

LAND USE COMMISSION  
MEETING MINUTES  
**June 13, 2013, 9:30 a.m.**  
**Marriott Courtyard Hotel, Haleakalā Room**  
**Kahului, Maui, Hawai`i, 96732**

COMMISSIONERS PRESENT: Chad McDonald  
Ernest Matsumura  
Kyle Chock  
Lance Inouye  
Nicholas Teves, Jr.  
Sheldon Biga (arrived at 9:39 a.m.)  
Thomas Contrades

COMMISSIONERS EXCUSED: Jaye Napua Makua  
Ronald Heller

STAFF PRESENT: Daniel Orodenker, Executive Officer  
Scott Derrickson, Staff Planner  
Sarah Hirakami, Deputy Attorney General  
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Walter Mensching

**CALL TO ORDER**

Chair Chock called the meeting to order at 9:30 a.m.

**APPROVAL OF MINUTES**

Chair Chock asked if there were any corrections or additions to the May 2, 2013 minutes. There were none. Commissioner Contrades moved to approve the minutes. Commissioner Teves seconded the motion. The minutes were unanimously approved by a voice vote (6-0).

**TENTATIVE MEETING SCHEDULE**

Executive Officer Orodenker provided the following:

- The regular tentative meeting schedule has been distributed in the handout material for the Commissioners.
- The June 27, 2013 portion of the next LUC hearing will be on Maui to complete A11-794 State of Hawai‘i- DOE- Kihei High School and for A94-706 Ka‘ono‘ulu Ranch motions. The June 28, 2013 portion of the meeting will be on Oahu to hear presentations from OP and OEQC.
- The first LUC meeting in July will be on the 25 and 26; with a site visit and commencement of hearing A10-787 Maui R&T Partners LLC at the Malcolm Center in Kihei. The LUC meeting date for July 11-12 is currently open.
- The August 8-9 meeting in August will be on Maui with a continued hearing of A10-787.
- The August 21 and 22 meeting will be on Maui with a continued hearing of A10-787.
- Any questions or conflicts, please contact LUC staff.

There were no questions or comments regarding the tentative meeting schedule.

## **HEARING**

### **A11-794 State of Hawaii-Dept. of Education- Kihei High School (Maui)**

Chair Chock announced that this was a hearing on Docket No. A11-794 State of Hawai‘i, Dept. of Education- Kihei High School, (Maui) to Amend the Agricultural Land Use District Boundaries into the Urban Land Use District for Approximately 77.2 acres of land at Kihei, Maui, Hawai‘i, Maui Tax Map key No. 2-2-02:81 and 83.

#### Disclosures by Commissioners

Commissioners McDonald and Inouye disclosed how their respective companies were sometimes involved with doing project work or competitive bidding for jobs with the State Department of Education, but not specifically with respect to this project, and stated how they did not feel their organizations’ involvement would affect their participation in this docket. There were no objections to both Commissioners continuing their participation in the proceedings.

#### APPEARANCES

*(Please refer to LUC Transcript for more details on this matter)*  
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William Yuen, Esq., represented Petitioner, State of Hawai'i, Dept. of Education ("DOE")

Melissa Uhl, Esq., represented Petitioner

Nick Nichols, DOE representative

James Giroux, Deputy Corporation Counsel, represented County of Maui Planning Department ("County")

William Spence, Director, County

Bryan Yee, Deputy Attorney General, represented State Office of Planning ("OP")

Rodney Funakoshi, OP

Chair Chock updated the record and asked if Petitioner was agreeable to the Commission's policy on reimbursements for hearing expenses. Mr. Yuen acknowledged that Petitioner would cooperate and abide with the reimbursement policy.

#### PUBLIC WITNESSES

1. James Beerer- Kihei Community Association Board of Directors Member/  
Kihei High School Action Team Representative

Mr. Beerer submitted written testimony and stated his individual and organization's support for the proposed high school facility and for the proposed change in land use designation for it.

There were no questions for Mr. Beerer.

2. Laura Marzke- Kihei Community Association Education Committee Representative

Ms. Marzke stated her organization's support and endorsement of the proposed project and change in land use designation.

There were no questions for Ms. Marzke.

There were no other public witnesses.

#### MAP ORIENTATION

LUC planner Scott Derrickson was called upon to provide a map orientation for the Commission. There were no questions for Mr. Derrickson.

#### ADMISSION OF EXHIBITS

Petitioner

Mr. Yuen offered Petitioner's Exhibits 1-31 to be admitted for the record. There were no objections to Petitioner's Exhibits.

#### County

Mr. Giroux offered County Exhibits 1-9 to be admitted to the record. There were no objections to County's Exhibits.

#### OP

Mr. Yee offered OP Exhibits 1-4, 5A, 7, 8, and 10 to be admitted to the record.

There were no objections to OP's Exhibits.

Chair Chock inquired on what the Parties had agreed to with regard to the handling of witnesses and cross examinations; and what witnesses had been stipulated to and which ones the parties would be calling.

Mr. Yuen stated that Petitioner had submitted written testimony for 3 witnesses- Daniel Lum, Gavin Masaki and Bruce Plasch and that Mr. Lum and Mr. Masaki would be appearing to answer any questions that Commission might have; and that since the Parties had stipulated on Mr. Plasch's testimony, he would not be appearing.

Mr. Giroux stated that County had reviewed the testimonies of Petitioner's witnesses and would rest on them; and would be making a short cross examination on Petitioner's witnesses Nick Nichols and Christine Ruotola.

Mr. Yee stated that OP had waived cross examination of Petitioner's witnesses Lum, Masaki and Plasch and had stipulated to their written testimony. Mr. Yee also stated that OP would be presenting DOT representative Alvin Takeshita and OP representative Rodney Funakoshi on June 14th.

Mr. Giroux added that he had submitted written testimony for four witnesses- Rowena Dagdag-Andaya, Kyle Ginoza, Paul Meyer, and William Spence; and that only Mr. Spence would be testifying and that the other three witnesses were available to be called. Mr. Yuen and Mr. Yee stated that they waived cross examination on the three named witnesses.

Mr. Yee added that OP had withdrawn its C-WRM representative since the Parties had no issues on the matter.

Chair Chock called for the Parties to begin their presentations.

## PRESENTATIONS

### Petitioner

Mr. Yuen offered his witnesses for the Commission.

#### Petitioner Witnesses

1. Daniel Lum

Mr. Lum was offered and admitted as an expert in hydro-geology. There were no objections to his qualifications as an expert and Mr. Lum stated that he stood on his written testimony.

There were no questions for Mr. Lum.

2. Gavin Masaki

Mr. Masaki was offered and admitted as an expert in civil engineering. There were no objections to his qualifications as an expert and Mr. Masaki stated that he stood on his written testimony.

County and OP had no questions for Mr. Lum.

Commissioner McDonald requested clarification on the service zone and water tank elevations for the proposed project and whether or not a booster to the County water system was needed. Mr. Masaki responded that he could not recall the elevation level for the tank; that the central water zone would service the Petition Area and that the booster was necessary for fire protection purposes.

There were no further questions for Mr. Lum.

3. Nick Nichols- DOE Facilities Planner

Mr. Nichols expressed why the DOE felt that a high school was justified for the community and employed a PowerPoint presentation to describe the proposed infrastructure and facilities for the Petition Area, and the timetable phasing of construction for the various components of the high school. Mr. Nichols also stated that the estimated start date for the first phase was 2014, and the projected completion date for phase two was 2025.

Mr. Nichols described the sustainability features that had been included in the plans; how and when the anticipated funding from the

Legislature would be provided; and how the County and State's conditions and concerns would be addressed.

Mr. Nichols provided extensive details on how the DOE had worked with the DOT regarding public access, ingress/egress concerns and various traffic and safety issues; and what actions the DOE needed to take to resolve the concerns that had surfaced during their meetings.

#### Questions for Mr. Nichols

Mr. Giroux requested clarification on what action the DOE would take to resolve the various County concerns regarding the conditions for the proposed project. Mr. Nichols described how the various conditions would be addressed and provided details on how issues with stormwater, security, access and other transportation network concerns had been considered and evaluated in planning the proposed high school facilities and integrating them into other planned community features; and how landscape features were considered and incorporated into designing the layout for elements of the proposed facility.

Mr. Yee requested clarification on various FEIS issues regarding the proposed project and had specific questions regarding the stormwater quality, non-potable water use and facility design and funding. Mr. Nichols shared his perception of how the various FEIS issues would be addressed and resolved; and how design, funding and phasing for the high school development was anticipated to occur. Mr. Nichol also described the timetable for the backbone infrastructure to be installed within ten years; how impact fees might be applied for development of the Petition area and what review had been done on OP's conditions. Mr. Nichols responded that he had not reviewed OP's conditions in depth.

Mr. Yee advised Chair Chock that he would next review the various OP conditions with Mr. Nichols and suggested a recess before proceeding. Chair Chock acknowledged Mr. Yee's suggestion and declared a recess at 10:35 a.m. and reconvened the proceedings at 10:55 a.m.

Mr. Yee reviewed each condition with Mr. Nichols and had him state whether or not DOE had any concerns about them. Mr. Nichols identified the OP conditions that DOE had concerns with and described why the DOE concerns existed and how they might or might not be addressed. Detailed questioning occurred over condition 8 and 1 to clarify DOE's position on them. Mr. Nichols shared the reasons why the DOE had concerns about both conditions.

### Rebuttal

Mr. Yuen requested clarification on Petitioner's condition 1D and asked if DOE would make provisions for bicycle lanes along Pi'ilani Highway. Mr. Nichols described the priorities that the DOE used in deciding what provisions were needed and responded that he was unable to make a current decision on what type of provisions for bicycle lanes would be needed.

Mr. Yuen requested clarification on what schools had overpasses or underpasses included in their development next to major thoroughfares or highways. Mr. Yee objected that the question was outside of the scope of what OP had addressed. Discussion occurred over the reason for the questioning. Chair Chock noted Mr. Yee's objection and directed that Mr. Nichols respond to the question. Mr. Nichols identified the schools that he was aware of that were adjacent to major thoroughfares or highways and what agency was responsible for installing or maintaining them. Mr. Yee requested that he be allowed to have a running objection to the questioning and that he be able to recross afterwards. Chair Chock granted Mr. Yee's request and permitted the questioning to continue.

Mr. Nichols described the difficulties in obtaining funding for maintaining existing overpass facilities and why DOE felt DOT was responsible for funding/maintaining overpass and underpass facilities next to DOE facilities.

### Commissioner Questions

Chair Chock requested clarification on overpass/underpass construction costs, where the structure would be located in the proposed project, what discussions had occurred on pedestrian/traffic safety in the Petition Area, how the designated funding for phase I was allocated, what the status and effectiveness of using the design/build

approach for the proposed project was, what the sequence and timing of the anticipated construction process would be and how impact fees might be applied. Mr. Nichols provided his opinion of what costs might be involved, where any over/underpass might be located, what community and agency input had occurred regarding pedestrian/traffic safety, how designated funding would be allocated, how design/build had not yet been analyzed to determine its effectiveness, what expected timelines for the proposed project were and stated that he would attempt to get information for the Commission on how impact fees might affect the proposed project.

After the conclusion of Chair Chock's questions, discussion occurred to determine when OP would be allowed to recross Mr. Nichols. Chair Chock informed Mr. Yee that he could recross after the conclusion of Commissioners' questions.

Commissioner Inouye requested clarification on the timing between the approvals and obtaining of funding for the proposed project and how the DOE would proceed with its bidding and award process. Mr. Nichols shared his perception of how the funding and project bidding process occurred and responded that he would have to check on the specifics of when, during the process, funding would occur for the selected builder.

Executive Officer Orodener excused himself at 11:34 a.m. and returned at 11:38 a.m.

Commissioner McDonald requested clarification on the payment schedule for the final three teams involved in the last phase of the bid award process and what provisions were in place to assure adequate water pressure for the Petition Area. Mr. Nichols described how DOE handled the design/build process for its projects and acknowledged the need to address and provide for water pressure concerns in the Petition Area.

Commissioner Biga stated his concerns about including safety measures for the proposed project and requested clarification on what other types of considerations were made to provide adequate protection. Mr. Nichols expressed that he shared the same safety concerns and described how a school bus network would factor into the proposed project.

There were no further Commissioner questions.



#### OP Recross

Mr. Yee requested clarification on the speed limits associated with the schools that Mr. Yuen had referred to and whether over/underpasses might be required by Federal guidelines. Mr. Nichols was unable to answer the question. Mr. Yee also requested clarification on what Mr. Nichols' awareness was of other schools that had over/under passes. Mr. Nichols answered the questions to the best of his knowledge.

#### 4. Pete Pascua- Admitted as an expert in Traffic Engineering

Mr. Pascua employed a PowerPoint presentation to describe the methodology used for his traffic study, the assumptions it was based on, and summarized what findings and traffic issues he had discovered for the Petition Area, what mitigation measures had been recommended for them and described various aspects of the TIAR (Traffic Impact Analysis Report) that he had submitted for the proposed project.

#### Questions for Mr. Pascua

Mr. Giroux requested and was granted a short recess to review a late DOT submittal.

The Commission took a recess in place at 12:11 p.m. and reconvened at 12:12 p.m.

Mr. Giroux responded that County had no cross for the witness.

Chair Chock declared a recess at 12:12 p.m. and reconvened the proceedings at 1:30 p.m.

Mr. Yee requested clarification on the study horizon for the TIAR that Mr. Pascua had performed and traffic related conditions surrounding the Petition Area. Mr. Pascua replied that his TIAR had a 2015 horizon, and described what changes might be necessary to adjust the TIAR if the conditions that the assumptions were based on changed. Mr. Pascua also described the factors involved in assessing whether or not traffic signals or other controls were warranted and shared his perception of

traffic/pedestrian related situations and conditions in and around the Petition Area.

### Rebuttal

Mr. Yuen requested clarification to the response provided to Mr. Yee in regards to the suggested location of the proposed overpass entrance in the projected project. Mr. Pascua shared the details of how elevation and travel time considerations factored into that locale.

### Commissioner Questions for Mr. Pascua

Commissioner Teves inquired if pedestrian accidents along the highway in the Petition Area had been considered. Mr. Pascua explained why they were not included in his study area and described the considerations that had been made for the Petition Area

Chair Chock requested clarification on the level of service described in the TIAR for 2025 and the mitigation measures that could be implemented. Mr. Pascua described the assumptions and considerations that were used in his study and what possible mitigations might be used to improve service levels.

Commissioner McDonald requested clarification on the DOT comments to the TIAR and how other impending projects in the region might impact levels of service. Mr. Pascua shared what the DOT comments were and how the regional traffic might degrade in the future on the present highway system and what might need to be done about it.

Chair Chock asked if any additional accident information could be provided for the Pi'ilani Highway route over the past few years for the Commission to consider. Mr. Pascua responded that he would check and see what he could provide as accident data.

There were no further questions for Mr. Pascua.

## 5. Christine Ruotola- Land Use Planning Expert

Ms. Ruotola described the methodology and considerations involved in developing the plans for the Petition Area; and how various State and County criteria and regulations were complied with.

#### Questions for Ms. Ruotola

Mr. Giroux stated that County had no questions.

Mr. Yee requested clarification on the projected number of pedestrian/bicycle crossings that might be required for the Pi'ilani Highway. Ms. Ruotola responded that she did not have that information and shared what she thought would be needed to provide for the necessary highway improvements at a later stage of development; and stated that she was not aware of the public trust aspects of the proposed project.

There were no further questions for Ms. Ruotola.

There were no further Petitioner Witnesses.

Mr. Giroux requested that the Parties stipulate that his proposed witnesses were qualified experts and that their written testimonies be accepted for the record. There were no objections to his request and the Parties agreed to stipulate.

Mr. Giroux offered his only remaining expert witness, William Spence. There were no objections to Mr. Spence's appearance as an expert witness in planning, or his position statement and written testimony.

#### County Witness

##### 1. William Spence

Mr. Spence described how the County had reviewed and formulated its position statement to support the Petition; and determined that the Petition Area met the criteria for an urban land use designation.

#### Questions for Mr. Spence

Mr. Yuen requested clarification on how conflict over the County's recommended conditions could be resolved. Mr. Spence described how he felt the existing conflicts between Petition and County over various conditions could be resolved and how the County would monitor the situation to ensure public safety and County criteria.

Mr. Yee requested clarification on County condition 6 regarding stormwater; how R1 water infrastructure for the Petition Area would be installed; and the status of the County zoning and amendments needed for the proposed project. Mr. Spence provided the details and reasoning for requiring condition 6 and stated that the County would observe and abide by the applicable regulations and ordinances; and described how the County would address concerns about the R1 water infrastructure and handle the zoning and amendments necessary to accommodate the proposed project.

#### Redirect

Mr. Giroux requested clarification on how the County would enforce its conditions about landscaping and septic considerations. Mr. Spence described how the various County agencies would deal with reviewing and deciding what courses of action were necessary to meet the conditions.

#### Commissioner Questions for Mr. Spence

Commissioner McDonald requested clarification on the County plans for a non-potable water supply. Mr. Spence shared his awareness of how County would work with DOE on their options for a non-potable water supply system.

Commissioner Biga requested clarification on whether providing R1 water by the County or developer to the construction site was a common practice. Mr. Spence explained why he felt that it was an issue that was better addressed by the Department of Environmental Services and stated that the County was willing to work with DOE on resolving the matter.

There were no further questions for Mr. Spence.

Mr. Yuen stated that Petitioner had no further witnesses on direct and requested to recall Pete Pascua as a rebuttal witness to the DOT witness. Chair

Chock confirmed with OP and County that they were agreeable to Mr. Pascua's recall in the sequence proposed by Mr. Yuen. OP and County had no objections.

Mr. Giroux requested permission to release the three witnesses that were on call for County. Chair Chock polled the Commission and confirmed there were no Commissioner questions for the witnesses and granted County's request.

Mr. Yee requested clarification on what the scheduling would be after the evidentiary portion of the hearing was done. Discussion occurred over what submittal and response dates would be acceptable to the Parties. Chair Chock stated that it was his preference to expedite matters before the expiration of the terms of two sitting Commissioners and asked for the Parties to attempt to meet the proposed LUC schedule to conclude the proceedings.

The meeting was adjourned for the day by Chair Chock at 2:42 p.m.