look
10 forward to being in a community association.

11 The area next to it will be a major ball
12 field. An also the County of Maui is planning to
13 relocate in the area and taking care of their Public
14 Works, all their various, Water Department, and
15 everything to consolidate there in the Waikapu area.

16 So this is just one of those projects that
17 goes along with what's happening in our area. And as
18 a resident of Waikapu I urge each and every one of you
19 to approve this.

20 CHAIR CHOCK: Thank you for your testimony,
21 Randy. Parties, any questions?

22 MR. GARNEAU: No questions.

23 MR. GIROUX: No questions.

24 MR. JENCKS: No questions.

25 MR. YEE: No questions.

1 CHAIR CHOCK: Commissioners? Thank you,
2 Randy. Have a good day.

3 MR. ORODENKER: There are no further
4 testifiers signed up at the moment.

5 CHAIR CHOCK: Anyone in the audience
6 wishing to provide testimony? If you haven't signed
7 up please and forward at this time. If not we're
8 going to be moving forward with our proceeding.
9 (pause) Okay. We'd like to start with the map
10 orientation provide by Bert.

11 MR. SARUWATARI: Staff has prepared Map 1
12 on the wall which depicts the Petition Area. Map 1 is
13 the GIS composite of four of the Commission's official
14 maps. The Petition Area, which is shown in yellow, is
15 located on the M-5 Wailuku quadrangle.

16 The red areas on the map indicate the Urban
17 areas, Urban District areas. And the white or
18 uncolored portions represent the Agricultural
19 District. If the Commission remembers, last year the
20 Commission reclassified the A&B's Wai'ale Project.
21 That's located to the north and south of the Petition
22 Area. Also of note is the Consolidated Baseyards
23 project which the Commission reclassified a few years
24 ago. That divides the Petition Area basically in two
25 areas.

1 For general orientation purposes, the
2 Kuihelani Highway forms the eastern boundary of the
3 Petition Area with Waiko Road forming the southern
4 boundary. That concludes my map orientation.

5 CHAIR CHOCK: Commissioners, any questions?
6 (no responses) Thank you, Bert. We'll now move forward
7 with the presentation of exhibits by the parties.
8 Petitioner, are you prepared to have any exhibits you
9 would like admitted?

10 MR. GARNEAU: Yes, we are. We've submitted
11 to the Commission our exhibits numbered 1 through 7
12 and also No. 9 through 57 with a handful of those this
13 morning being supplemental exhibits which have been
14 provided to the Commission and all the parties.

15 Out of those, however, we're excluding
16 Exhibit 30, Exhibit 50 and Exhibit 51. So those will
17 not be moved into evidence.

18 CHAIR CHOCK: Parties, any objections?
19 County?

20 MR. GIROUX: County has no objection.

21 CHAIR CHOCK: State?

22 MR. YEE: State has no objection.

23 CHAIR CHOCK: Commissioners, any objections
24 on these exhibits? Chair's going to admit Exhibits 1
25 through 7; 9 through 57. Petitioner will be excluding

1 30, 50 and 51; is that correct?

2 MR. GARNEAU: That's correct. Thank you.

3 MR. GIROUX: County has Exhibits 1 through
4 4 which we would like to have submitted.

5 CHAIR CHOCK: Thank you. Parties, any
6 objections?

7 MR. GARNEAU: No objection.

8 MR. YEE: No objection.

9 CHAIR CHOCK: Commissioners? Chair will
10 admit County Exhibits 1 through 4. Mr. Yee.

11 MR. YEE: The Office of Planning submits
12 Exhibits 1 through 10.

13 CHAIR CHOCK: Parties, any objections?
14 Petitioner?

15 MR. GARNEAU: No objection.

16 CHAIR CHOCK: County?

17 MR. GIROUX: No objections.

18 CHAIR CHOCK: Commissioners, any
19 objections? Chair will admit OP Exhibits 1 through
20 10. Okay. Parties, are we ready to have some fun?
21 Mr. Jencks, ready to have some fun? (audience
22 laughter) Would you like to go ahead and proceed with
23 your presentation?

24 MR. GARNEAU: Yes, I will, Mr. Chair. I
25 did have one question before be start. I wondered if

1 we could have a stipulation among the parties with
2 regard to the foundations for any of the experts or
3 witnesses that are here, that they're qualified to
4 testify regarding the particular subject areas that
5 are contained in their reports.

6 CHAIR CHOCK: Parties?

7 MR. GIROUX: County has no objection to
8 their experts being qualified.

9 MR. YEE: No objection.

10 MR. GARNEAU: Okay. Thank you. At this
11 time we would call Mr. Charley Jencks please.

12 MR. YEE: I'm sorry. Mr. Garneau, would you
13 like to offer -- there was some witnesses the Office
14 of Planning was willing to waive cross-examination on.
15 I know some of them are here. I don't know if you
16 want to release them, some of them now. There may be
17 some other witnesses that you'd release a little later
18 such as are sitting in the audience here, you're
19 probably paying for them. (Laughter).

20 MR. GARNEAU: Actually, thank you, Mr. Yee.
21 We did bring all of our witnesses today. We did have
22 an agreement that with regards to Mr. Nance, Mr. Hobdy
23 and Mr. Fuich, that if there weren't anything, any
24 matters raised in the public testimony that they
25 needed to address that we would submit on their

1 written testimony and that they would be released at
2 this time as long as the parties agree.

3 MR. YEE: Office of Planning has no
4 objection.

5 MR. GIROUX: The County has no objections.

6 CHAIR CHOCK: Okay. Go ahead.

7 MR. GARNEAU: Okay. Very well. Thank you.

8 DIRECT EXAMINATION

9 BY MR. GARNEAU:

10 Q Mr. Jencks, you're the owner's
11 representative, are you not?

12 A That's correct.

13 Q And in general terms can you just describe
14 the Project for us briefly?

15 A The Project before you today is a 31-acre
16 parcel of land that Bert described on the exhibit
17 above me to my right which is located in the Central
18 Valley area of Maui on the island of Maui. It's
19 surrounded by urban area at this time with the A&B
20 application and the Consolidated Baseyards application
21 that was approved.

22 It's intended to be a small-lot light
23 industrial subdivision that will serve the needs of
24 those folks in Central Maui that need small, defined
25 lots for their businesses.

1 A little bit of history: The Project EA
2 was done for the Project and was accepted by the Maui
3 Planning Commission. That Environmental Assessment,
4 which was a part of this entire entitlement process,
5 was accepted and a FONSI was issued. That
6 Environmental Assessment analyzed all of the worst
7 case scenarios for land use on the Project.

8 By that I mean whether it was regard to
9 drainage or it was with regard to traffic
10 specifically, the worst case scenario was evaluated in
11 terms of traffic generation and the impacts on roads
12 and highways adjacent to the property.

13 So we've done a rather complete and
14 extensive analyses of the EA. I don't know if you've,
15 had a chance to look at that. But it did a good job
16 of analyzing the worst case scenario in terms of
17 impacts.

18 I think what I'd like to do, if I may,
19 Greg, is clarify some of the issues. I was sitting
20 before you about a week ago on February 7th with
21 regard to another project that had to do with light
22 industrial/commercial development here in Maui County.
23 What I'd like to do today is, a part of my
24 presentation, just kind of clarify what our overall
25 intent is for this Project.

1 I think you all have a map that looks like
2 this in your packet or in your file. I brought a
3 larger map for ease of review.

4 MR. GARNEAU: Mr. Chair, for the record
5 that's Exhibit No. 55.

6 CHAIR CHOCK: So noted.

7 MR. JENCKS: This map highlights the entire
8 Project Area, the 31 acres. A portion here, a small
9 residual lot across the top, then the red outlined
10 area on the right which is an 8-acre piece. There are
11 a total of 41 lots on this plan. Three of the lots
12 are roadway lots. The balance are lots that would be
13 offered for sale or lease.

14 The lot sizes vary in size from
15 10,000 square feet, which is the minimum lot size for
16 the Light Industrial District, up to an acre
17 and-a-half in size. And then the large lot on the
18 right fronting on Kuihelani Highway from Waiko Road is
19 an 8-acre piece.

20 What I've done on this exhibit is
21 clarified -- and I want to represent to you today --
22 that the uses that we're proposing in the Industrial
23 District which would be the zoning we applied for with
24 the county of Maui, would include Light Industrial
25 Districts or uses, excuse me, in the area that's

1 surrounded by blue which include typical warehousing,
2 supply, the typical things you'd see in a Light
3 Industrial District.

4 And then on the right in the red outlined
5 area, the other uses allowed in the Light Industrial
6 District in Maui County which includes the commercial
7 uses. So there wouldn't be any commercial uses over
8 here in the blue outlined area. They'd be all focused
9 on the red outlined area. That's an 8-acre piece.

10 And our project analyses used as a maximum
11 for traffic generation purposes a hundred thousand
12 gross square feet of floor area. So all the analyses
13 done on this Project includes the uses that are light
14 industrial in nature on this side in the blue. And on
15 the red a maximum square footage of a hundred thousand
16 gross square feet of commercial. B1, B2, B3.

17 These are neighborhood central district
18 type of commercial uses: retail, offices, gas station
19 perhaps, those kinds of uses located in the commercial
20 red outlined area.

21 You'll also note I've added a note that
22 there are no apartments proposed in this Project.
23 It's all light industrial uses as outlined in blue or
24 the commercial in red. No apartments. I just want to
25 make that representation today so there's no

1 confusion. Okay?

2 So that pretty much summarizes what the
3 Project's about. It's basically an infill Project
4 meant to address a specific demand. The demand is
5 there. The lots *could* change in size. They could
6 change in configuration. We have to go through a
7 subdivision application with the County of Maui.

8 This road here that travels up the middle
9 of that Light Industrial area is major collector road
10 that would connect the A&B properties to the north and
11 south. So the design of that has to be formalized
12 working with A&B.

13 As a result of that some of these smaller
14 lots may evolve into larger sized lots, maybe going
15 from 10 to 15,000 square feet. I don't know at this
16 point. In any case it would be fewer lots than what
17 you see on the map today, not more most probably.

18 So I think we need some flexibility in
19 understanding in that regard. But generally speaking
20 this is the plan that you're gonna get subject to
21 future review and comment by the County of Maui which
22 I don't see to be an issue at this point.

23 All the roads are intended to be developed
24 to county standards, dedicated to the County of Maui,
25 the water system, the sewer system. The water system

1 will remain private. The sewer system would be
2 individual systems on the lot to basic projects
3 similar to what you have at Consolidated.

4 CHAIR CHOCK: Any questions for this
5 witness?

6 Q (By Mr. Garneau) I do just have a couple
7 other areas, Mr. Jencks, that we want to go over. We
8 submitted a few exhibits yesterday. One of them had
9 to do with the water agreement. That's Exhibit No.
10 57. Would you just explain to the Commission why we
11 submitted, what that was for?

12 A Okay. In the area surrounding this
13 Project there is no established county domestic water
14 delivery system. The Consolidated Baseyard's Project
15 was developed based upon a private water system. They
16 dug wells and created the tankage and the supply needs
17 for the Project.

18 Our initial negotiations and discussions
19 with Consolidated were targeted on using that same
20 system because there isn't anything yet in the are
21 delivered by the County. We have a Memorandum of
22 Understanding with Consolidated Baseyards' Association
23 to improve and expand upon the existing system.

24 One of the things that we've offered to
25 Consolidated is a significant capital contribution

1 that would help them with their reserves in the
2 long-term sense.

3 So our intention is to not only use that
4 system but also improve the system for the additional
5 lot owners and also make it be a more viable system by
6 contributing additional capital to their reserves and
7 giving them additional security as to the maintenance
8 and groundskeeping of that system.

9 MR. GARNEAU: I have no additional
10 questions.

11 CHAIR CHOCK: County?

12 CROSS-EXAMINATION

13 BY MR. GIROUX:

14 Q Thank you. Mr. Jencks, the County had
15 raised some concerns about their easement going across
16 your property. Can you explain to the Commission how
17 those concerns have been addressed?

18 A There's a -- I'll go up to the map. On
19 this exhibit you'll see a roadway right along this
20 edge of the property. That easement crosses the
21 property and provides access to the closed and
22 abandoned Waikapu Landfill that the county still
23 maintains and uses from time to time.

24 Clearly, I think you can understand that
25 that easement needs to be relocated. What we're

1 proposing is that that easement will remain in place
2 until we, of course, develop the subdivision. We will
3 then provide access through the subdivision on the
4 subdivision roads.

5 This property at the top of the blue area
6 is owned by A&B. They provided a temporary easement
7 that would allow access on their property to the
8 landfill. What we've stated is in any case no matter
9 what happens between A&B and Waiko Industrial
10 Investment, that access to that landfill will be
11 provided either in an easement or an improved roadway.
12 So there won't be any shortfall in access no matter
13 what happens on the property.

14 Q Just for the record that is depicted in
15 Exhibit 53. Also as an alternative, if that easement
16 isn't able to be there long enough or permanent enough
17 for the County's purpose, you're agreeable to moving
18 that easement onto lot 1C?

19 A That's correct.

20 Q You're aware of the condition that was
21 proposed between the County and the Petitioner?

22 A Regarding the easement?

23 Q Yes.

24 A Yes.

25 Q And you're agreeable to that.

1 A Yes.

2 MR. GIROUX: The County has no further
3 questions.

4 CHAIR CHOCK: State?

5 CROSS-EXAMINATION

6 BY MR. YEE:

7 Q Mr. Jencks, have you reviewed or had an
8 opportunity to review the proposed conditions from the
9 Office of Planning in its written testimony?

10 A Yes, I did.

11 Q Are those proposed conditions acceptable to
12 the Petitioner?

13 A Yes.

14 Q Is the Petitioner -- will the Petitioner
15 also be implementing either the mitigations
16 recommended by its consultants within the Final
17 Environmental Assessment or better or equivalent
18 mitigations that might be available in the future?

19 A Certainly.

20 Q Then with respect to your proposed uses of
21 B-1, B-2, B-3 could you describe what those -- you
22 said "commercial". Is there any further -- well, let
23 me get to the particular issue. Is big box retail
24 outlets in B1, B2 or B3?

25 A (Chuckling) "What is a big box retail

1 outlet"? (Chuckling). Just one second.

2 Q Go ahead.

3 A The B-1 neighborhood level retail category
4 is basically intended -- the director of planning is
5 here -- but I'll tell you what I know about it -- it's
6 basically intended to provide retail services for a
7 neighborhood, small grocery store, bakery, that kind
8 of thing, maybe some professional services.

9 The B-2 area is described as a community
10 level commercial district. So the types of uses
11 expand or get a little bit larger in terms of their
12 scope of service and the area served.

13 And lastly, the B-3, which I'm kind of -- I
14 don't even know why we have the B-3 district because
15 it excludes other uses, and kind of abrogates
16 everything together and excludes some of the more
17 noxious uses that you'd find in the B-2.

18 Basically it's a pyramid style structure
19 starting with the local neighborhood level then
20 broadening out to more of a central type retail
21 service area. I think, frankly, the 8-acre parcel
22 that's at the intersection of Waiko and Kuihelani
23 Highway suits itself perfectly to that need.

24 In fact the Waikapu Community Association
25 has expressed the desire for a grocery store, I think

1 a gas station and that's exactly the kinds of things
2 we're lookin' at.

3 Q Would a store like Wal-Mart be allowed
4 within B-1, B-2 or B-3?

5 A Yeah, it would. That's assuming you have
6 the area to build a Wal-Mart store.

7 Q Which actually brings me to my next
8 question. With respect to the subdivision of lots was
9 that area marked for commercial use going to be
10 subdivided further? Or has a decision been made about
11 that?

12 A We identified it as a gross 8-acre parcel
13 with the intent of selling it as a large piece or
14 possibly leasing it out. Doing a build-to-suit.
15 There are many options so we could go either way. But
16 like I said earlier in my presentation, the maximum
17 square footage is a hundred thousand gross square
18 feet.

19 Q Which is a fair point. And as I understand
20 then with respect to light industrial area I guess
21 there's a maximum 38 lots that you're proposing?

22 A I think that's what's on the map now 38.

23 Q So say it's approximately 38.

24 A Approximately. That number as I stated
25 could perhaps go down. It could increase nominally.

1 It's driven by the market.

2 Q And those lots would be sold fee simple?

3 A That's the concept at this time, yes.

4 Q Do you have any information or updated
5 status on where Mr. Nobriga is on his relocation of
6 the cattle?

7 A Of the feedlot?

8 Q Yes.

9 A No, I do not.

10 Q Do you know if anyone would have an updated
11 status?

12 A Let me restate. I know that Mr. Nobriga
13 has talked to A&B. They're talking about some
14 alternative land. That's all I know.

15 Q Okay. That's all. Thank you.

16 CHAIR CHOCK: Petitioner, any redirect for
17 your witness?

18 MR. GARNEAU: No, we do not have.

19 CHAIR CHOCK: Commissioners, any questions
20 for this witness? Commissioner Heller.

21 COMMISSIONER HELLER: Just to clarify with
22 regard to the 8 or 8 and-a-half-acre piece that's
23 proposed for the B-1 and B-2, B-3 uses. You said
24 100,000 square feet maximum. If it's 8 or 8
25 and-a-half acres that footprint is roughly one quarter

1 of the land area. The other three-quarters would just
2 be vacant basically parking and internal roadways? Or
3 is there any other use being planned?

4 THE WITNESS: No. It's basically parking
5 and roadways and access, buffers and those kinds of
6 things from the highway and Waiko Road.

7 COMMISSIONER HELLER: Thank you.

8 THE WITNESS: Mr. Chair, I'd like to add
9 one thing if I may.

10 CHAIR CHOCK: Go ahead.

11 THE WITNESS: I'd just like to clarify who
12 the owners are on this property. The land was
13 originally owned by Alexander & Baldwin. I've had a
14 relationship with Roderick Fong and his dad since
15 about the mid '80s. They've been on the property for
16 a while, as Roderick stated, with a special use permit
17 and a conditional permit.

18 The County would like to see those types of
19 activities and permits formalized in zoning. And
20 that's part of our intention here to take this from Ag
21 land to Urban so that we can zone it properly and
22 create a place for Roderick.

23 The major partner here is Goodfellow
24 Brothers, Steven Goodfellow. So to answer your
25 question directly, Commissioner Biga, certainly the

1 work on this Project would be conducted by Goodfellow
2 Brothers.

3 CHAIR CHOCK: Commissioner Inouye.

4 COMMISSIONER INOUE: Thank you, Chair
5 Chock. You mentioned that in the light industrial
6 area, the blue area, it will most likely be less than
7 more. But then you just, in answer to Mr. Yee's
8 question, might be nominally more.

9 My question is: Would the studies done by
10 your consultants change as far as impact to things
11 like traffic by what you consider nominally more?

12 THE WITNESS: I think the direct answer is
13 no. Because as you, I think you are aware, any time
14 you develop something like this you have to balance
15 your offsite improvement costs against your onsite
16 costs and potential revenue.

17 So if there was some nominal changes in the
18 number of lots it certainly can't be anything that
19 changes dynamically the costs to make all these
20 off-site improvements which may be substantial. I
21 would say no, that the impacts would not be -- would
22 be minimum.

23 COMMISSIONER INOUE: Would not basically
24 change.

25 MR. JENCKS: Correct.

1 COMMISSIONER INOUE: So that's what I'm
2 trying to balance what it is. It's going to be
3 impacted if it's more. So when you say "nominally
4 more" to the extent it will not impact the traffic?

5 THE WITNESS: No. No. I think if you look
6 at the map that we provided, if you look at the
7 Consolidated Baseyard map I think you'll find more
8 larger lots than we've got in our plan.

9 This is a balancing act trying to predict
10 what people are gonna wanna buy two years from now
11 when this thing comes into the marketplace. After
12 it's subdivided can have to balance the expectation
13 today versus the expectation two years ago.

14 Like I said maybe we'll have fewer lots.
15 It's gonna be driven by the market. But I would say
16 to you any change to impacts offsite would be at the
17 minimum, if any.

18 COMMISSIONER INOUE: Thank you.

19 CHAIR CHOCK: Commissioner Biga.

20 COMMISSIONER BIGA: Mr. Jencks, if all this
21 is, all your permitting process and everything is
22 done, what are you looking at as far as a timetable
23 when this Project will start?

24 THE WITNESS: Well...

25 COMMISSIONER BIGA: Hypothetically I mean.

1 THE WITNESS: If we could get approval
2 today... (laughter)

3 COMMISSIONER BIGA: Hypothetically.

4 THE WITNESS: Hypothetically, of course.
5 The idea here is to get through this process. Then as
6 you may or may not be aware the county council
7 initiates its, by due process in March we'd like to
8 get to the Planning Commission as quickly as possible.
9 With the help of Mr. Spence and Mr. Giroux we could
10 possibly get to the commission.

11 We probably wouldn't have any hearings
12 before the council until the summer. There's capacity
13 on the land use committee agenda. So we could get it.
14 We could get it into the council after the Planning
15 Commission by the spring, let's say. Because then
16 maybe get referred to committee right away. Hearings
17 on that would start after July because that's when the
18 budget session ends with the council. Hopefully by
19 the end of the year we're done with this.

20 And then in the meantime our intention,
21 certainly, is to deliver as quickly as we can, start
22 the subdivision process there's a lot to do. I would
23 say we'd probably be in the ground no more than a year
24 from now.

25 COMMISSIONER BIGA: Thank you.

1 THE WITNESS: You're welcome.

2 CHAIR CHOCK: Commissioner McDonald.

3 COMMISSIONER McDONALD: Mr. Jencks, just a
4 quick clarification. Where are you folks with in
5 regards to the water allocation from the Commission on
6 Water Resource Management? I know you folks have a
7 private system. Is there sufficient water allocated
8 for the Project --

9 THE WITNESS: Yes, yes.

10 COMMISSIONER McDONALD: -- from the
11 Commission?

12 THE WITNESS: Yes. Actually the
13 Consolidated Water Association has an allocation
14 system because they're on a private system. The water
15 is expensive. They've allocated water on a, I think
16 it was on a square footage basis. I don't recall, but
17 we're following exactly their guidelines for water
18 allocation, and there is adequate capacity.

19 COMMISSIONER McDONALD: Thank you.

20 CHAIR CHOCK: Any other questions,
21 Commissioners? I have a couple questions, Charley,
22 just as follow up on Commissioner McDonald's question
23 on your water allocation. So as a private well, I'm
24 assuming does CWRM have jurisdiction over your
25 allocation?

1 THE WITNESS: Abso -- not over the
2 allocation but over the permitting and the operation
3 of the well certainly.

4 CHAIR CHOCK: What's the capacity of the
5 well and what aquifer services the source?

6 THE WITNESS: You know -- Mr. Nance left.
7 I believe it's -- I believe it's the Kahului Aquifer
8 that we're talking about. And there's adequate
9 sustainable yield in that for this operation
10 certainly.

11 The wells that are operating today have
12 been operating for a number of years. And they are
13 operating as efficient as they're supposed to operate.
14 The water quality hasn't diminished at all. It's a
15 very stable process and stable resource.

16 CHAIR CHOCK: Okay. Thanks, Charley.
17 Besides Goodfellow Brothers are there any other equity
18 owners in Waiko Industrial?

19 THE WITNESS: I believe that's it.

20 CHAIR CHOCK: Sole investor?

21 THE WITNESS: It's Goodfellow Brothers,
22 Steve Goodfellow and Roderick Fong.

23 CHAIR CHOCK: What kind of absorption
24 timetable are you guys looking at in terms of this
25 Project once you get green lighted on the construction

1 and you break ground?

2 THE WITNESS: I think you're probably
3 looking at maybe ten lots a year, something like that
4 would be reasonable. One a month perhaps.

5 CHAIR CHOCK: Generally the mix of users
6 are construction-type companies?

7 THE WITNESS: Yeah. If you go to
8 Consolidated today and just look to see who's out
9 there it's guys like Pacific Source. The Maui County
10 Fire Department bought a parcel and put a structure on
11 it. So there's a variety of uses, soup to nuts.
12 Plumbers, contractors, solid waste guys for repair and
13 maintenance. It runs the gamut.

14 CHAIR CHOCK: Are you guys planning to sell
15 these lots in fee or ground lease or what?

16 THE WITNESS: The idea is to sell them in
17 fee.

18 CHAIR CHOCK: Okay. I have no further
19 questions. Commissioners, any other questions for
20 Mr. Jencks?

21 COMMISSIONER MATSUMURA: One question.
22 What is the anticipated fee for the land on the
23 industrial property?

24 THE WITNESS: Per square foot?

25 COMMISSIONER MATSUMURA: Per square foot.

1 THE WITNESS: Right now we're looking at
2 values in the, I would say, in the \$40 to \$45 a square
3 foot improved lots, all the utilities in, roadway
4 service, complete. That's today. The longer it takes
5 the more it costs.

6 COMMISSIONER MATSUMURA: How about your
7 lease rates? What's your cap rate going to be on the
8 leases?

9 THE WITNESS: We haven't really gotten to
10 that point yet. It certainly will be driven by the
11 market.

12 COMMISSIONER MATSUMURA: Thank you.

13 CHAIR CHOCK: Any other questions for
14 Mr. Jencks? Thank you, Mr. Jencks. Petitioner, do
15 you have any other witnesses that are going to be
16 coming forward to provide expert testimony today?

17 MR. GARNEAU: At this time we have an
18 additional five witnesses that are on our list. If I
19 can indulge the Commission can we have a short recess
20 because I think the attorneys wanted to speak and see
21 if there's any agreement as to the remaining
22 witnesses.

23 CHAIR CHOCK: Okay. Why don't we take a
24 10-minute recess. It's timely for our court reporter.
25 Then we'll reconvene about ten minutes.

1 MR. GARNEAU: Thank you.

2 (Recess was held. 10:30)

3 CHAIR CHOCK: Petitioner.

4 MR. GARNEAU: Yes, thank you, Chair. At
5 this time for the record, I did speak with the
6 County's attorney and Office of Planning attorney. We
7 decided to not call Mr. Stacy Otomo as a witness and
8 stand on his written testimony this morning. So our
9 next witness is Mr. Vince Bagoyo.

10 VINCE BAGOYO
11 being first duly sworn to tell the truth, was examined
12 and testified as follows:

13 THE WITNESS: Yes.

14 CHAIR CHOCK: Please state your name and
15 address for the record, please.

16 THE WITNESS: Vince Bagoyo, 1500 Kilanoi
17 Place, Wailuku.

18 CHAIR CHOCK: Proceed.

19 MR. GARNEAU: Thank you.

20 DIRECT EXAMINATION

21 BY MR. GARNEAU:

22 Q Mr. Bagoyo, you were hired by the owner to
23 work on his Project, were you not?

24 A Yes.

25 Q Can you tell the Commissioners what it was

1 your particular role has been.

2 A I did prepare all of the applications for
3 this Project including the Environmental Assessment.

4 Q And as part of your assessment can you
5 describe for us what the current uses on the site are?

6 A The current uses of the site about 4 acres
7 currently used for construction equipment and material
8 storage. And the remaining parcels for pasture lands,
9 just a vacant, vacant lot.

10 Q Okay. And the Project itself you're
11 proposing a subdivision, can you describe that as
12 well?

13 A The owner is proposing to develop 41 lots
14 including roadways and one, 8.5-acre lot for
15 commercial.

16 Q Okay. Do you happen to know what the lot
17 sizes are, what the range is?

18 A The proposed lot sizes ranging from
19 10,000 square feet to about 70,000 square feet. The
20 remaining large parcel is 8.5 acres. That's the
21 reason for the 10,000 square feet is required by the
22 Department of Health because there's an individual
23 wastewater treatment facility for individual lots.

24 Q I know earlier Mr. Jencks had testified to
25 that the uses will either be light industrial uses or

1 commercial use within that 8 and-a-half-acre lot. Is
2 that your understanding as well?

3 A That's correct. The 8.5-acre lot, as noted
4 by Mr. Jencks, is supposed to have 100,000 square feet
5 of commercial-retail space.

6 Q And, again, you've indicated that you
7 prepared the Environmental Assessment, is that true?

8 A That's correct.

9 Q Who is the accepting authority for the EA?

10 A The accepting authority for the EA is the
11 Maui Planning Commission.

12 Q Okay. Was the Draft EA published with the
13 Office of Environmental Quality Control?

14 A That's correct. The Draft EA was published
15 by the OEQC December 8, 2011 edition of the
16 Environmental Notice.

17 Q And did the Planning Commission accept the
18 Final EA?

19 A Yes, in its meeting of July 10, 2012. And
20 they have issued a FONSI determination and it was
21 published on August 8, 2012.

22 Q In your assessment of the Project did you
23 look at the soil productivity of the agricultural
24 land?

25 A Yes, I did.

1 Q How is that soil rated and what category,
2 ALISH category, do you see it fall under?

3 A The Project site has a soil productivity
4 rating of 8 which is the lowest possible. On the
5 ALISH map the Project falls within the "other"
6 agricultural land.

7 Q So what is the lowest rating of the E and
8 the other agricultural land categories in terms of the
9 use for agricultural uses?

10 A The rating of E is just, it's the lowest
11 rating that can't be, you know, in definitions. It's
12 not productive land for agriculture.

13 Q Did you also look at the land use, the
14 current land use designations for the property?

15 A Yes, I did. The existing land use
16 designation, the State Land Use District Ag and
17 Community Plan designation is Ag and the county zoning
18 Agriculture.

19 Q I know that Maui County recently went
20 through their general planning process back in
21 December, the Maui Island Plan was finally adopted.
22 Do you happen to know if the Project Area is within
23 the Urban Growth Boundary of the Maui Island Plan?

24 A Yes. The Maui Island Plan has designated
25 that parcel within the Urban Growth Boundary.

1 Q In terms of the land entitlements that will
2 now be required to change the use of the property to
3 light industrial, what will the owner have to get in
4 terms of land use?

5 A For the proposed Project it will require
6 the state land use boundaries to meet the plan
7 amendment and change in zoning.

8 Q Last question I have. With regards to the
9 subdivision improvements did you look at the overall
10 estimation of the cost of those improvements?

11 A Yes, I did.

12 Q What was that range?

13 A It ranged from about 8 million to about
14 10 million for the subdivision improvements.

15 MR. GARNEAU: I have no further questions,
16 Mr. Chair.

17 CHAIR CHOCK: County?

18 MR. GIROUX: No questions.

19 CHAIR CHOCK: State?

20 CROSS-EXAMINATION

21 BY MR. YEE:

22 Q Mr. Bagoyo, you mentioned a 10,000 square
23 feet lot. What was that for?

24 A The Department of Health, one of the
25 comments because this Project will have individual

1 wastewater treatment system. They are requiring
2 10,000 square feet minimum lot.

3 Q And there's also a communal leach field
4 that's anticipated for this Project, correct?

5 A That's correct.

6 Q And I looked at your Exhibit 22 that's in
7 your EA that sort of draws this 1,000-foot circle
8 around the existing wells. I take it the leach
9 field -- does the leach field have to exist outside of
10 that area?

11 A That's correct. The Department of Health
12 requires that the wells must be -- the distance
13 between the wells and the leach field a minimum of a
14 thousand square feet radius.

15 Q Have you selected where that leach field is
16 likely to be located?

17 A Yes, our civil engineer...

18 Q There's a conceptual map, that large map
19 behind you.

20 A It's on the east boundary, boundary of the
21 property.

22 Q There is sort of a larger blow-up of
23 Petitioner's Exhibit 55 if that would help
24 otherwise...

25 A As I recall the leach field will be located

1 along the boundary of Kuihelani Highway which gives
2 you over a thousand square feet radius from the two
3 wells.

4 Q Is that located within the 8.5 acres?

5 A That's correct.

6 Q Then you said you were going to locate it
7 along Kuihelani Highway or somewhere.

8 A Yes.

9 Q Have you looked at -- well, let's backtrack
10 a step. This Project is located between portions of
11 the A&B Wai'ale Project, correct?

12 A Yes.

13 Q Have you looked at how your Project will be
14 consistent with those proposed uses by A&B?

15 A The project that the Commission approved on
16 A&B's project across which is south of this Project on
17 the corner of Kuihelani and Waiko Road, is Waiko Road.
18 I believe A&B's project calls for a BMX which is a
19 mixed-use both commercial and a residential.

20 For this Project apartments, as noted by
21 Mr. Jencks, apartments will not be allowed.

22 Q If it's helpful I could point you to OP
23 Exhibit 5 which is a copy of the conceptual Master
24 Plan for Wai'ale. Do you have a copy of OP's
25 Exhibit 5? If not I have one.

1 A I'm referring to OP Exhibit 5.

2 CHAIR CHOCK: Thanks, Bryan.

3 Q (By Mr. Yee) Do you have that in front of
4 you now?

5 A Yeah.

6 Q Okay. So portions of the A&B Wai'ale
7 Project that border the Petition Area include a
8 variety of uses including single-family, multi-family,
9 light industrial and BMX in different parts, correct?

10 A That's correct.

11 Q I guess I'm just asking have you looked at
12 how your light industrial area, for example, would be
13 made to ensure it's going to be consistent being next
14 to a single-family area?

15 A Yes, I did look at that.

16 Q What were some of the proposals that you
17 had to try to get those two uses consistent with each
18 other?

19 A Our proposed Project is consistent with I
20 believe some of the uses of BMX. And the residential
21 component at single-family as proposed by A&B it's not
22 consistent with the light industrial that the owner is
23 proposing.

24 I did have a meeting with the Waikapu
25 Association regarding those projects. They felt the

1 commercial component will help this area in Waikapu
2 including A&B's project to make it more convenient for
3 them to utilize some of the commercial components that
4 the owner is proposing to do.

5 In fact they have suggested that create a
6 walking community, as they have put it when I met with
7 the Waikapu Association.

8 Q Is that with respect to both the light
9 industrial as well as the commercial parcels or just
10 to the commercial parcels?

11 A Both.

12 Q With respect to the light industrial
13 parcel, at least on the conceptual map that I had it
14 indicates that your light industrial area will be
15 across the street from a single-family area.

16 A (Witness nodding)

17 Q Correct?

18 A That's correct.

19 Q Is there anything you've looked at to try
20 to make sure the light industrial uses would be
21 consistent with the single-family uses across the
22 street?

23 A Yeah. One of the things that we looked at
24 is, is to make it, one, safe for the single-family to
25 walk through the commercial component of the Project.

1 And one of things we have suggested to make it as a
2 walkable community including the projects of A&B on
3 the north side of the proposed Project, is to make it
4 safe for the residents.

5 Q Anything about setbacks or fencing or
6 topography that you're planning on?

7 A The setback, I believe there's an existing
8 county setback on Waiko Road if I'm not mistaken,
9 about 60 feet something in this proposal.

10 Q On the same Office of Planning Exhibit 5 I
11 notice that there seems to be a, I'm going to call it
12 a green belt, but this line of green along Kuihelani
13 Highway. Do you see that?

14 A Yes.

15 Q That's on the A&B side of the property --
16 the A&B parcels, correct?

17 A That's correct.

18 Q Do you know if there's any discussion with
19 the county or with Department of Transportation about
20 having a setback along Kuihelani Highway, the setback
21 of that no structures would be built?

22 A When we met with the State Highway Division
23 there was no discussion about setbacks.

24 Q And this is with respect to the County.

25 A Yes. The County had no requirement setback

1 as well. I believe the leach field will create that
2 natural setback.

3 Q For but the leach field is not -- doesn't
4 take up the entire border of Kuihelani Highway,
5 correct?

6 A No, it doesn't.

7 Q Do you know what the Project's impact is
8 going to be on the Nobriga Ranch?

9 A I believe the owner has a lease agreement
10 with Nobriga. A large portion of the feed lot is
11 owned by A&B. They have been in discussion with
12 Mr. Nobriga as I understand regarding relocation.

13 A large portion of -- maybe a small portion
14 of Mr. Nobriga's feed lot on Waiko Baseyard property
15 is used for storage of manures and stuff.

16 MR. YEE: I have no further questions,
17 thank you.

18 CHAIR CHOCK: Petitioner, redirect?

19 MR. GARNEAU: I just had one question.

20 REDIRECT EXAMINATION

21 BY MR. GARNEAU:

22 Q Mr. Bagoyo, when we were talking about the
23 setbacks along Kuihelani Highway, it would be the
24 standard setbacks that would be required by the code?

25 A Probably when you go to the subdivision.

1 Q So at that time you determine what they
2 would be.

3 A Yes.

4 MR. GARNEAU: Okay. Thank you.

5 CHAIR CHOCK: Commissioners, any questions
6 for this witness? Thank you, Petitioner. Next
7 witness.

8 MR. GARNEAU: Yes. At this time we'd like
9 to call Mr. Glenn Kunihisa, please.

10 CHAIR CHOCK: Good morning, Mr. Kunihisa.

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

14 THE WITNESS: Yes.

15 CHAIR CHOCK: Name and address for the
16 record.

17 THE WITNESS: Glenn Kunihisa. I'm at 2073
18 Wells Street, Wailuku.

19 CHAIR CHOCK: Proceed.

20 MR. GARNEAU: Thank you.

21 DIRECT EXAMINATION

22 BY MR. GARNEAU:

23 Q Mr. Kunihisa, what has your role been in
24 this Project?

25 A I'm president of ACM Consultants. Our

1 company was hired to perform a market study for the
2 proposed subdivision.

3 Q Okay. And in studying the market can you
4 briefly tell the Commission what the steps that were
5 involved that you went through?

6 A Well, of course, we conducted a lot of
7 research pertaining to former subdivisions, looking at
8 current sales, looking at the upcoming supply. And,
9 you know, I did have a -- I was prepared to talk a lot
10 about the small sizes of the subdivision, but I think
11 Charley was in my head last night and stole my
12 thunder.

13 But we -- if you don't mind I'd like to
14 kind of reiterate on those points.

15 Q Yes, please do.

16 A You know of the 38 lots that this
17 subdivision will have, 27 of them will be under
18 15,000 square feet in size. This is a really, really
19 nice size for what we consider to be the target market
20 of this subdivision. And that is the local owner-user
21 who now has an affordable opportunity to develop and
22 to occupy their own properties.

23 Also building off of, I guess, Mr. Fong's
24 story about having to relocate every decade, you gotta
25 give him a lot of credit for having the wherewithal

1 and the business sense to be able to do this.

2 There's really fierce competition in the
3 market from retail and service users. They will bid
4 up land prices and bid up rents in Kahului. As a
5 result the market that we're targeting with this
6 subdivision is -- has been severely underserved in the
7 past 20 years or so.

8 And, you know, like I said you gotta give
9 Fong Construction credit for being able to survive all
10 these moves. Other people have had to close their
11 doors and move home to do business. We hear this
12 story time and time again.

13 Q Mr. Kunihisa, in terms of your study of the
14 demand for the type of lots that will be offered in
15 this Project, is there a particular demand in Central
16 Maui? Or did you look at that compared to the rest of
17 the island?

18 A We made some general comparisons of supply
19 in other parts of the island. But over the years
20 Central Maui has just established itself as the prime
21 industrial region of the island. It's also the center
22 of commerce. Its proximity to the airport, the
23 harbors, they just make it very convenient and highly
24 in demand.

25 Q Do you have any thoughts about the

1 short-term benefits for Maui's economy for the
2 Project?

3 A Of course the development alone -- I think
4 we have some numbers -- the development alone of the
5 subdivision and its infrastructure is approximately
6 \$10 million. Of course, there'll be other indirect
7 costs that will add to that. We also look at the
8 long-term employment and sales of the properties,
9 taxes. It will definitely infuse a lot of money into
10 the economy.

11 Q So both. You're saying would be beneficial
12 to the economy both short term and long term?

13 A Yes, definitely.

14 Q I think you touched on this a little bit,
15 but what do you see as the advantage of what's being
16 proposed here with Waiko as opposed to other projects
17 in the area that either have been approved or have
18 been proposed?

19 A The advantages?

20 Q The advantages of this different from other
21 ones that have been proposed?

22 A Well, for one thing its small lot sizes'
23 definitely an advantage. I think Consolidated
24 Baseyard is another example of a project that's served
25 the community well. This Project surrounds

1 Consolidated Baseyard. I think it will definitely
2 serve a segment of the industrial market that really
3 needs some help. You have other large, like A&B's
4 development coming up, but I think those would be
5 targeting a much different market.

6 Q Okay. So in your professional opinion then
7 if you have a professional opinion rather as to the
8 demand for this Project.

9 A I think once it's fully entitled and they
10 get it built, we expect the economy will be firming up
11 by then. And I think the demand will be very strong.

12 MR. GARNEAU: Thank you. I have no further
13 questions, Mr. Chair.

14 CHAIR CHOCK: County?

15 MR. GIROUX: No questions.

16 CHAIR CHOCK: State?

17 CROSS-EXAMINATION

18 BY MR. YEE:

19 Q I want to follow up on that last line of
20 questioning. If I read your market analysis you
21 acknowledge there are other light industrial zoned
22 areas in Maui, correct?

23 A Yes.

24 Q But you were saying that this particular
25 Petition Area would be particularly attractive in part

1 because of the small lot sizes?

2 A Yes.

3 Q Is the fact that it's also to be sold in
4 fee simple an important factor as well?

5 A Oh, yes, of course.

6 Q Because leases for light industrial, is
7 that a different market?

8 A It is. You don't see a lot of leasing
9 going on at this moment. The majority of the leasing
10 that was happening in the market started with the
11 Kahului Industrial Park. And A&B was leasing, doing
12 ground leases on those properties. A lot of them are
13 being sold in fee now.

14 Q So the light industrial uses tend to want
15 to go to fee purchase.

16 A Yes. If they want to fix their occupancy
17 cost for the long term, fee simple definitely works a
18 lot better.

19 Q And then you also mentioned how some of the
20 light industrial zoned areas, the prices have been
21 driven up by competing uses.

22 A Yes.

23 Q I take it that some of those competing uses
24 are commercial uses.

25 A Yes.

1 Q So where commercial/light industrial have
2 to fight for the same space, commercial tends to have
3 an ability to pay more per square foot?

4 A Absolutely, yes.

5 Q So the fact that the Petition Area is
6 divided, certain uses will be light industrial,
7 certain uses will be commercial, that will help to
8 ensure that the light industrial portion is
9 marketable, is so well marketable even though there
10 are substantial areas of light industrial zoned areas
11 outside the Petition Area.

12 A Yes. I think its location in Waikapu, for
13 instance, next to Consolidated Baseyard, Waiko
14 Baseyard up the road, I think that's a definite
15 advantage. It's not a place where big boxes would
16 come to look for land or retailers willing to pay a
17 high prices.

18 Q I think you've estimated, is it a 6-year
19 absorption?

20 A Approximately. If the market is really
21 hot. Consolidated Baseyard sold in a matter of two
22 years, less than two years and they had 35 lots. That
23 was in 2006.

24 So, you know, what Mr. Jencks referred to
25 as possibly one acre a month or so. I mean that could

1 be conservative. It could be right on the money.
2 It's hard to say at this point. But we anticipate
3 that there would be very good demand.

4 Q Based upon these presumed uses and method
5 of sale?

6 A Yes.

7 MR. YEE: Thank you. I have nothing
8 further.

9 CHAIR CHOCK: Redirect, Petitioner?

10 MR. GARNEAU: No, Mr. Chair.

11 CHAIR CHOCK: Commissioners, any questions
12 for this witness? Commissioner Matsumura.

13 COMMISSIONER MATSUMURA: Glenn, what is the
14 rental market value in Maui per square foot for
15 industrial property per month? About \$2?

16 THE WITNESS: For...

17 COMMISSIONER MATSUMURA: For industrial
18 building for rent.

19 THE WITNESS: Again, it would -- for like a
20 pure industrial warehouse type of...? No, it would be
21 approximately a dollar per square foot per month.

22 COMMISSIONER MATSUMURA: Say in essence
23 this will be an industrial property. You're gonna be
24 paying about \$675,000, it's a \$45 a square foot for
25 15,000 square feet?

1 THE WITNESS: Could you repeat that, sir?

2 COMMISSIONER MATSUMURA: If you're gonna
3 charge \$45 a square foot, as was stated, and you times
4 that about \$15 a square foot, you're going be paying
5 about \$675,000 per square foot for raw land, right?

6 CHAIR CHOCK: Finished?

7 COMMISSIONER MATSUMURA: Finished land,
8 sidewalks, whatever. And you gotta put your building
9 on that 15,000.

10 THE WITNESS: Right.

11 COMMISSIONER MATSUMURA: I don't know the
12 codes on Maui, but for 15,000 square foot what is the
13 maximum building that you can put? Roughly about
14 7,000 square feet?

15 THE WITNESS: About there, yes, about
16 50 percent, yes.

17 COMMISSIONER MATSUMURA: So if you charge a
18 dollar a square foot you're not going to get a return
19 paying the mortgage.

20 THE WITNESS: Well, we found that, like I
21 said, this Project will probably target the
22 owner-user. The owner-user not only has the benefit
23 of occupying its own space, fixing its rent, but also
24 they could sell it down the road and gain income from
25 that as well, as opposed to leasing the entire time.

1 So when you talk about owner-users we
2 generally find that they don't always make the
3 comparison between rent versus buy, but rather they're
4 motivated a lot by being able to occupy their own
5 property.

6 And you're right in that many times it may
7 not seem sensible, but we found that in the market
8 today the only ones who are buying are the owner-
9 users. And they're making a go of it even in this bad
10 market. I don't know if I've answered your question.

11 But we do find that there's a different set
12 of criteria for the owner-user as opposed to the
13 investor. At this point in time you really don't see
14 investors in the market trying to build multi-tenant
15 buildings. But we do see a lot of owner-users looking
16 for property to ensure their future.

17 COMMISSIONER MATSUMURA: So you made the
18 projections out as far as your market demand for this.
19 You said there is enough demand for owner-builders,
20 owner-users for industrial properties at \$45 a square
21 foot?

22 THE WITNESS: I think -- well, I don't know
23 exactly what the prices were. I do understand that
24 Mr. Jencks said 40 to 45. A&B's pricing their lots at
25 45 to \$60 per square foot in their new subdivision.

1 And the Maui Lani Village area is 50 to \$60 a square
2 foot. Sixty dollars being on the main road and 50 to
3 55 on the interior.

4 COMMISSIONER MATSUMURA: But not similar
5 zoning though.

6 THE WITNESS: Maui Lani, no. They have a
7 village mixed use type of zoning where you can do
8 office and so forth if you prefer. But, you know, the
9 price range seems reasonable. Whether that will come
10 about is difficult to say at this time. But I think
11 there will be a market for the small lots.
12 Consolidated Baseyards demonstrated that. The prices
13 went up in the \$40 range at one point. But then the
14 recession hit. I think they're at about at \$35 now.

15 COMMISSIONER MATSUMURA: Thank you.

16 CHAIR CHOCK: Thank you. Commissioners,
17 any other questions for this witness? Thank you for
18 your testimony.

19 THE WITNESS: Thank you.

20 CHAIR CHOCK: Next witness?

21 MR. GARNEAU: Yes. At this time we'll call
22 Mr. Phillip Rowell, please.

23 CHAIR CHOCK: Good morning.

24 PHILLIP ROWELL

25 being first duly sworn to tell the truth, was examined

1 and testified as follows:

2 THE WITNESS: Yes.

3 CHAIR CHOCK: Name and address please.

4 THE WITNESS: My name is Philip Rowell,
5 47-273D Hui Iwa Street, Kaneohe, Hawai'i.

6 CHAIR CHOCK: Thank you. Please proceed.

7 DIRECT EXAMINATION

8 BY MR. GARNEAU:

9 Q Mr. Rowell, what has been your role in
10 assisting with this Project?

11 A I prepared the Traffic Impact Analysis
12 Report.

13 Q What is the Traffic Impact Analysis Report?

14 A It's a description of the traffic
15 characteristics of the proposed Project; superimpose
16 that on background traffic conditions, and quantifying
17 the impacts and developing mitigation measures.

18 Q What is the purpose of it? It's called a
19 TIAR, correct?

20 A It is a TIAR. It's the part that goes into
21 the EIS or EA.

22 Q What is the purpose of the TIAR?

23 A It is to, like I said, to quantify and
24 describe the traffic impacts of a project and if
25 needed mitigation measures.

1 Q Okay. And what are the methods that you
2 used?

3 A I'm sorry?

4 Q The methods that you used in preparing it.

5 A First step is to document existing
6 conditions. That's going out, doing traffic counts,
7 doing reconnaissance, verifying roadway
8 cross-sections, intersections, geometry, signal
9 timing.

10 Then we do an LOS analysis which identifies
11 any existing deficiencies that need to be mitigated.
12 Then we compile a list of other projects, other known
13 development projects in the area, and use that to
14 develop background forecasts for future conditions.

15 Take the proposed Project, estimate the
16 traffic that it's going to generate, the Institute of
17 Transportation Engineers provides documentation, trip
18 rates equation, so forth that we use.

19 Then we superimpose that and come up with a
20 future background plus project and projections. Then
21 we do an LOS analysis to identify any deficiencies in
22 problem areas. If we exceed a certain threshold we
23 have to develop mitigation measures. In this
24 particular case the recommendations are traffic report
25 goes to DOT for review.

1 Q So has DOT, State DOT reviewed the report?

2 A They reviewed, provided two sets of
3 comments. We got some, I believe it was April. The
4 most recent comments we got were dated October. We
5 have met with DOT to discuss those comments. We will
6 be making some revisions to the report in response to
7 those comments.

8 Q When are you expecting, then, that the
9 revised report will be submitted to DOT?

10 A Well, where we stand right now, one of
11 their major comments was they wanted the study area
12 expanded to include intersections where Project
13 traffic would represent 3 percent or more of the
14 background traffic. So I've done that analysis.

15 I'm preparing to make recommendations to
16 DOT. The way we left it is I would make that
17 recommendation to them. They would provide an okay so
18 we don't end up having revising the traffic study
19 again.

20 They're also supposed to provide me some
21 feedback or clarification on one issue regarding the
22 bypass trips, how we're going to verify those numbers.
23 We met with Planning, part of that comment came from
24 Traffic Branch. They need to get to Traffic and
25 Traffic needs to get back to them before I can figure

1 out how to address that question.

2 Q Okay. So I guess as a summary then you've
3 indicated the impacts of the proposed Project. And
4 you're looking at ways to mitigate and committed to
5 doing that with DOT, correct?

6 A I don't expect the recommendations or
7 conclusions of the report to change. The questions
8 didn't really focus on the intersections in the
9 report.

10 However, I'll qualify that by saying that
11 if when we revise the report we're going to be doing
12 new counts No. 1, because the existing counts are two
13 years old. And DOT wants counts less than two years
14 old. So we're going to be doing new counts. There
15 may be some changes because I have seen a drop in
16 traffic over the last couple years.

17 There's a couple more additional
18 development projects that have come on line since we
19 did the traffic report. So the numbers will change.
20 But I don't think the recommendations, the mitigation
21 measures that we recommended are gonna change. You're
22 just gonna see a larger study area in the report.

23 MR. GARNEAU: Okay. Thank you. I don't
24 have any further questions, Chair.

25 CHAIR CHOCK: County?

1 MR. GIROUX: No questions.

2 CHAIR CHOCK: State?

3 MR. YEE: Yes.

4 CROSS-EXAMINATION

5 BY MR. YEE:

6 Q Could you describe what the proposed
7 mitigation measures are at this time?

8 A The current mitigation measures?

9 Q The current ones you're proposing.

10 A At the intersection of Wai'ale and Waiko we
11 recommended that a left-turn refuge lane be installed.
12 Then at the, what I call the intersection of drive A,
13 which is the first intersection west of Kuihelani
14 Highway, the original plan was to have a single lane
15 approach.

16 We recommended that we widen that to have a
17 separate right and left-turn lanes. Recommended a
18 separate left-turn lane into the Project, and a
19 separate right-turn decel lane into the Project.

20 Q Are there any recommendations from the
21 Department of Transportation for periodic updates if
22 construction lasts longer than anticipated?

23 A Yes, they did. It was kind of left in my
24 court to make recommendations in the report as to what
25 those updates would be. There was also, in addition,

1 to that, if this Project got delayed that we would
2 have to update the TIAR and include the Wai'ale
3 development in the update.

4 Q Are there any proposed improvements to
5 Kuihelani Highway?

6 A No.

7 Q Or any areas that they've asked to maintain
8 a buffer?

9 A No, not to me.

10 Q In your calculation as you described the
11 TIAR process, part of that is to do a trip generation,
12 correct?

13 A Yes.

14 Q Was this based upon either 8 and-a-half
15 acres of commercial or a hundred thousand square feet
16 of commercial?

17 A We actually started out with 140,000 square
18 feet of commercial and decided that was too much. And
19 we backed it down to 100,000. So that was sort of
20 like a mitigation, if you will.

21 Q So the trip generation was based upon
22 100,000 square feet of commercial with the remainder
23 in light industrial?

24 A Right.

25 Q I take it the trip generation changes if

1 the proposed use changes.

2 A Correct.

3 Q Is the trip generation for commercial, does
4 that change based on the type of commercial?

5 A It can. The problem is that a lot of the
6 ITE trip generation data doesn't cover every possible
7 use in the area. There's some inconsistencies between
8 what the ITE defines as "light industrial" and what
9 the code says is "light industrial". Sometimes we
10 have to make a judgment call what we think, the best
11 we can do.

12 Q If you kept it at 100,000 square feet of
13 commercial but you put in sort of a big box
14 retail-type outlet, does that change the trip
15 generation at all?

16 A Put in a what?

17 Q If you don't change the total square
18 footage of commercial--

19 A Okay.

20 Q -- but the commercial turns out to be more
21 of a big box retail, does that change the trip
22 generation or is it the same?

23 A Depends on what type of big box and if we
24 have trip generation data for it. Whereas if you're
25 thinking a Wal-Mart there isn't a type of trip

1 generation data specifically for a Wal-Mart.

2 There's a discount super store, but that's,
3 you don't know, that's like the Super Wal-Mart they
4 call it. There's a super electronic store. Depends
5 on if it's a use we have data for.

6 Q So your calculation was based on more
7 general commercial.

8 A Right.

9 Q As I heard your testimony, then, you're
10 anticipating you'll be submitting a revised TIAR to
11 DOT?

12 A Right.

13 Q Do you have any proposed or anticipated
14 dates?

15 A Well, it took us two months to set up a
16 meeting to review the comments. So I will have my
17 part into them this week or first part of next week.
18 But getting DOT's feedback could be a couple months.

19 Then I'm running into the problem of doing
20 traffic counts before school's out. It depends on how
21 quickly we get a response from DOT.

22 Q I heard you say you're going to do some
23 additional traffic counts.

24 A When we do the updated traffic study we
25 will do new traffic counts.

1 Q Does that occur before or after I guess I'm
2 trying to figure out.

3 A I'm sorry?

4 Q Do you do the traffic, the updated traffic
5 counts first, then revise the TIAR?

6 A Yeah, because all the background, it
7 changes all the count projections.

8 Q So if you're submitting your revised TIAR
9 in the next couple weeks --

10 A It will be a couple months.

11 Q Okay. I thought you said you were going to
12 give it to them in a couple weeks.

13 A No. I have my recommendations for the
14 expanded study area and so forth in more than a couple
15 days.

16 Q So you're going to explain the scope of the
17 revised TIAR.

18 A Right. I left it with DOT to submit them
19 the scope and have it approved before we do a traffic
20 study, than have to go back out and do it again.

21 Q Okay. I understand. Thank you. I have
22 nothing further.

23 CHAIR CHOCK: Petitioner, any redirect?

24 MR. GARNEAU: No, Mr. Chair.

25 CHAIR CHOCK: Commissioners, questions?

1 Commissioner McDonald.

2 COMMISSIONER McDONALD: Quick
3 clarification, Mr. Rowell. Currently your TIAR
4 doesn't include the Wai'ale Project.

5 THE WITNESS: Correct.

6 COMMISSIONER McDONALD: I may have missed
7 it but was that one of the DOT's comments or requests
8 to include that Wai'ale development?

9 THE WITNESS: No, sir. This Project should
10 be built before Wai'ale starts generating any traffic.
11 One of the comments from DOT is, "In your next draft
12 make some recommendations of what will happen if the
13 Project gets delayed. Because if it gets delayed
14 beyond 2016, 2017 we will have to include the Wai'ale
15 traffic in the forecast."

16 But as the report stands right now it comes
17 in before the Wai'ale.

18 COMMISSIONER McDONALD: So there's
19 potential depending on the market and the sale of the
20 lots that future TIARs will possibly include the
21 Wai'ale?

22 THE WITNESS: There will be an updated
23 TIAR. But there is also a requirement to verify --
24 not do a full blown traffic study -- but to verify the
25 trip generation rates and estimates with a driveway

1 count when the Project reaches a certain occupancy.

2 They left it to me to make a determination
3 of what that level of occupancy should be. But
4 typically 75 to 80 percent occupancy we'll do a count
5 to verify our projections.

6 COMMISSIONER McDONALD: Thank you.

7 CHAIR CHOCK: Commissioners, any other
8 questions? Commissioner Inouye.

9 COMMISSIONER INOUE: Thank you,
10 Mr. Rowell, for your testimony. Just following up on
11 Mr. Yee's question. A hundred thousand. I thought
12 you said that if it went up to 140,000 the trip count
13 could be greater?

14 THE WITNESS: I'm sorry?

15 COMMISSIONER INOUE: 140,000 square foot
16 commercial. The reason you limited it to a hundred
17 thousand because 140,000 --

18 THE WITNESS: Generated too much traffic.

19 COMMISSIONER INOUE: Too much traffic.
20 Okay. So that's why I think Mr. Jencks indicated that
21 the maximum would be a hundred thousand square feet.

22 THE WITNESS: Well, the hundred thousand
23 could be handled without doing major roadway
24 improvements. It's limited to the mitigation measures
25 that I described in my report.

1 COMMISSIONER INOUE: Okay. In the 8
2 and-a-half acre parcel, how many hundred thousand
3 square foot lots could you have in there?

4 THE WITNESS: How many hundred...?

5 COMMISSIONER INOUE: Yeah. I guess the
6 question is: Is your study based on the maximum
7 number of hundred thousand square foot lots there is
8 in there or does it matter?

9 THE WITNESS: If I'm understanding...

10 COMMISSIONER INOUE: Well, 8 and-a-half
11 acres, 8 acres around 400,000 square feet. So you
12 might have 8 -- yeah, about 400,000 square foot. So
13 you could have four lots of a hundred thousand square
14 feet if my math is reasonable.

15 THE WITNESS: I'm not -- I'm sorry -- I...
16 you're talking about the retail or the commercial
17 portion, right?

18 COMMISSIONER INOUE: (pause) Maybe I
19 misunderstood Mr. Jencks' testimony. So the maximum
20 commercial would be one 100,000 square foot parcel.

21 THE WITNESS: That's right. That's right.

22 COMMISSIONER INOUE: Okay. That's where
23 I'm all messed up. So I apologize. What happens to
24 the rest of the 8 and-a-half acres? Maybe I should
25 ask....

1 THE WITNESS: I think you better ask
2 Charley.

3 MR. JENCKS: It's an 8 and-a-half acre
4 parcel. There's a maximum of a hundred thousand gross
5 square feet of commercial: B-1, B-2, B-3 on the
6 parcel. The balance of the parcel would be parking,
7 landscape buffer, those types of uses, not leasable
8 square footage.

9 COMMISSIONER INOUE: I got it. So a
10 hundred thousand square foot is the footprint of the
11 building itself.

12 MR. JENCKS: That's correct. Gross square
13 footage.

14 COMMISSIONER INOUE: I apologize. I
15 didn't understand.

16 CHAIR CHOCK: Any further questions for
17 this witness? Thank you for your testimony.
18 Petitioner, who do you intend to call for your next
19 witness?

20 MR. GARNEAU: Our next witness is Mr. Eric
21 Frederickson.

22 CHAIR CHOCK: About how long on direct?

23 MR. GARNEAU: I'd say about ten minutes.

24 CHAIR CHOCK: Let's go ahead with this
25 witness and we can break for lunch.

1 MR. GARNEAU: At this time we'll call Eric
2 Frederickson.

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

6 THE WITNESS: Yes.

7 CHAIR CHOCK: Your name and address,
8 please.

9 THE WITNESS: Good morning, Commissioners.
10 Eric Frederickson. My address is 29 Ulani Street,
11 Makawao.

12 CHAIR CHOCK: Proceed.

13 DIRECT EXAMINATION

14 BY MR. GARNEAU:

15 Q Thank you. Mr. Frederickson, you were
16 hired as a consultant on this Project and prepared two
17 reports, did you not?

18 A Yes.

19 Q Can you tell the Commission what were the
20 reports you prepared?

21 A Okay. The first report is termed an
22 Archaeological Inventory Survey. And it basically is
23 what one does when you go out to a property. It's an
24 inventory trying to see what is there.

25 In this instance because there were no

1 significant cultural resources located, it becomes
2 what's called an Archaeological Assessment. Same
3 thing it's just an Assessment doesn't have any
4 identified resources.

5 The second report or project was what's
6 termed a Cultural Impact Assessment. That's -- it's a
7 study that's undertaken to determine if there are any
8 traditional cultural practices that occur in a certain
9 area. In this instance we interviewed residents of
10 Waikapu and a community activist who's been involved
11 for many years in burial matters basically.

12 If I can back up just a little bit.
13 Mr. Bagoyo brought this up earlier. The land where
14 the subject parcel is it's in the sand dune area.
15 Traditionally Hawaiians buried their dead not only in
16 sand dune areas but in sand. That's one of the
17 reasons why the agricultural potential is not so great
18 because it's sand.

19 But going back to the Cultural Impact
20 Assessment, once the interviews, et cetera, are made
21 and background information is gathered, then
22 conclusions are drawn on that too.

23 Q So when you said you did interviews you met
24 with the native Hawaiians that are in the area?

25 A Residents, four residents from Waikapu and

1 then a member, former member of the Maui, Lana'i
2 Islands Burial Council, chair, vice chair, different
3 positions she's held in the past. So five total.

4 Q So as far as traditional and customary
5 practices in this area did you identify any?

6 A Not, not in our study. Again, going back
7 to the fact that the Project Area, although it's been
8 heavily disturbed, contains a lot of sand dune
9 deposits. The potential exists that there could be
10 native Hawaiian remains buried somewhere on the
11 property.

12 And in an inventory/assessment survey you
13 do the best you can in testing, but it certainly
14 doesn't -- it provides no guaranty that nothing is
15 going to be on a Project Area.

16 Q Here did you identify any historic
17 properties within the Project Area?

18 A No.

19 Q Did not. In terms of the Archaeological
20 Inventory Assessment did you make any recommendations?

21 A Yes. Given the presence of all the sand,
22 sand dune deposits, what's termed 'archaeological
23 monitoring' is what was recommended. The State
24 previously accepted the Archaeological Assessment.
25 The letter, acceptance letter, is document

1 No. 1205TD05.

2 And in that acceptance letter they
3 recommended or concurred that archaeological monitoring
4 should take place because of the sand dune deposits
5 that were identified in the survey.

6 Q So SHPD then has accepted their
7 recommendations. And you said there's archaeological
8 monitoring. What does that mean in terms of going
9 forward? What is the plan?

10 A The archaeological monitoring is quite
11 often -- not always -- but often called for on
12 different projects. So what would occur is when
13 construction happens the land-altering activities
14 would be monitored typically by one monitor, sometimes
15 more if there's lots, if there are multiple heavy
16 pieces of equipment operating in different places
17 where one person can't adequately cover it.

18 Q Okay. Is that type of monitoring in your
19 opinion the appropriate course of conduct given your
20 findings?

21 A Yes. Especially in this area because
22 again, going back to the fact that there are sand dune
23 deposits, that the potential existed there could be
24 burials somewhere. Although on the property it has
25 been heavily impacted and sand mined at one point in

1 the past, there still is certainly the possibility.

2 Q With regard to the cultural practices, in
3 your opinion is there anything with regard to
4 reclassifying this property that would adversely
5 affect the cultural resources or practices?

6 A No, not in our, not in our study.

7 MR. GARNEAU: All right. Thank you. I
8 have no further questions.

9 CHAIR CHOCK: County?

10 MR. GIROUX: We have no questions.

11 CHAIR CHOCK: State?

12 CROSS-EXAMINATION

13 BY MR. YEE:

14 Q The Petition Area is located within the
15 Pu'uone sand dune region, correct?

16 A Correct.

17 Q Have there been any human remains or iwi
18 found within the Petition Area?

19 A Not on this, not on this Project, no.

20 Q But outside the Petition Area --

21 A Yeah.

22 Q -- but within the Pu'uone sand dune regions
23 human remains or iwi have been found?

24 A Yeah. It is a traditional burial area
25 basically.

1 Q So in order -- and you've dug, I believe,
2 20 trenches to --

3 A Yes, on inaccessible portions.

4 Q -- to look for subsurface sites.

5 A Hmm-hmm.

6 Q "Yes"?

7 A Yes.

8 Q Only because it's difficult to take down an
9 "uh-huh" and "huh-huh" on the transcript.

10 A Sorry.

11 Q So because of the possibility of just
12 inadvertently discovering native Hawaiian
13 archaeological sites or human remains, I take it
14 you're recommending that a monitoring plan be
15 implemented.

16 A Correct.

17 Q The monitoring plan's approved by SHPD, is
18 that correct?

19 A Correct. That document number is document
20 No. 1205JP13.

21 Q Could you describe for the Commission what
22 that monitoring plan will involve.

23 A It will involve a pre-construction meeting
24 with construction personnel explaining different
25 procedures that will take place. A monitor will be

1 out onsite in the event that any significant
2 properties are found whether they be Hawaiian site
3 remnants or other sites as well.

4 Basically anything over 50 years old, they
5 would be protected with construction fencing, the
6 orange fencing.

7 Then the State Historic Preservation
8 Division would be informed and mitigation measures
9 would be agreed upon. Activities can occur elsewhere.

10 In the event human remains are identified
11 the -- again, the area would need to be stabilized,
12 earth-moving activities would stop in that area. The
13 State Historic Preservation Division would be
14 notified, the cultural branch division, as well as the
15 regional geographic representative of the Maui, Lana'i
16 Islands Burial Council. Then mitigation measures
17 would be put into place there as well.

18 And a monitor would be onsite during the
19 course of the earth-moving activities, excavation
20 activities until the Project is done or that sort of
21 activity is no longer occurring. Eventually when
22 everything is finished a report would be prepared --
23 will be prepared.

24 Q I just want to take you back to one aspect
25 of that plan. During groundbreaking activities a

1 trained observer is present on site, correct?

2 A Yes, an archaeological monitor, correct.

3 Q And the archaeological monitor would
4 have -- what kind of qualifications would that person
5 have?

6 A Typically a bachelor's degree in
7 Anthropology, Archaeology, prior experience
8 monitoring.

9 Q So that that person would be able to
10 recognize a native Hawaiian archaeological site?

11 A Yes.

12 Q With respect to the cultural survey was
13 there a consultation with the Maui Cultural Resources
14 Commission?

15 A No, there was not.

16 Q Any particular reason why?

17 A No.

18 Q Okay.

19 A If I might add. At one point I was on the
20 Maui County Cultural Resources Commission. That's not
21 why I do that. (audience laughter) But I am familiar
22 with the Maui County Cultural Resources Commission.

23 Q Is consultation optional?

24 A For a Project like this, given the negative
25 findings on the assessment survey and the location, I

1 made the decision not to, not to go forward with that.

2 MR. YEE: Thank you. I have nothing
3 further.

4 CHAIR CHOCK: Petitioner, any questions for
5 this witness?

6 MR. GARNEAU: I have no redirect.

7 CHAIR CHOCK: Commissioners, any questions
8 for this witness? No questions. Thank you for your
9 testimony. Thank you. So it's 11:45. We're going to
10 take a break for lunch and resume at around 1:00 p.m.
11 Is that okay, everybody? 1:15? Thank you.

12 (Lunch recess was held 11:45)

13 CHAIR CHOCK: (Gavel). Call the meeting
14 back to order. Petitioner, next witness.

15 MR. GARNEAU: Mr. Chair, that concludes our
16 direct testimony. We have no more witnesses at this
17 time.

18 CHAIR CHOCK: County, ready to proceed?

19 MR. GIROUX: Yes. We would like to stand
20 on our position statement, also if there's no
21 objections from counsel or the board just have
22 Mr. Spence's written statement just entered into the
23 record and received, and also Mr. Ginosa's statement.

24 The only thing is with the statement of
25 Mr. Spence is at the time that the statement was made

1 that the Urban Growth Boundaries were in draft stage.
2 They have now been finalized. And Exhibit 53 I
3 believe or Exhibit 56 has been entered into the
4 record.

5 CHAIR CHOCK: County exhibit -- it would be
6 Petitioner's exhibit.

7 MR. GIROUX: Yeah. That would clarify that
8 statement.

9 CHAIR CHOCK: Parties, any objections?

10 MR. GARNEAU: No objections.

11 MR. YEE: No objections.

12 CHAIR CHOCK: Commissioners?

13 MR. GIROUX: That's all we've got.

14 CHAIR CHOCK: So you're not going to be
15 offering Mr. Spence at all. You're going to stand on
16 his written testimony.

17 MR. GIROUX: Yes.

18 CHAIR CHOCK: Okay. Bryan? Ready?

19 MR. YEE: Yes. I need to clarify a small
20 matter on the record. When we submitted Exhibits 1
21 through 10 I forgot that the Department of
22 Transportation, in light of the agreement by
23 Petitioner to accept the conditions, we did not submit
24 written testimony for the Department of
25 Transportation.

1 So Exhibit 6 was not submitted by the
2 Office of Planning. So we would not -- we'd ask that
3 the Exhibits 1 through 5 and 7 through 10 rather than
4 1 through 10. So our only witness will be Rodney
5 Funakoshi. We would ask for a stipulation for the
6 expertise of OP's expert witnesses.

7 CHAIR CHOCK: Mr. Garneau?

8 MR. GARNEAU: So stipulated.

9 MR. GIROUX: We so stipulate.

10 CHAIR CHOCK: Okay, Rodney.

11 RODNEY FUNAKOSHI

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

14 THE WITNESS: Yes.

15 CHAIR CHOCK: Your name and address.

16 THE WITNESS: Rodney Funakoshi. I'm with
17 the Office of Planning, 235 South Beretania Street in
18 Honolulu.

19 DIRECT EXAMINATION

20 BY MR. YEE:

21 Q Mr. Funakoshi, what's your position with
22 the Office of Planning?

23 A I'm a planning program administrator of the
24 Office of Planning's land use division.

25 Q Was OP Exhibits 1 and 2 the Statement of

1 Position and written testimony prepared by you or at
2 your direction?

3 A Yes.

4 Q Did these constitute the positions and
5 testimony of the Office of Planning?

6 A Yes.

7 Q Would you please provide us with a summary
8 of your testimony.

9 A Okay. Thank you. The Office of Planning
10 recommends approval subject to conditions of Waiko
11 Industrial Investment, LLC Petition to reclassify
12 approximately 31.22 acres of land from the state
13 Agricultural District to the Urban District in
14 Waikapu, Maui for the development of a light
15 industrial and commercial subdivision as represented
16 by Petitioner.

17 I'll basically cover the issues of concerns
18 to the State and briefly review the proposed
19 conditions of approval, recommended conditions of
20 approval.

21 First, impacts on areas of state concern
22 relative to groundwater resources. The proposed
23 subdivision will be supplied with water from two
24 existing private wells drawing potable water from the
25 Kahului Aquifer system.

1 Petitioner has submitted, recently
2 submitted a Memorandum of Understanding addressing a
3 concern raised earlier for the lack of a joint
4 services agreement to confirm the shared use of the
5 wells. So this MOU satisfies that concern.

6 The Kahului Aquifer is presently being
7 pumped at between 25 and 30 mgd, million gallons per
8 day. The Commission on Water Resource Management has
9 set the sustainable yield at 1.0 mgd but this is based
10 on rainfall recharge and doesn't include other
11 important sources of recharge including underflow from
12 Haleakala, the West Maui Mountains, and irrigation
13 return from sugarcane fields.

14 The Commission on Water Resource Management
15 commented that the potability of the wells is
16 dependent upon the continued irrigation of sugarcane
17 on adjacent lands and leakage from the Waiale
18 Reservoir artificially freshening the aquifer which is
19 otherwise pumped in excess of the sustainable yield of
20 1 mgd.

21 They also noted that reliance upon the
22 potability of these wells and others cannot be assured
23 in the absence of these sources of augmentation.

24 We would note, however, that unlike the
25 adjacent 'Iao Aquifer the Kahului Aquifer is not a

1 designated Groundwater Management Area subject to more
2 intensive management and allocation of water resources
3 via the Commission on Water Resource Management.

4 There is, however, some uncertainty
5 regarding the future availability of water should
6 plantation operations cease to provide the present
7 irrigation recharge.

8 Petitioner's water resources engineer has
9 estimated that closing the plantation would reduce
10 aquifer pumpage by more than 25 mgd leaving current
11 and projected pumpage at less than 5 mgd, but that the
12 two wells supplying the Petition Area can continue to
13 provide the needed quantity and quality of
14 groundwater.

15 Regarding archaeological resources, we
16 acknowledge the archaeological assessment report
17 prepared and submitted by the Petitioner which
18 included 20 trench excavations which found no
19 significant surface or sub-surface remains and no
20 historic properties were identified.

21 The State Historic Preservation Division
22 approved the Archaeological Report in May 2012. The
23 Petitioner also submitted an archaeological monitoring
24 plan that was also approved by the State Historic
25 Preservation Division.

1 And in consideration of the Project
2 location, geology and presence of known burials in the
3 area, OP is recommending that a condition be imposed
4 requiring compliance with the recommendations of the
5 State Historic Preservation Division, including
6 archaeological monitoring during any ground-disturbing
7 activities.

8 Regarding agricultural lands, the area has
9 not been used for any agricultural cultivation in
10 recent years. The productivity of the soil is rated
11 as Poor by the Land Study Bureau's detailed land
12 classification which classifies the soils as E, the
13 lowest class of productivity.

14 The Department of Agriculture's main
15 comment was that the 27-acre feed lot on Nobriga Ranch
16 is the only one on Maui and has been in operation
17 since 1968 providing feed to various ranches
18 throughout Maui.

19 Regarding sustainability, the Office of
20 Planning is recommending that a condition be imposed
21 to incorporate water conservation measures, inside
22 design and landscaping.

23 On transportation, the State Department of
24 Transportation has reviewed the Traffic Impact
25 Analysis Report and found that it is not acceptable

1 and needs to be revised and resubmitted for review and
2 acceptance.

3 DOT had the following concerns: The need to
4 eliminate direct access to Kuihelani Highway,
5 provision of fair-share contribution to the cost of
6 regional highway improvements, potentially
7 unacceptable traffic impacts to Honoapi'ilani Highway
8 and Kuihelani Highway; the need for transportation
9 mitigation improvements and impacts from heavy vehicle
10 truck traffic.

11 OP recommends that conditions be imposed to
12 address concerns regarding the TIAR and mitigation of
13 traffic impacts to the state highway system.

14 Civil Defense noted that the location does
15 not presently have an outdoor warning system. And
16 recommends the installation of a siren, civil defense
17 siren on the property. So OP is recommending that
18 this condition for installation of a civil defense
19 warning siren be imposed.

20 Regarding airports. The Petition Area lies
21 west of the aircraft flight path to Kahului Airport.
22 DOT has concerns with the proximity of the Petition
23 Area to Kahului Airport in that flight operations in
24 and out of the airport may affect the Petition Area.

25 They have recommended, as was done in the

1 Waiale petition, that Petitioner, and any subsequent
2 owners, notify and formally disclose to all
3 perspective buyers and lessees of real property in the
4 Petition Area that there is the potential for aircraft
5 noise emissions, vibration and other effects from the
6 overflight of aircraft and other incidences of
7 aircraft operations.

8 The Department of Transportation is also
9 concerned regarding wastewater and stormwater
10 improvements, that these improvements have the
11 potential to attract wildlife and threaten aviation
12 safety.

13 Since the Petition Area is within
14 five miles of the airport operations area, the DOT is
15 recommending that they be consulted and that a
16 Memorandum of Agreement be executed to insure that the
17 Federal Aviation Administration advisory circular
18 conditions are met and that the Project does not
19 create a safety hazard to the aircraft operations.

20 The Petitioner will also need to document
21 hazardous wildlife attractant mitigation that may
22 arise from standing water in the Petition Area.

23 So OP is recommending that conditions
24 regarding the notification and disclosure of airport
25 operations and hazardous wildlife attractants be

1 imposed to address DOT Airports concerns.

2 On wastewater the master sewer system will
3 require approval from the State Department of Health
4 for compliance with administrative rules regarding
5 private wastewater system. According to the rules any
6 cesspools, seepage pit or soil absorption system must
7 be a minimal distance of 1,000 feet from a potable
8 water source.

9 Given the proximity of the proposed septic
10 system and leach fields to the potable water wells,
11 the Office of Planning recommends a condition be
12 imposed seeking compliance with the DOH wastewater
13 system provisions.

14 We are also recommending that a condition
15 be imposed that the Petitioner incorporate low-impact
16 development techniques and technologies in the design
17 and construction of the Project's drainage and
18 stormwater management system.

19 To summarize: The conformity with
20 decision-making criteria: The Petition meets the
21 standards for determining State Urban District
22 boundaries as set forth in Administrative Rules. The
23 Petition Area is surrounded by existing and proposed
24 urban uses, in particular the Waiale master planned
25 community which will have city-like concentrations of

1 people, structures, streets and urban levels of
2 service.

3 The Project is in proximity to areas of
4 trading and employment. And with proposed mitigation
5 will have access to basic public services. The
6 Petition Area is surrounded by lands within the Urban
7 District and is located within the proposed Urban
8 Growth Boundary of the Maui Island Plan.

9 Minimal impacts are anticipated from
10 natural hazards due to existing topography and the
11 inland location of the Petition Area.

12 With the appropriate mitigation the
13 proposed reclassification is generally consistent with
14 the Hawai'i State Plan and complements the
15 Administration's priorities in its New Day
16 comprehensive plan by supporting the economy, jobs and
17 small businesses.

18 The Petition generally conforms to the
19 Hawai'i Coastal Zone Management objectives and
20 policies set forth in Hawaii Revised Statutes chapter
21 205.

22 Finally, the Petition Area does not meet
23 the criteria for Important Agricultural Lands as
24 specified in section 205-2 of the Hawaii Revised
25 Statutes.

1 Regarding consistency with county plans the
2 Petition Area is consistent with infill development
3 policies in the County General Plan and lies within
4 the Urban Growth Boundary of the Maui Island Plan.

5 The Petition Area is not consistent with
6 the Wailuku-Kahului Community Plans land use
7 designation of Agriculture. A community plan
8 amendment and change of zone are required to change
9 the land use designation to allow the proposed uses.

10 So in summary OP is recommending approval
11 of the Petition subject to the Petitioner's
12 commitments to avoid, minimize or mitigate Project
13 impacts and the imposition of conditions as
14 recommended by the Office of Planning.

15 So these as alluded to in my presentation
16 relate to highway and road improvements particularly
17 relative to the Traffic Impact Analysis Report,
18 notification of proximity to Kahului Airport,
19 hazardous wildlife attractants at or near Kahului
20 Airport, water conservation, wastewater compliance
21 with Chapter 62, stormwater management and drainage,
22 civil defense, archeological and historic
23 preservation, previously unfiltered water,
24 archaeological sites.

25 And infrastructure deadline that Petitioner

1 shall complete construction of the proposed backbone
2 structure within ten years from the date of the
3 Decision and Order.

4 And then, finally, compliance with
5 representations that the Petitioner shall develop the
6 Petition Area in substantial compliance with
7 representations made to the Commission. That
8 concludes my testimony.

9 MR. YEE: No further questions.

10 CHAIR CHOCK: Petitioner?

11 MR. GARNEAU: Yes, thank you.

12 CROSS-EXAMINATION

13 BY MR. GARNEAU:

14 Q Mr. Funakoshi, I just had one question for
15 you. To your knowledge the Petitioners agree to the
16 conditions that have been proposed by the Office of
17 Planning, have they not?

18 A Yes, that's my understanding.

19 MR. GARNEAU: Thank you.

20 CHAIR CHOCK: County?

21 MR. GIROUX: I have no questions.

22 CHAIR CHOCK: Redirect?

23 MR. YEE: Nothing.

24 CHAIR CHOCK: Commissioners, any questions
25 for this witness? Commissioner Heller.

1 COMMISSIONER HELLER: Just to clarify with
2 respect to water conservation and then the well
3 capacity. You mentioned an issue about potential
4 replenishment if irrigation of the cane field ceases
5 and whether that affects the capacity of the wells to
6 continue pumping.

7 But as far as the conditions proposed by OP
8 the only specific condition, as I understand it, is
9 your proposed Condition No. 4 that says "Petitioner
10 shall implement water conservation measures including
11 the use of endemic, indigenous and drought-tolerant
12 plants," et cetera.

13 I assume from that that OP is of the
14 position that no other specific water-related
15 requirements are needed at this point.

16 THE WITNESS: Yes. The area is not a water
17 management area with oversight from the State
18 Commission on Water Resource Management. That is
19 triggered when the aquifer reaches 9 percent of the
20 sustainable yield.

21 The sustainable yield is already exceeded
22 actually in current pumpage -- I'm not sure about
23 currently exceeded or not in current pumpage. Well,
24 it is exceeded in current pumpage. But there is
25 substantial recharge from surrounding areas and

1 particularly the sugarcane irrigation.

2 So that's one of the anomalies that's not
3 triggered the Water Resources Commission to designate
4 this as yet a groundwater management area. Should
5 sugar cease for any reason, though, that would
6 certainly come up.

7 At a point there may be then in a position
8 to designate it as a water management area and
9 regulate the allocation. Of course at that point this
10 Project will probably, you know, be far into
11 implementation.

12 COMMISSIONER HELLER: I understand that.
13 I'm just making sure that it's OP's position that no
14 other water-related conditions are needed beyond what
15 you guys have proposed as Condition No. 4.

16 THE WITNESS: Yes. We did specifically ask
17 that of the Water Commission.

18 COMMISSIONER HELLER: Thank you.

19 CHAIR CHOCK: Commissioner Inouye.

20 COMMISSIONER INOUE: I just have one quick
21 question. There was some testimony about the leachate
22 field being a thousand feet away from wells. There's
23 developments outside, and I was involved in those
24 proceedings. There's no other wells within a thousand
25 feet of the leaching field.

1 THE WITNESS: Ah, no.

2 COMMISSIONER INOUE: Thank you.

3 CHAIR CHOCK: Rodney, thank you for a quite
4 comprehensive report there. Just a couple of
5 clarifying questions following up on Commissioner
6 Heller's questions on water. You were saying the
7 Kahului Aquifer produces about 30 mgd, sustainable
8 yield of 30 mgd?

9 THE WITNESS: The current pumpage may be 25
10 to 30 mgd.

11 CHAIR CHOCK: Current pumpage.

12 THE WITNESS: Yes.

13 CHAIR CHOCK: What's the sustainability
14 yield?

15 THE WITNESS: 1 mgd.

16 CHAIR CHOCK: 1 mgd.

17 THE WITNESS: Yes.

18 CHAIR CHOCK: The difference is made up
19 through groundwater recharge from the sources that you
20 mentioned?

21 THE WITNESS: Right. So it's groundwater
22 flow from the West Maui Mountains, the Haleakala
23 Mountains and from the irrigation of sugarcane.

24 CHAIR CHOCK: And all of that is enough to
25 make up for approximately 29 mgd beyond the

1 sustainable yield of 1 mgd?

2 THE WITNESS: Apparently. Because, yeah,
3 it has not triggered any alarm bells to designate that
4 area. You know, like I mentioned, the way that they
5 calculate sustainable yield is fairly -- it does not
6 account for the additional recharge.

7 So they are aware, you know, that -- it's
8 really -- all they look at basically is the amount of
9 rain that comes down and how much they estimate gets
10 into the aquifer and thereby recharges the
11 groundwater.

12 So they did not consider external additions
13 to that supply in determining their sustainable yield.
14 But if there is history of pumpages and increased
15 salinity detected in the potable wells, then they
16 would move to take action toward designation.

17 CHAIR CHOCK: Okay. Thanks, Rodney. Any
18 other questions for this witness? Thank you very
19 much.

20 MR. YEE: The State has nothing further.

21 CHAIR CHOCK: Any other parties have any
22 rebuttal witnesses? (pause) Didn't think so.
23 (Laughter). Why don't we move, then, into closing
24 argument. Petitioner.

25 MR. GARNEAU: Thank you very much. At this

1 time I'd like to thank you, Mr. Chair and Members of
2 the Commission for your kind consideration of this
3 Petition today.

4 It's the right Project at the right time as
5 you heard from the witnesses here, for quite a few
6 reasons. Its location, it's central on Maui. It's
7 contiguous to other light industrial uses. It's also
8 something the community supports as we've heard today.
9 The Maui Island Plan, this is located within the Urban
10 District Boundary.

11 Other key advantages of the location of
12 this proposed Project it's close to transportation
13 hubs. It's close to the harbor and it's also close to
14 the airport, of course, in Kahului.

15 There's also certain synergy that's
16 happening in this Waiko area for businesses that are
17 located there and can interact.

18 While the Project that we're here today is
19 going to have some smaller lots, encourage some
20 smaller businesses to be there, there's also larger
21 light industrial, and industrial businesses in the
22 area. So it does provide a central location where all
23 of these businesses can interact with one another.

24 As you heard earlier from Mr. Kunihisa the
25 economy on Maui has been somewhat slow to improve. I

1 think that's been true throughout the state, probably
2 through the United States. But we are seeing
3 improvement now.

4 So when I say that it's the right Project
5 at the right time it's because, you know, it's got to
6 a point subject to approval today hopefully by the
7 Commission, we are able to move quickly through the
8 process with the county. As Mr. Jencks said, it would
9 be developed within, I think he said about a year or
10 so.

11 But in any event the one key advantage I'd
12 like you to consider is, as Mr. Kunihisa said, it's a
13 place for mom and pop type businesses, smaller
14 businesses which actually are a source for many jobs
15 in our community. They're also a place to incubate
16 jobs as well.

17 And the nice part about this Project too
18 it's close to where a lot of people live in Kahului,
19 in Waikapu and, of course, in and around Wailuku.

20 With regards to the legal basis for it,
21 both the State and the County and the Petitioner
22 obviously all agree that the proposed reclassification
23 from Urban -- I mean from Agricultural to Urban is
24 consistent with the applicable LUC rules with the
25 State statutes and, of course, the State plans

1 including the policies that are contained in the
2 criteria that are contained within Hawaii Revised
3 Statutes Chapters 205 and 205A.

4 So based on the evidence that's been
5 presented here today the Petitioner respectfully
6 requests that the Commission find that this Petition
7 complies with the necessary requirements of a Petition
8 for Boundary Amendment under your Administrative Rule
9 15-15-50.

10 We also respectfully request that the
11 Commission find the proposed development of the
12 Petition Area meets with the standards for determining
13 the Urban District boundaries pursuant to
14 Administrative Rule 15-15-18 and therefore grant the
15 reclassification of the Petition Area from
16 Agricultural District to Urban District. Thank you.

17 CHAIR CHOCK: Thank you, Petitioner.
18 County?

19 MR. GIROUX: The County joins in the
20 comments of the Petitioner. We'd just like to
21 reiterate that we see this Project as fitting in with
22 the County's long range planning paradigm. And that
23 we also do see it as a benefit to the economy as these
24 types of projects and the size and the type of work
25 that it will provide is necessary for the county of

1 Maui.

2 CHAIR CHOCK: Thank you, Mr. Giroux.

3 Mr. Yee.

4 MR. YEE: The Office of Planning supports
5 the reclassification request of the Petitioner. This
6 is clearly an infill project. If you looked at OP
7 Exhibit 5 you'd see the surrounding uses, literally
8 surrounding uses are all urban.

9 Furthermore, we certainly appreciate the
10 fact that the size of the lots and the commitment for
11 light industrial specifically uses serve an important
12 function that when you -- that they have committed to,
13 been very frank and honest about that, when you commit
14 to that and you don't have that competition with
15 commercial uses it fills a very important part of the
16 market for Maui.

17 So we think that's a very good idea.
18 Again, we do appreciate the clarity for the proposed
19 uses in this case.

20 Finally, we just wanted to note that
21 although some of the issues that have arisen about
22 this Project were also addressed in the A&B case, we
23 addressed certainly the archaeology question in that
24 case. We also addressed the water question in that
25 case.

1 We recognized, and we had a much more
2 extensive discussion in the A&B Waiale matter, about
3 the issues involving the aquifer and the difference
4 between the sustainable yield and the actual pumpage
5 and what the concerns might be if conditions changed
6 in the future.

7 But given the fact that the A&B Waiale
8 matter was reclassified, we thought that to be
9 consistent with that case the Office of Planning would
10 also support this as well without, frankly, raising
11 too many new issues.

12 So given the fact that we think this is a
13 good Project, that it's consistent with both the
14 county plans as well as the surrounding uses, and the
15 fact that the concerns which may have arisen either
16 have been addressed or are really no different than
17 any other project in the area, the Office of Planning
18 supports the reclassification.

19 CHAIR CHOCK: Thank you, Bryan.
20 Petitioner, I'm assuming you have no rebuttal, but I
21 thought I'd offer you anyway.

22 MR. GARNEAU: No, I do not.

23 CHAIR CHOCK: Okay. Given that the parties
24 have completed their presentations I declare the
25 evidentiary portion of this proceeding to have been

1 completed subject to the receipt of various follow-up
2 reports and/or questions that may have been requested
3 during the course of this hearing.

4 I'd like to ask all parties draft their
5 individual proposed Findings of Fact, Conclusions of
6 Law, Decision and Order based upon the record in this
7 that docket and serve the same upon each other and the
8 Commission.

9 The proposed Findings of Fact must
10 reference the witness as well as the date, page and
11 line numbers of the transcripts to identify your
12 facts.

13 In addition to the transcript the exhibits
14 in evidence should also be referenced. I'd like to
15 note for the parties that the Commission has standard
16 conditions which we would like the parties to consider
17 in preparing their proposed orders. A copy of the
18 standard conditions may be obtained from Commission
19 staff.

20 Should any of the parties desire to
21 stipulate to any portion or all of the Findings of
22 Fact, Conclusions of Law and Decision and Order
23 they're encouraged to do so.

24 Regardless of whether the parties pursue a
25 partial or fully stipulated order I'd like to ask each

1 party to file its proposal with the Commission and
2 serve copies on the other parties no later than the
3 close of business on March 22nd, 2013.

4 All responses or objections to the parties'
5 respective proposals shall be filed with the
6 Commission and served upon other parties no later than
7 the close of business on March 28, 2013.

8 Any responses to the objections must be
9 filed with the Commission and served on the other
10 parties no later than the close of business on
11 April 5th, 2013.

12 Please consult with staff early in the
13 process to ensure that technical and non-substantive
14 formatting protocols are observed by the Commission.
15 Are there any questions with respect to our
16 post-hearing procedures? Petitioner?

17 MR. GARNEAU: No, no questions.

18 CHAIR CHOCK: County?

19 MR. GIROUX: No questions.

20 CHAIR CHOCK: State?

21 MR. YEE: Chair, the Office of Planning in
22 prior cases would ask that if you waive the
23 requirement to submit its own D&O as we anticipate --
24 we are in very close agreement with the Petitioner in
25 this case -- we would be filing potentially responses

1 or objections probably only with respect to some of
2 the findings of fact. As you may guess there were
3 certain findings we may want.

4 In turn we would waive, then, the
5 opportunity to submit any further responses to our
6 objections so that the schedule can be maintained
7 fairly, fairly closely.

8 I would note, however, in this case you
9 only provided one week rather than two weeks for
10 objections and responses. When I think in the past
11 you've given us two.

12 We would inquire as to whether either the
13 Petition could be moved up a week or if you could move
14 the other deadlines back a week to allow us two weeks
15 to respond.

16 CHAIR CHOCK: Dan, you want to address
17 that?

18 MR. ORODENKER: It is possible to move the
19 original filing up a week if that's okay with the
20 Petitioner.

21 MR. GARNEAU: One week earlier?

22 CHAIR CHOCK: Yes.

23 MR. GARNEAU: That will be fine.

24 MR. ORODENKER: Okay. March 15th will be
25 the date that the original proposal is filed and

1 served on the other parties. That would move...

2 MR. YEE: Then we keep the rest of the
3 dates the same.

4 MR. ORODENKER: Yes. Everything else stays
5 the same.

6 CHAIR CHOCK: Parties, any objections or
7 questions?

8 MR. GARNEAU: No objections.

9 MR. GIROUX: Just to clarify. If we agree
10 with the Petitioner's draft we would probably just be
11 joining in on that March 15th date. If there is any
12 major discrepancies I guess we would file the
13 objections by the 28th.

14 CHAIR CHOCK: Okay. Petitioner, you okay?

15 MR. GARNEAU: Yes, yes. That's fine.

16 MR. YEE: That's fine.

17 CHAIR CHOCK: Okay. Deliberation and
18 decision-making is tentatively scheduled for
19 April 18th. Hang on for a sec. (pause) Okay.
20 Deliberation and decision-making tentatively scheduled
21 for April 18th. Any questions, parties, before we
22 adjourn for the day?

23 MR. GARNEAU: No.

24 MR. GIROUX: No.

25 MR. YEE: No.

1 CHAIR CHOCK: Commissioners, any questions?

2 So we're adjourned. Thank you, parties.

3 (The proceedings were adjourned at 2:00 p.m.)

4 --oo00oo--

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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 21st day of February 2013;

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_____2013

HOLLY M. HACKETT, HI CSR #130, RPR