

LAND USE COMMISSION
MEETING MINUTES
September 5, 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
 Ronald Heller
 Sheldon Biga

COMMISSIONERS EXCUSED: Jaye Napua Nakasone
 Carol Torigoe
 Dennis Esaki (recused Docket No.A13-797)

STAFF PRESENT: Daniel Orodener, Executive Officer
 Diane Erickson, Deputy Attorney General
 Bert Saruwatari, Staff Planner (departed after
 A94-706 proceedings concluded)
 Scott Derrickson, Staff Planner
 Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Holly Hackett
AUDIO TECHNICIAN: Walter Mensching

CALL TO ORDER

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

APPROVAL OF MINUTES

Chair Heller asked if there were any corrections or additions to the August 22-23, 2013 minutes. There were none. Commissioner Biga moved to approve the minutes. Commissioner McDonald seconded the motion. The minutes were unanimously approved by a voice vote (6-0).

TENTATIVE MEETING SCHEDULE

Executive Officer Orodener provided the following:

The regular tentative meeting schedule has been distributed in the handout material for the Commissioners.

- There are currently no items for the second LUC meeting in September which had been combined with the HCPO Conference in Kona on the 18th, 19th and

20th. There will be a Public Hearing (but not an LUC meeting) on Proposed Amendments to Administrative Rules on the 18th at 1 p.m. at the conference.

- There will be a brief LUC videoconference meeting on Friday, October 4, 2013 to address the approval of advancing the proposed amendments to the LUC administrative rules to its next stage.
- On October 17th, continued hearings are planned on Maui for Docket No. A10-787 Maui R&T and possibly A13-797 CMBY 2011 Investment LLC. The October 18th date is to be determined.
- A hearing on Defend Oahu's motion for an order to show cause for Docket No. A84-595 Kuilima Development is scheduled for November 7 -8, 2013, in Honolulu.
- The remainder of the 2013 schedule is open.
- Public Hearings for the Proposed Amendments to the LUC Administrative Rules are scheduled for O`ahu on September 10th, Moloka`i on the 11th, Hawai`i (Big Island) on the 18th, Lāna`i on the 23rd, and Kaua`i on the 25th.
- Any questions or conflicts, please contact LUC staff.

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

Chair Heller noted that the Commission was planning to transition to a Wednesday/Thursday format in the coming months and advised the Parties to prepare for the shift of meeting days. There were no comments or questions regarding the new meeting format.

ACTION

A94-706 Ka`ono`ulu Ranch (Maui)

Chair Heller announced that this was an action meeting on Docket No. A94-706 Ka`ono`ulu Ranch (Maui):

- To determine whether the Land Use Commission is the appropriate accepting authority pursuant to Chapter 343, Hawai`i Revised Statutes, of an Environmental Impact Statement relating to the Pi`ilani Promenade project at Ka`ono`ulu, Makawao-Wailuku, Maui, Hawai`i, TMK: (2) 3-9-01: 16 And 170 Through 174
- To determine whether the proposed action may have a "significant effect" to warrant the preparation of an Environmental Impact Statement pursuant to Chapter 343, Hawai`i Revised Statutes.

(Please refer to LUC Transcript for more details on these matters)

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Chair Heller updated the record and explained the procedures to be followed for the proceedings. There were no questions, comments or objections to the procedures.

APPEARANCES

Jonathan Steiner, Esq., represented Honua`ula Partners (“HP”) and Pi`ilani Promenade North LLC, and Pi`ilani Promenade South LLC, (“PP”)

Michael Hopper, Esq., Deputy Corporation Counsel, represented County of Maui Planning Department (“County”)

Ann Cua, Planner, County

Bryan Yee, Esq., Deputy Attorney General, represented State Office of Planning (“OP”)

Rodney Funakoshi, OP

Chair Heller called for Public Witnesses.

PUBLIC WITNESSES

There were no Public Witnesses.

PRESENTATIONS-

PETITIONER PP and HP

Mr. Steiner stated that project planners Brett Davis and Jordan Hart were available to answer questions regarding the preparation of the EIS and argued why the Land Use Commission was the appropriate accepting authority pursuant to Chapter 343, Hawai`i Revised Statutes, of an Environmental Impact Statement relating to the Pi`ilani Promenade project at Ka`ono`ulu, Makawao-Wailuku, Maui, Hawai`i, TMK: (2) 3-9-01: 16 And 170 Through 174 and why the proposed action may have a “significant effect” to warrant the preparation of an Environmental Impact Statement pursuant to Chapter 343, Hawai`i Revised Statutes

COUNTY

Mr. Hopper stated that County supported the LUC’s being the appropriate authority for the EIS in this matter. Chair Heller asked if County approved of the proposed project proceeding directly to an EIS. Mr. Hopper replied that County was agreeable to moving directly to an EIS.

OP

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Mr. Yee described why OP concluded that the LUC was the appropriate accepting authority for the EIS and that the proposed action would have a “significant effect” to warrant its preparation.

REBUTTAL

There was no rebuttal.

COMMISSIONER QUESTIONS

There were no Commissioner questions.

DECISION MAKING

Commissioner McDonald moved that the LUC should be the accepting authority of Petitioner’s EIS and that the proposed action would have a “significant effect” to warrant the preparation of an EIS. Commissioner Biga seconded the motion. There was no discussion.

The Commission was polled as follows:

Ayes: Commissioners McDonald, Biga, Matsumura, Chock, Inouye and Chair Heller.

Nays: None

The Motion passed 6-0 with 3 excused.

Chair Heller asked if there were any further comments on this agenda item. There were none.

The Commission took a recess in place at 9:40 a.m. and reconvened at 9:42 a.m.

HEARING

Docket No. A13-797 CMBY 2011 Investment LLC, (Maui)

Chair Heller announced that the Commission would continue with a hearing on Docket No. A13-797 CMBY 2011 Investment LLC, (Maui) to amend the Land Use District Boundary of Certain Lands Situated at Pulehunui, Wailuku, Island of Maui, State of Hawai`i, Consisting of approximately 86.03 acres from the Agricultural District to the Urban District, TMK Nos. 3-8-008:019.

APPEARANCES

Jennifer Benck, Esq. represented CMBY 2011 Investment, LLC (“CMBY”)

Charles Jencks, Representative CMBY

James Giroux, Esq., Deputy Corporation Counsel, represented County of Maui Planning Department (“County”)

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Kurt Wollenhaupt, Planner, County
Bryan Yee, Esq., Deputy Attorney General, represented State Office of Planning (“OP”)
Rodney Funakoshi, OP

Chair Heller updated the record and explained the procedures for the proceedings. There were no questions, comments or objections to the procedures.

Chair Heller asked if Petitioner had been made aware of and would comply with the LUC’s reimbursement for hearing expenses policy. Ms. Benck acknowledged that her client was agreeable to the LUC’s reimbursement policy.

Chair Heller called for Public Witnesses.

PUBLIC WITNESSES

1. Garrett Hew

Mr. Hew stated that he worked for Hawai`i Commercial and Sugar (HC&S) and was testifying to attest that the ditch and roadway in the Petition Area had no useful purpose to his company and were not currently in use.

There were no questions for Mr. Hew.

There were no other Public Witnesses.

Chair Heller disclosed that in his law practice he represented taxpayers involved in real property tax cases where the adverse party was the County of Maui. He stated that he did not believe that such representation would influence his ability to be fair and impartial in this hearing, and stated that he was offering this information now to allow any of the Parties to express their concerns or objections with his continued participation in the proceedings. There were no objections or concerns raised against Chair Heller’s continued participation.

Chair Heller called for the LUC map orientation.

MAP ORIENTATION

LUC staff planner Scott Derrickson provided a map orientation of the Petition Area and described items of note and general features of the Petition Area using an LUC map of the Petition Area posted on the wall. There were no questions for Mr. Derrickson.

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ADMISSION OF EXHIBITS

Chair Heller called on the Parties to offer their exhibits to the Commission.

Petitioner

Ms. Benck offered Petitioner's Exhibits 1- 47 and errata to Exhibits 40 and 42 to be admitted for the record. There were no objections to Petitioner's Exhibits and they were admitted.

County

Mr. Giroux offered County Exhibits 1, 2, and 4 to be admitted to the record and noted that Exhibit 3 was being withdrawn since the Parties had agreed that Deputy Director Dagdag need not appear. There were no objections to County's Exhibits and they were admitted.

OP

Mr. Yee stated that he would be withdrawing OP Exhibits 4 and 5 and offered OP Exhibits 1, 2, 3, 6, 7, and 8 to be admitted to the record. There were no objections to OP's Exhibits and they were admitted.

Chair Heller called for Petitioner's first witness.

PETITIONER WITNESSES

Ms. Benck asked if the Parties could agree beforehand that the experts offered during the proceedings could be admitted as experts without having to qualify them. Discussion ensued to determine how the witnesses would be treated. Ms. Benck stated that OP and County concurred that her witnesses had the qualifications to be considered "experts" and that County had agreed to waive cross-examination all of her witnesses; and that OP had agreed to waive cross-examination of some, but not all. Chair Heller determined that each witness would be qualified individually as they appeared. Further discussion regarding which witnesses could be released from the proceedings followed. Chair Heller responded that he would allow time for the Commission to review the witness list and decide which witnesses could be dismissed a little later on in the hearing.

1. Glenn Tadaki, Expert in Planning

Mr. Tadaki was offered and admitted as an Expert Witness in Planning.

Ms. Benck requested clarification on various parts of Mr. Tadaki's written testimony regarding the preparation of the Environmental Assessment for the

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Petition Area, the community involvement that the proposed project had during its development process, and what land use, planning, environmental and cultural concerns were addressed and resolved by Petitioner. Mr. Tadaki utilized a PowerPoint presentation and shared the depth and breadth of his planning work to help Petitioner prepare for the development of the proposed project; and described what applicable permits and approvals were anticipated to be required to be obtained from various County and State agencies. Mr. Tadaki also described how the proposed project conformed to various State and County plans and how, if approved, the plans for the project would be overseen as it made its way through the development process.

County Questions

Mr. Giroux requested clarification on whether the Commission considered Mr. Tadaki as an expert in planning. Discussion ensued to confirm that the Commission acknowledged Mr. Tadaki's status as an expert witness. There were no objections to Mr. Tadaki's qualifications and admittance.

Mr. Giroux asked if Mr. Tadaki had reviewed Maui County Planning Department Director, Will Spence's Testimony (County Exhibit 4). Mr. Tadaki responded that he had and stated that he had no problems with Mr. Spence's proposed conditions and that they seemed reasonable and acceptable.

Mr. Giroux had no further questions.

OP Questions

Mr. Yee requested that the issue of which witnesses should be retained be revisited to clarify which witnesses could be released. Discussion ensued to determine whether witnesses Breuner, Hobdy, and LeGrande could be released. The Parties concurred that the named witnesses could be dismissed. Ms. Benck noted that witnesses Vuich, LeGrande and Rowell would continue to be available for questioning if necessary.

Mr. Yee requested clarification on how County M3 zoning factored into the planning process for the proposed project. Mr. Tadaki shared his perspective of how M3 zoning factored in the planning process and how the number and layout of the initial 28 lots was determined; what measures were involved in the sustainability analysis for the development of the Petition Area; and how CC&Rs would be utilized to enforce compliance by prospective tenants after the proposed project was completed and Petitioner had sold its interests to the new owners. Mr. Tadaki deferred water, stormwater and other infrastructure related questions that he could not address to other Petitioner witnesses that he felt could better answer them and noted that Petitioner would be responsible for all

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backbone infrastructure; and that the infrastructure would include a privately owned and maintained drainage system; and that pending land use approvals after the LUC's granting the Petition, would include county land use, zoning and tentative/final subdivision approval. Mr. Tadaki estimated that construction for the infrastructure would take approximately 30 months after final subdivision approval

Mr. Tadaki also shared how he felt sub-division approvals would be scheduled as construction progressed; and stated that no further special studies were anticipated to be needed for the State Historic Preservation Division (SHPD), that no plans were being pursued for an alternate access road for the Petition Area; and that Kama`aina Road fell under the jurisdiction of the Department of Land and Natural Resources (DLNR).

Redirect

Ms. Benck requested clarification on whether or not Mr. Tadaki had conferred with Petitioner on the County's conditions and what Petitioner's future obligations would be to maintain the major stormwater infrastructure for the Petition Area. Mr. Tadaki responded that he had not reviewed County's conditions thoroughly with Petitioner and that the proposed subdivision lot owners' association was expected to assume maintenance responsibilities for the stormwater infrastructure once the lots were sold to them by Petitioner.

Commissioner Questions

Commissioner Biga requested clarification on whether or not the Petition Area would have a residential component; whether the surrounding Department of Hawai`ian Home Lands (DHHL) land would have a residential component, and how the proposed conditions would be policed and enforced. Mr. Tadaki stated that the Petition Area and the DHHL land were not anticipated to be residential, although some portions of the DHHL land would remain agricultural. Mr. Tadaki also represented that the enforcement of the conditions would be provided for by the CC&Rs planned for the proposed project.

There were no further questions for Mr. Tadaki.

The Commission went into recess at 10:54 a.m. and reconvened at 11:11 a.m.

Discussion on what other witnesses could be released occurred and Chair Heller determined that the Commission had no questions for witnesses Neal and Ebisu and that they could be released.

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PETITIONER'S WITNESSES (continued)

2. Michael Dega- Expert in Archaeology and Cultural Impact Assessment

Mr. Dega was offered and admitted as an expert witness and summarized his written testimony for the Commission. Ms. Benck requested clarification on how the Petition Area had been studied for archaeological and cultural issues. Mr. Dega detailed the considerations and methodology used in conducting his studies of the Petition Area and disclosed his findings and why certain reports regarding burial treatment and cultural monitoring plans were not necessary. Mr. Dega stated that a Cultural Impact Assessment had been performed for the proposed project and that it had been submitted to the Commission as part of the Environmental Assessment; and summarized his written testimony.

Mr. Giroux had no questions.

Mr. Yee asked whether or not Mr. Dega knew who the alternate access road property owners were. Mr. Dega responded that he did not know.

Commissioner Questions:

Commissioner McDonald requested clarification on why a monitoring plan was prepared since SHPD had not made a request. Mr. Dega responded that Petitioner had been proactive and had submitted the plan to ensure that this issue had been addressed beforehand.

There were no further questions for Mr. Dega.

3. Glenn Kunihisa- Expert in Market Conditions and Economic Fiscal Impact

Mr. Kunihisa was offered and admitted as an expert witness and summarized his written testimony. Mr. Kunihisa described the various factors that had been considered in structuring his studies and evaluating his data; and reported his findings.

Mr. Giroux had no questions.

Mr. Yee requested clarification on what potential future uses the nearby DHHL land might have. Mr. Kunihisa shared his understanding of how DHHL might utilize its properties and stated that he was not aware of any planned residential uses within the DHHL properties.

Commissioner Questions:

Commissioner Matsumura requested clarification on the market values for M3 zoned properties and what the projected sales were. Mr. Kunihisa stated that there were no M3 zoned lands currently available and provided his perspective of what the various costs were per square foot and what the market

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feasibility would be for the different price points for M2 zoned property; and shared his perspective on how marketable the M3 zoned land would be and what price range it might sell in.

Chair Heller requested further clarification on how the final decision on the number and size of lots had been made and what type of uses they would have. Mr. Kunihsa responded that the final lot sizes were yet to be determined, and that he had no idea yet of what the final configurations or their uses would be.

There were no further questions for Mr. Kunihsa.

4. Stacy Otomo- Expert in Civil Engineering

Mr. Otomo was qualified and admitted as an expert witness and summarized his written testimony. Mr. Otomo described the various infrastructure features that were proposed for the Petition Area and provided details on the roadways, drainage, water, wastewater and other systems that would be installed and what permitting requirements were at each phase of construction.

Mr. Giroux had no questions.

Mr. Yee requested clarification on how the wastewater system would be installed to accommodate its required surrounding leach field radius setback and how proposed potable water sources would be developed within the Petition Area. Mr. Otomo provided his understanding of how the wastewater and potable water systems would be installed. Discussion ensued to clarify the locations of those systems within the Petition Area using Petitioner's Exhibit 42 errata (well infrastructure site plan). Mr. Yee requested clarification on how the proposed lots would be impacted by the location depicted in Exhibit 42. Mr. Otomo described how the Department of Health (DOH), Department of Transportation (DOT), Department of Public Works, and the Department of Water Supply would be involved in assessing the construction plans and determining whether or not to approve and allow the plans to proceed. Mr. Otomo also clarified that the preparation of construction plans could start at any time but that supplemental permits and zoning approvals after preliminary subdivision approval would need to be obtained that would contain the various conditions which would need to be met during the construction process.

Redirect

Ms. Benck requested clarification on the County subdivision process and the timing involved with obtaining approvals on project applications. Mr. Otomo

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described how the County had 45 days to respond or issue a preliminary subdivision approval; and what obstacles might delay a timely County response.

Commissioner Questions

Commissioner McDonald requested clarification on the site selection process for the proposed Petition Area detention basin. Mr. Otomo stated that a 9 acre detention basin was planned for the lower west side of the Petition Area and described why that site was selected after taking into account the development of the proposed 28 lots for industrial use; and how individual lot owners would obtain their building permits and be responsible for their lot's water quality. Commissioner McDonald noted that from his perspective, the construction of the water system with the thousand foot radius might be difficult to fit into the Petition Area due to area required for an absorption bed and the setback restrictions involved. Mr. Otomo replied that they had conversations with DOH to address this matter and that DOH had preliminarily allowed combining some lots that fell within the thousand foot radius to align the leach field for each lot with a proper easement and by providing the necessary documentation.

Commissioner Inouye requested clarification on the Exhibit 42 errata and the thousand foot radius requirement; and how Petitioner would inform prospective lot owners of the conditions associated with their purchase. Mr. Otomo provided his understanding of how the thousand foot radius would apply to the Petition Area and how locating the water treatment system would be done; and what restrictions might be involved. Mr. Otomo referred more detailed questions regarding the water and wastewater systems to Tom Nance and provided his perspective of how Petitioner would explain the CC&Rs that would be applied to each lot to prospective owners.

Chair Heller requested clarification on whether adjoining lot owners who were affected by the new water systems would be provided notice and if just notice or actual consent of some sort was required. Mr. Otomo deferred this question to Tom Nance.

There were no more questions for Mr. Otomo.

Discussion occurred over the order of appearances for the remaining witnesses involved in the hearing. Mr. Giroux stated that he anticipated his one witness, Will Spence would be able to testify out of order after the Commission's impending recess if there were no objections. There were no objections to Mr. Giroux's request.

Chair Heller declared a recess at 12:17 p.m. and reconvened the meeting at 1:35 p.m. (Commissioner Chock exited the meeting with the Chair's approval at this time and did not return. 5 Commissioners remained for the continuation of proceedings.)

PETITIONER WITNESSES (continued)

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5. Charles Jencks- Expert in Planning, Permitting and Project Feasibility

Mr. Jencks was qualified and admitted as an expert witness and summarized his written testimony. Mr. Jencks provided the historical background of the proposed project and described the problems that he had to confront and resolve to prepare the Petition Area for its proposed land use designation change submittal. Mr. Jencks stated that he did not feel he would be able to close on a lot sale prior to obtaining final subdivision approval from the County and described the restriction in the deed that prevented him from quarrying on the property due to Hawai`ian Cement's activity on the neighboring property. Mr. Jencks identified various types of work that he could perform while awaiting his final subdivision approval, and in what time frame he planned to accomplish them in and stated that his estimated cost for developing the on and offsite infrastructure would be approximately \$20 million; and described how he intended to finance the proposed project.

Mr. Jencks also described how he anticipated that two community associations would need to be established- 1) a water association to maintain, process and upkeep the systems providing water; and 2) an association responsible for all the common area maintenance and enforcement of the CC&Rs applicable to the Petition Area; and how similar associations that he was familiar with performed these tasks.

Mr. Giroux asked if Mr. Jencks had reviewed Will Spence's testimony (County Exhibit 4). Mr. Jencks replied that he had and stated that other than Condition No. 5, he did not have any concerns about County's proposed conditions. Discussion occurred over what details were not agreeable to Petitioner regarding Condition No. 5's DOT matters and the TIAR approval process for the proposed project. Mr. Jencks identified the various problems that the DOT approval process posed to obtaining financing for the proposed project and stated that he would be more comfortable if the last sentence in Condition No. 5 read "that TIAR would be accepted prior to final subdivision".

Mr. Yee asked if Petitioner was willing to perform or implement the mitigations recommended by Petitioner's EIS consultants, whether Petitioner was representing that the proposed project would be completed within ten years; and that clarification be provided on the timeline involved for obtaining zone changes, Community Plan Amendments and submitting a Preliminary Subdivision Application. Mr. Jencks described the timeline that he intended to follow for getting construction work started for the proposed project and stated that Petitioner's intent was to complete the work within ten years and to observe the recommended mitigations mentioned in the EIS; and that he anticipated getting the preliminary subdivision approval after the zone change and

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community plan amendments were approved by the Planning Commission and that the Maui County Council would make the final determination (the preliminary would be submitted and processed after the Maui Planning Commission heard the proposed project and made a recommendation to the Council), but that he had no timeframe on the preliminary subdivision approval or when final subdivision would occur.

Mr. Yee also requested clarification on what kind of work would be performed while awaiting the approvals. Mr. Jencks replied that roadway and utility service construction would begin after he received civil construction plan approval from the State and County and that grading and processing of rock would be occurring on site prior to final subdivision approval; along with final completion of the proposed wells.

Mr. Yee requested clarification on what OP conditions were acceptable and what were still under discussion. Mr. Jencks responded that other than Condition 1- Traffic and Condition 4- Pollution Prevention Plan, he had no concerns about the rest of OP's conditions; and described the language for Condition No. 4 that was acceptable to Petitioner; and how the TIAR acceptance at final subdivision approval was preferred language for Condition No. 1. Discussion occurred over comments made by DOT regarding regional improvements. Mr. Jencks stated that Mr. Rowell had addressed DOT's concerns; and that he agreed with OP's proposal to have the timing of the TIAR linked to the approval of the preliminary subdivision application.

Mr. Yee requested clarification on the individual wastewater systems and the proposed potable water system. Mr. Jencks described how Petitioner had worked with Mr. Otomo to determine possible layouts to accommodate those infrastructure features; and stated that the engineering solution and associated decisions had not been decided upon yet, but whatever decision that was made would have to abide by State regulations.

Redirect

Ms. Benck requested clarification on comments made regarding County Exhibit 4- Condition No. 5. Mr. Jencks stated that he had mis-spoken and that he could not agree with the statement "Petitioner shall complete all transportation improvements as recommended in the revised TIAR prior to receiving final subdivision approval from the County of Maui"; and offered Petitioner's alternative language that "Petitioner shall complete all transportation improvements as recommended in the accepted revised TIAR prior to receiving final subdivision approval from the County of Maui". Discussion occurred over the details of the Condition's language and Mr. Jencks stated that Petitioner

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could comply with OP's language that "Petitioner will provide and complete all transportation improvements as recommended in the DOT accepted revised TIAR prior to the Certificate of Occupancy for the first building in the subdivision."

Commissioner Questions

Commissioner McDonald requested clarification that County and State were agreeable with the Petitioner's statement and the proposed language regarding the Certificate of Occupancy. Discussion occurred to clarify the Parties' positions. Mr. Jencks described how he was suggesting using a milestone which would be clearer than that which was the final subdivision approval, which would predate occupancy by a significant period of time. Mr. Yee commented that there were two different areas involved, one was when the TIAR should be accepted and the other was when the traffic improvements should be constructed; and that OP was not in agreement with the proposed TIAR acceptance that would be earlier than the actual construction; and prior to final subdivision; although County was. Commissioner McDonald encouraged the Parties to continue to work on resolving the issue.

Commissioner Inouye requested clarification on the representations of Petitioner with regard to M3 zoning. Mr. Jencks described the efforts made to clarify M1, M2 and M3 zoning at the County level and stated that the M3 allowed uses included construction material and cement recycling; and shared how Goodfellow Brothers, Inc. was practicing recycling in its operations. Mr. Jencks also described how, although "landfill" was a permitted use in the M3 zone, that Petitioner had no current intentions for doing any "landfill" in the Petition Area; and that residences were not allowed as a permitted use for M3 zoning; and clarified what allowable office space consisted of.

Chair Heller requested clarification on whether notification or actual consent from adjoining landowners was required in regards to dealing with the required thousand foot radius surrounding a potable water well. Mr. Jencks replied that it was his understanding that the permitting process required notification only and that no consent was required, but deferred to Tom Nance to provide the final answer.

There were no further questions for Mr. Jencks.

Chair Heller asked if Ms. Benck had any further witnesses for the Commission. Ms. Benck responded that she had no further witnesses for the day and would resume with her witnesses on September 6, 2013.

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Chair Heller called for County to begin its presentation. Mr. Giroux stated that County had only one witness, Will Spence.

COUNTY WITNESSES

1. Will Spence, Director- Maui County Planning Department

Mr. Spence was offered and admitted as an expert in Planning and summarized his written testimony (County Exhibit 4). Mr. Spence stated that the County supported the proposed project and shared the analysis and findings that the County had used in determining its position. Mr. Spence described why the Petition Area was a suitable location and how it conformed to the County, Maui Island and community plans for the area; and confirmed that County had proposed 11 conditions for the Petition.

Mr. Spence provided additional details that factored into crafting County Condition No. 5; and stated that there were two sections to the condition. One was changing the condition requirement from “prior to submitting a subdivision application” to “prior to final subdivision approval”; and the other was determining the timing on the recommended improvements pursuant to the TIAR and when those improvements should or could be done. Mr. Spence stated that the mitigation measures should be planned prior to the Certificate of Occupancy; and that he was available to provide any clarification the Commission needed on the process of change in zoning and the Community Plan amendment process.

Ms. Benck had no questions.

Mr. Yee requested clarification on the anticipated timing of the approvals and whether it was likely that the Planning Commission would complete its approval of the Community Plan Amendment and County zoning amendments by the first quarter of 2014. Mr. Spence responded that he was not sure of the timing and estimated that it might be the second quarter of 2014; and that Maui County Council might give their approval by December, 2014.

Mr. Yee also requested clarification on the County’s preliminary subdivision approval process. Mr. Spence described the various aspects of the approval process that involved feedback from different agencies and resolving prospective issues that they might have with the proposed project.

Redirect

Mr. Giroux asked if Mr. Spence wished to expound on any of the questions that had been asked of him. Mr. Spence replied that he had nothing further to comment on.

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There were no further questions for Mr. Spence. Chair Heller assessed what County and Petitioner witnesses still needed to appear before the Commission. Ms. Benck stated that her remaining witness would appear on September 6th. Mr. Giroux had no further witnesses.

Chair Heller stated that the hearing would resume at 8 a.m. September 6, 2013 and that the LUC Staff would be conducting a Public Hearing for Proposed Amendments to the LUC Administrative Rules at 3 p.m. and recessed the LUC meeting at 2:47 p.m.

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