

LAND USE COMMISSION  
MEETING MINUTES  
August 8, 2013 9:30 a.m.  
Marriott Courtyard Hotel, Haleakalā Room  
532 Keolani Place  
Kahului, Maui, Hawai`i, 96732

COMMISSIONERS PRESENT: Chad McDonald  
Ernest Matsumura  
Lance Inouye  
Carol Torigoe  
Sheldon Biga  
Dennis Esaki  
Kyle Chock

COMMISSIONERS EXCUSED: Jaye Napua Nakasone  
Ronald Heller

STAFF PRESENT: Daniel Orodener, Executive Officer  
Bert Saruwatari, Staff Planner  
Diane Erickson, Deputy Attorney General  
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Walter Mensching

**CALL TO ORDER**

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

**APPROVAL OF MINUTES**

Acting Chair McDonald asked if there were any corrections or additions to the July 25-26, 2013 minutes. There were none. Commissioner Biga moved to approve the minutes. Commissioner Inouye seconded the motion. The minutes were unanimously approved by a voice vote (7-0).

**TENTATIVE MEETING SCHEDULE**

Executive Officer Orodener provided the following:

- The regular tentative meeting schedule has been distributed in the handout material for the Commissioners.
- The August 22<sup>nd</sup> and 23<sup>rd</sup> meeting will be on Oahu to hear Docket No. A92-683 Halekua Development Co. (Royal Kunia) Petitioner's Motion to Amend the Amended Findings of Fact, Conclusions of Law and Decision and Order on the 22<sup>nd</sup> and presentations from OEQC, C-WRM and SHPD on the 23<sup>rd</sup>.
- The September 5-6, 2013 meeting will be on Maui for the beginning of Docket No. A13-797 CMBY and a Public Hearing (but not a LUC meeting) on Proposed Amendments to the LUC Administrative Rules at 3 p.m. on the 5<sup>th</sup>.
- The second LUC meeting in September is combined with the HCPO Conference in Kona on the 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup>; with a Public Hearing on Proposed Amendments to Administrative Rules.
- There are currently no items scheduled for the October 3-4, 2013 meeting.
- On October 17<sup>th</sup>, a continued hearing is planned on Maui for Docket No. A10-787 Maui R&T and a hearing on a motion for an order to show cause for Docket No. A84-595 Kuilima Development on the 18<sup>th</sup>, in Honolulu.
- Any questions or conflicts, please contact LUC staff.

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

## **HEARING AND ACTION**

### **A10-787 Maui R&T Partners, LLC (Maui)**

Acting Chair McDonald announced that this was a continued hearing on Docket No A10-787 Maui R&T Partners LLC To Amend the Land Use District Boundary of Certain Lands Situated at Kīhei, Island of Maui, State of Hawaii, Consisting of 253.05 Acres, from the Agricultural District to the Urban District, Tax Map Key Nos. (2) 2-2-024:016 and 017, and (2) 2-2-002-084(por).

### **APPEARANCES**

Curtis Tabata, Esq., Wyeth Matsubara, Esq. and Benjamin Matsubara, Esq., represented Petitioner Maui R&T Partners, LLC ("Petitioner")

Steve Perkins, Maui R&T Partners, LLC, Project Manager and Representative James Giroux, Deputy Corporation Counsel, represented County of Maui Planning Department ("County")

Will Spence, Director, County

Kurt Wollenhaupt, Planner, County

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

Rodney Funakoshi, OP

Acting Chair McDonald updated the record and described the procedures to be followed for the day and asked if County had any new witnesses. Mr. Giroux replied that he had no new witnesses.

There were no questions, comments or objections to the procedures.

Acting Chair McDonald called for Public Witnesses to provide testimony.

#### PUBLIC WITNESSES

There were no Public Witnesses.

#### ADMITTANCE OF EXHIBITS

Acting Chair McDonald called for the Parties to offer any remaining exhibits that they wished to have admitted.

Mr. Benjamin Matsubara offered Petitioner's Exhibit #49, the written testimony of Rory Frampton.

There were no objections and Petitioner's Exhibit #49 was admitted to the record. Neither Mr. Giroux nor Mr. Yee had new exhibits to offer.

#### PRESENTATIONS

Acting Chair McDonald called for OP's witness, Ms. Charlene Shibuya to continue her testimony from the July 26, 2013 LUC meeting. Mr. Yee stated that Ms. Shibuya was ready and available for cross-examination.

#### OP Witnesses

##### 1. Charlene Shibuya

Acting Chair McDonald reminded Ms. Shibuya that she was still under oath from the prior proceedings and asked for Petitioner to begin its questions.

Mr. Benjamin Matsubara requested clarification on what the DOT's interests and roles were during the Traffic Impact Assessment Report (TIAR) process; and on what concerns, traffic features and mitigation components were involved and considered when the DOT reviewed TIARs and what different issues were addressed by different governmental agencies as the proposed project advanced through the DOT and County processes with each phase of the proposed project. Ms. Shibuya referred to Petitioner's Exhibit 26 and described what actions the State DOT performed or would be performing when evaluating, analyzing and assessing collected transportation/traffic data; and determining the mitigations necessary for the Petition Area; and how anticipated traffic

within and around the Petition Area would impact the proposed regional transportation system based on its findings.

Mr. Giroux had no questions.

#### Redirect

Mr. Yee requested clarification on how County zoning change approvals were inter-related to the TIAR findings and the DOT's corresponding analysis of the Petition Area's anticipated growth and needs. Ms. Shibuya provided her perception on when various traffic improvements or mitigations would factor into any memorandum of agreement or understanding between Petitioner and the County and/or the DOT.

#### Commissioner Questions

Commissioner Esaki requested clarification on how access fees would be determined and assessed. Ms. Shibuya replied that she was not familiar with the intricate details of how access rights were appraised, priced and administered; and shared her general understanding of how the assessment/appraisal process occurred and what entities were more directly involved with access rights negotiation, decision-making and administration.

Acting Chair McDonald requested further clarification on how DOT assessed impact fees to developers. Ms. Shibuya shared her understanding of how impact fees were applied by Counties but restated how she was not qualified or involved with determining what amounts would be assessed for different aspects of a proposed transportation project and deferred to the County agencies to provide further explanation on how impact fees were negotiated.

Mr. Spence addressed the issue posed by Acting Chair McDonald and described how County expected to determine and negotiate the impact fees with the State for the proposed project; and assess those fees to the proposed project at its building permit stage

There were no further questions for Ms. Shibuya.

Acting Chair McDonald called for Petitioner's next witnesses. Mr. Benjamin Matsubara stated that Michael Dega would be testifying first.

#### Petitioner's Witnesses

##### 1. Michael Dega

Mr. Tabata offered Mr. Dega as an expert in archaeology. Mr. Dega was admitted without objections and summarized his written testimony; and described how the archaeological survey was conducted, what findings and recommendations were contained in his reports; and what mitigation and

protection protocols had been obtained from the appropriate government entities.

Mr. Giroux had no questions.

Mr. Yee requested clarification on how a rock wall found in a gulch area near the Petition Area would be protected and how the mitigation measures for it would be implemented and funded. Mr. Dega described the level of mitigation that would be involved to protect the wall and how he expected it would be paid for.

There was no redirect.

#### Commissioner Questions

Commissioner Esaki asked if Mr. Dega could guarantee that there were no further sites in the Petition Area. Mr. Dega replied that his company had performed the survey to the best of its ability and described how the great visibility in the Petition Area allowed him to make very accurate assessments of the terrain.

There were no further questions for Mr. Dega.

Mr. Tabata stated that Mr. Frampton would be the next witness.

#### 2. Rory Frampton

Mr. Frampton was offered and admitted without objection as an expert in planning and summarized his written testimony regarding Petitioner's response to the Department of Interior- Fish and Wildlife Service correspondence regarding the Petition Area. Mr. Frampton provided his perspective of why the concerns expressed in the Dept. of Interior letter did not affect the specific areas of development within the Petition Area.

Mr. Giroux and Mr. Yee had no questions.

The Commission had no questions.

There were no further questions for Mr. Frampton.

Mr. Tabata stated that he had no further witnesses.

Mr. Giroux stated that County had no further witnesses.

Acting Chair McDonald called for OP to complete its presentation. Mr. Yee stated that his remaining witness was Rodney Funakoshi.

#### OP Witnesses

##### 2. Rodney Funakoshi

Mr. Funakoshi was offered and admitted without objection as an expert in planning. Mr. Funakoshi summarized OP's position and described the areas of concern OP's proposed conditions addressed; and how his agency had determined that it supported the Petition with conditions.

Mr. Wyeth Matsubara thanked Mr. Funakoshi and the Office of Planning for its efforts and for supporting the Petition with conditions; and had no questions.

Mr. Giroux had no questions.

There was no redirect.

#### Commissioners Questions.

Commissioner Chock requested clarification on whether OP had concerns about setting a precedent by allowing a 15 year build-out for the backbone infrastructure and what rationale was involved in determining that time frame. Mr. Funakoshi described how existing components of the Petition Area and its proposed form-based zoning code factored into OP's deciding to allow a 15 year provision.

Commissioner Inouye requested clarification on how the proposed plan would be implemented, managed/controlled and directed to achieve the types of results represented by Petitioner's Exhibits 11O and 11Q; how speculation profiteering on the properties within the Petition Area could be avoided and whether incremental redistricting should be a consideration. Mr. Funakoshi described how County controls might factor into the type of controls that Commissioner Inouye was referring to and deferred to County to provide more details.

Mr. Spence described how County reviews would evaluate and analyze various aspects of the Petition Area proposals as they were presented before his department under the proposed form based code. Mr. Spence stated that various guidelines were still to be developed and that there would be "checks and balances" in place to allow the code to be flexible, yet accommodate the

internal design reviews of the proposed project within the County zoning guidelines.

Commissioner Inouye expressed his continued concerns about the oversight of the proposed project that might be required to achieve its desired objectives; and how the mechanism for realizing these objectives had not been clearly defined within the proposal before the Commission. Discussion occurred to determine the type of details Commissioner Inouye was seeking; and what County and OP's positions in the matter were. Mr. Tabata stated that the issues of project controls and design reviews under discussion would be addressed in more detail as part of Petitioner's final argument before the Commission; and that Petitioner's representations would be further clarified at that time. Mr. Funakoshi described how the completion of the Petition Area's infrastructure was OP's primary concern so that it could facilitate the future development of other elements of the proposed project; and how Petitioner was expected to work with County and State agencies to make it successfully evolve.

There were no further questions for Mr. Funakoshi.

Acting Chair McDonald asked if the Parties had anything further to add to the proceedings.

Petitioner, County and OP stated that they had nothing further to add. There were no Commissioner questions or comments.

#### CLOSE OF EVIDENCE

Acting Chair McDonald declared the evidentiary portion of the hearing concluded and directed that the parties draft their individual proposed findings of fact, conclusions of law and decision and order based upon the record in this docket and serve the same upon each other and the Commission; and regardless of whether the parties pursue a partial or fully stipulated order, that each party file its proposal with the Commission and serve copies on the other parties no later than the close of business on September 3, 2013. All responses or objections to the parties' respective proposals shall be filed with the Commission and served upon the other parties no later than noontime on September 25, 2013. Any responses to the objections must be filed with the Commission and served on the other parties no later than noontime on October 3, 2013; and deliberation and decision-making is tentatively scheduled for October 17, 2013.

Mr. Giroux stated that the Parties already had conversations on what type of stipulations would be offered and agreed to.

Mr. Yee stated that there had been considerable agreements among the Parties, and asked that OP and County be excused from filing their initial separate proposed Findings of Fact, Conclusions of Law and Decision and Orders; and be allowed to file their respective comments and objections to Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order and follow the pursuant schedule thereafter.

Acting Chair McDonald granted Mr. Yee's request regarding OP and County's proposed filings. There were no questions or comments regarding filings by the Parties or on the post-hearing procedures.

Acting Chair McDonald restated that the deliberation and decision was tentatively scheduled for October 17, 2013 and announced that a site visit briefing for Docket No. A13-797 would be held at 1 p.m. in the Courtyard's Haleakala Room with a site tour to follow; and adjourned the meeting at 10:55 a.m.

The meeting was adjourned at 10:55 a.m.