

LAND USE COMMISSION  
MEETING MINUTES

**October 17, 2013, 9:30 a.m.**  
**Maui Arts and Cultural Center**  
**One Cameron Way, Kahului, Maui, Hawai`i,**

COMMISSIONERS PRESENT: Chad McDonald  
Ernest Matsumura  
Lance Inouye  
Carol Torigoe  
Sheldon Biga (arrived at 9:51 a.m.)  
Kyle Chock  
Ronald Heller

COMMISSIONERS EXCUSED: Dennis Esaki

STAFF PRESENT: Daniel Orodenker, Executive Officer  
Diane Erickson, Deputy Attorney General  
Bert Saruwatari, Staff Planner  
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 October 4, 2013 minutes. There were none. Commissioner Chock moved to approve the minutes. Commissioner McDonald seconded the motion. The minutes were unanimously approved by a voice vote (6-0). Commissioner Biga arrived at 9:51a.m.

**TENTATIVE MEETING SCHEDULE**

Executive Officer Orodenker provided the following:

- The regular tentative meeting schedule has been distributed in the handout material for the Commissioners.
- A hearing on a motion for Docket No. A84-595 Kuilima Development is scheduled for November 7 and 8, 2013 in Honolulu. There is a possibility that the Commission will need to work through lunch; and lunch will be provided for the Commissioners by LUC staff.
- A videoconference format will be used to conduct the November 22, 2013 meeting to adopt any orders that may result from today's meeting.
- The December meeting is currently open and the early 2014 schedule is dependent upon Docket No. A84-595 Kuilima Development's needs.
- Any questions or conflicts, please contact LUC staff.

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

## **ORAL ARGUMENT AND DELIBERATION**

### **A13-797 CMBY 2011 Investment LLC (Maui)**

Chair Heller announced that the public witnesses who had initially signed up had indicated that their testimonies involved one or more of the agenda items (the A13-797, A10-787 and A84-585 dockets); and that he would be combining the public witness portion for all the agenda items to facilitate the meeting; and asked the Parties if there were any objections to altering the public witness portion of the hearing in this manner. The Parties for both dockets concurred that they were agreeable to combining public testimony.

Chair Heller announced that this was oral argument and decision-making 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")

Kurt Wollenhaupt, Planner, County

Will Spence, Director, County (arrived at 9:45 a.m.)

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

Rodney Funakoshi, OP

Charlene Shibuya, Department of Transportation (“DOT”)

Mr. Yee raised a procedural question regarding the combining of Public Witness testimonies for both cases and asked if the Petitioner for the remaining agenda items would be allowed to participate in the questioning of the witnesses. Chair Heller acknowledged Mr. Yee’s comments and confirmed that the representatives for the remaining agenda items (A10-787 and A84-585) were present to question public witnesses. Mr. Tabata responded that the representatives for agenda items A10-787 and A84-58 were present.

## APPEARANCES

(for hearing Public Witnesses for Docket No. A10-787 and A84-585)

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

Chair Heller stated that he would include Mr. Tabata in the questioning of the public witnesses and updated the record; and explained the procedures for the proceedings. There were no questions, comments or objections to either the procedures or Mr. Tabata’s participation.

Chair Heller called for Public Witnesses.

## PUBLIC WITNESSES

### 1. Don Couch

Mr. Couch stated that he was a Maui Council member and would be testifying on Docket Nos. A13-797 and A10-787 and A84-585; expressed his support for the dockets and described how he anticipated the community would benefit as a result of granting approval for the proposed projects. Mr. Couch also described how a past LUC decision and order condition involving the DOT had impacted a recent Maui Council committee discussion regarding development of a proposed project and why he felt that it was more appropriate for the County to deal with DOT and Traffic Impact Analysis Reports (TIAR) conditions.

Mr. Yee requested clarification on what specific project Mr. Couch was referring to. Mr. Couch responded that it was the Waiko Light Industrial/Commercial development and described how Maui Council expected hearing a DOT report regarding the proposed project but were disappointed when DOT indicated they would not be attending. Mr. Yee

requested clarification on what Maui Council's expectations were regarding the DOT report. Mr. Couch described the details that he was expecting the DOT report to provide.

Mr. Giroux requested clarification on what Mr. Couch's awareness was of the time spans involved from when a Land Use Commission approval was granted through to the County zoning process and of dealing with conditions regarding land use. Mr. Couch shared his perspective of the time involved and discussion occurred regarding the limits of the questioning of the witness that was occurring and what his familiarity was with imposing and observing conditions for land use. Mr. Yee objected to the questioning on the basis that the evidentiary portion of the hearing had been closed and Chair Heller acknowledged his remarks. Mr. Giroux ceased his questions.

Mr. Tabata and the Commissioners had no questions for Mr. Couch.

2. Randy Piltz

Mr. Piltz shared what his background in community matters was and described how the job opportunities afforded by all the proposed projects on the LUC agenda would benefit Maui. (Commissioner Biga arrived-there were now 7 Commissioners in attendance)

There were no questions for Mr. Piltz.

3. Jeanne Skog

Ms. Skog stated that she was testifying in support of the Maui R&T project and described her thoughts on the matter.

There were no questions for Ms. Skog.

4. Dick Mayer

Mr. Mayer submitted reference material to support his testimony and described his participation in community matters and voiced his concerns regarding traffic and water/water treatment for Dockets A10-787 and A84-585.

Ms. Benck requested clarification on whether any portion of Mr. Mayer's testimony concerned Docket No. A13-797. Mr. Mayer responded that he was only referring to Docket Nos. A10-787 and A84-585.

Mr. Tabata requested clarification on the perceived impacts that Mr. Mayer had regarding the Mauka collector road and the availability of water. Mr. Mayer shared his perspective of what would occur if other projects were not built in the surrounding areas and how his traffic and water concerns would then be altered.

There were no further questions for Mr. Mayer.

5. Calib Wilsted

Mr. Wilsted stated that he attended the charter school located in the Petition Area for Docket Nos. A10-787 and A84-585 and described the type of zoning and setback changes that he felt his school needed to better serve student needs.

Commissioner Biga asked how many students attended the school. Mr. Wilsted responded that he thought there were approximately 200 students attending classes and described how enrollment was impacted by facility limitations.

There were no further questions for Mr. Wilsted.

6. Gene Zarrow

Mr. Zarrow expressed why he felt the Commission should grant the petition for the A10-787 and A84-585 Petition Areas.

There were no questions for Mr. Zarrow.

7. Conner Jones

Mr. Jones shared his experiences as a student at Kihei Charter School and described why he felt the requested zoning and setbacks described by Mr. Wilsted were necessary.

There were no questions for Mr. Jones.

Chair Heller thanked the Public Witnesses and declared that the Public Witness portion of the day's proceeding had been concluded and called for the oral arguments from the Parties for Docket No. A13-797.

## PRESENTATIONS

### Petitioner

Ms. Benck summarized why the A13-797 Petition should be granted by the Commission, argued how all State and County criteria and standards for approving the district boundary amendment had been met; and described how community and cultural concerns had been addressed and/or mitigated. Ms. Benck argued that the Commission should accept Petitioner's proposed Findings of Fact, Conclusions of Law and Decision and Order filed on October 10, 2013 and grant the Petition though it was not surrounded by urban uses but had been determined to be appropriate for the area after a review by the Maui County Department of Planning; and that it could be supported by existing infrastructure. Ms. Benck also expressed how concerns about industrial use and traffic had been assessed by the Maui Council with consideration for

the Maui Island Plan; and how the Council had favorably reviewed the proposed project..

Ms. Benck summarized how all the concerns about the proposed project had been studied and mitigated; and what necessary measures would be taken if the proposed project was approved.

#### County

Mr. Giroux described why the County had filed a joinder in the Petitioner's proposed findings of fact, conclusions of law and decision and order, summarized the reasons why Maui County strongly supported the Petition, and argued why the Petition should be granted and what benefits the proposed project would offer to the surrounding community and the people of Maui.

Mr. Giroux also described how the County would monitor the proposed project and argued how the all the information provided by the County bolstered the decision for the LUC to grant the Petition.

Mr. Giroux then stated his concerns regarding OP's proposed timing of the acceptance of the TIAR by the DOT prior to preliminary subdivision approval and argued how this timing of the acceptance of the TIAR complicated the County review phase and how seeing the TIAR during the zoning phase of development would benefit County Council's efforts to adequately deal with the latest assessment of the traffic problems and subsequently construct its Memorandum of Understanding/Agreement ("MOA") with the DOT.

#### OP

Mr. Yee stated the reasons why OP supported the Petition with conditions and argued why the comments and objections that OP had to Petitioner's Proposed Findings of Fact, Conclusions of Law and Decision and Order were valid and substantial and should therefore be included when drafting the final Decision and Order.

Mr. Yee also provided DOT and OP's perspective on portions of Mr. Couch's public testimony regarding the DOT's comments on the TIAR for the Waiko Light Industrial/Commercial docket; and explained how the DOT's expected delivery of comments for the proposed project before Maui Council involved a misunderstanding between the agencies and that DOT had advised County that its comments would not be ready in time for the Council's meeting; and how the cited LUC condition had not impeded or restricted any County progress or discussion on those matters. Mr. Yee continued to argue why OP felt that its proposed timing for TIAR acceptance was appropriate and necessary and why relying on County's proposal of TIAR acceptance upon final subdivision approval would not provide sufficient time to determine what

the impacts of the development were, how they would be mitigated and how the mitigation measures for the impacts would be implemented.

The Commission went into recess at 10:50 a.m. and reconvened at 11:06 a.m. Chair Heller called for Ms. Benck to present her rebuttal.

#### Rebuttal

Ms. Benck thanked OP and the County for their efforts and restated the reasons why the Commission should vote to grant the A13-797 Petition and argued how the findings in the record supported amending the district boundary to urban use; and why Petitioner's Proposed Findings of Fact ("FOF"), Conclusions of Law and Decision and Order should be adopted.

Ms. Benck stated that regarding:

- FOF 139- Petitioner was agreeable to its removal.
- FOF245-247- These were not exhibits but were included as additional Public Testimony- if OP or the County found them to be objectionable, Petitioner would not retain them.
- Notification to surrounding property owners regarding potable wells and waste water treatment- Petitioner was agreeable with the condition but requested OP's guidance on what distance or wording to use to identify who needed to be notified.
- Condition 1A re: Traffic- Petitioner accepted OP's Condition that "Petitioner shall obtain acceptance of the revised TIAR from the DOT prior to Petitioner receiving preliminary subdivision approval from the County of Maui".

#### Commissioner Questions

Commissioner Inouye requested clarification on the Parties involved in the County zoning and subdivision approval process, and in what order these approvals were addressed. Mr. Giroux provided his understanding of the entities involved when the County Planning Department processed zoning and subdivision applications, and how public objections or protests against the applications were handled. Mr. Yee clarified that his earlier comments were based on OP's perception that County zone changes usually occurred prior to preliminary subdivision approval and that it was different in this docket.

Commissioner Inouye requested clarification that final subdivision approval could not occur without zoning approval. Mr. Giroux confirmed that was the case for

consistency between the State Land Use Designation, the Community Plan, the General Plan and County zoning.

Commissioner Inouye requested clarification on the role of DOT during the County zoning and subdivision approval process. Mr. Yee described the communication that was involved between the State and County agencies and stated that despite this activity, the DOT was not considered a Party to each case.

Mr. Spence provided further clarification on how his department studied and assessed each application and determined what priority and type of handling each would be given. Mr. Yee added that the DOT did not have approval power. Discussion occurred to further clarify the circumstances where the DOT would have a more prominent role (Mr. Yee introduced Ms. Shibuya –DOT representative for the record) and how County and DOT agencies cooperated throughout the processing of zoning or subdivision applications.

Commissioner Inouye requested clarification on what the developer could do with just the preliminary subdivision approval. Ms. Benck described the limited activities that the Petitioner expected to be able to perform with only the preliminary subdivision approval and stated that active construction activities could not begin; and explained why Petitioner had structured its proposal for TIAR acceptance in the manner presented.

Chair Heller stated that he recognized that this issue also applied to Docket Nos. A10-787 and A84-585 and asked if Mr. Tabata had anything to add.

**MR. TABATA' S INPUT RELEVANT TO DOCKET NOS. A10-787 AND A84-585'S ORAL ARGUMENT THAT OCCURRED DURING THE ORAL ARGUMENT FOR A13-797**

Mr. Tabata shared his perspective of how DOT involvement in the planning process operated and how TIAR information needed to be timely and appropriate; but that requiring TIAR acceptance too early or too late could be disadvantageous and stated that for Docket Nos. A10-787 and A84-585, the TIAR acceptance was being requested at final subdivision approval. Commissioner Inouye asked about how long it would take Petitioner to obtain a revised TIAR and whether one had been submitted for the Maui R&T docket. Mr. Tabata responded that it would depend on the situation due to the variables involved in each proposed project and the workloads of the respective agencies involved; and that a revised TIAR had not yet been submitted for Docket Nos. A10-787 and A84-585. Discussion occurred to determine the level of communication that had occurred between the Petitioner and DOT in these dockets and how much longer it would take to submit a revised TIAR for the Maui R&T docket. Mr. Tabata



represented that ongoing discussions were the norm since the DOT was sensitive to any of the changes or requirements that Petitioner might need and he was not certain when the revised TIAR would be submitted.

There were no further questions for Docket Nos. A10-787 and A84-585.

**ORAL ARGUMENT AND DELIBERATION (continued)**

**A13-797 CMBY 2011 Investment LLC (Maui)**

Chair Heller asked if there were any further questions for Docket No. A13-797.

Commissioner McDonald requested clarification on whether it was possible for the County to issue a tentative approval of a preliminary subdivision application with certain conditions that would allow the developer to perform certain work; and whether Petitioner had stated that he was willing to accept the DOT's condition regarding an accepted TIAR prior to tentative subdivision approval. Ms. Benck acknowledged that it was possible for the County to issue a tentative approval of the preliminary with conditions or that the developer needs to follow up on and that Commissioner McDonald had stated Petitioner's position correctly.

Commissioner Inouye requested clarification on FOF 70 and 71 and expressed his concerns regarding the activities allowed by M3 zoning (which included use as a landfill) and whether Petitioner could confirm that the Petition Area would not have a landfill. Ms. Benck confirmed that Petitioner did not have plans for using the Petition Area as a landfill and consented to Commissioner Inouye's request to allow LUC staff to combine both FOFs to read "the Maui County Chapters 19.25 M3 Restricted Industrial District includes as one of its permitted uses "landfill, solid waste processing and disposal". Nevertheless, Petitioner represents that the Petition Area will not be used as a "landfill", even though it is a permitted use in the M3 district unless the Petitioner seeks approval of the Commission pursuant to a motion to amend or such other procedure. However, the Petition Area may still be used for "solid waste processing and disposal" as permitted within the M3 district."

There were no further questions by the Commissioners.

**DELIBERATION**

Chair Heller polled the Commission to verify that all members present were ready to deliberate on A13-797. The Commissioners unanimously responded that they were ready to deliberate

Commissioner Biga moved to grant the Petition with the conditions described by Commissioner Inouye.

Commissioner McDonald stated that he seconded the motion and described the conditions that he thought Commissioner Biga's motion to grant the Petition included.

Discussion occurred to clarify the specifics of Commissioner Biga's motion. Commissioner McDonald summarized that he believed the Conditions that were being referred to include the amended conditions proposed by OP, except that:

- Petitioner's FOF 139 is excluded,
- Petitioner's Amended Condition No. 3 second sentence would read "Petitioner shall also provide notice to surrounding landowners regarding the required separation distance for individual waste water systems from the proposed drinking water source"
- Petitioner's FOF 222-229, and FOF 245-247 are included
- Petitioner's Condition 1A is replaced with OP's Condition 1A

Chair Heller asked if Commissioner Biga accepted Commissioner McDonald's representation of his motion. Commissioner Biga acknowledged that the representation was accurate.

Commissioner Inouye commented that Petitioner had also requested guidance on the requirements for notifying the Petition Area neighbors and that additional detail to the term "surrounding landowners" should be included. Discussion occurred to determine whether a 1000' distance or use of an alternative term of "adjacent landowners" should be used. Mr. Yee described how DHHL was not an adjacent landowner but would be within a 1000' radius. Commissioner McDonald shared his understanding of how Department of Health ("DOH") notification requirements for individual wastewater systems would dictate who needed to be notified, and that the term "surrounding landowners" would be sufficient. Chair Heller asked if Petitioner was agreeable to the notification limits as described by Commissioner McDonald. Ms. Benck confirmed that Petitioner was agreeable to the stated term "surrounding landowner". Commissioner Inouye expressed that he withdrew his suggestion for altering Commissioner McDonald's statement of the Motion.

Executive Officer Orodenerker restated the Motion with the assistance of Commissioner McDonald and summarized the items included in the Motion to grant Petitioner's Findings of Fact, Conclusions of Law and Decision and Order filed on October 10, 2013.

- Petitioner's FOF 139 is excluded,
- Petitioner's Amended Condition No. 3's second sentence would read "Petitioner shall also provide notice to surrounding landowners regarding the required

separation distance for individual waste water systems from the proposed drinking water source”

- Petitioner’s FOF 222-229, and FOF 245-247 are included
- Petitioner’s Condition 1A is replaced with OP’s Condition 1A
- Commissioner Inouye’s change to FOF 70 and 71 as read into the record.

Ms. Benck requested clarification as to what filing date was referenced in the Motion. Executive Officer Orodenker stated that it was October 10, 2013.

There were no further questions or comments.

The Commission was polled and voted unanimously to grant the Petition (7-0 with 1 excused -there are currently 8 seated LUC Commissioners).

The Commission went into recess at 11:53 a.m. and reconvened at 12:02 p.m.

**ORAL ARGUMENT AND DELIBERATION**  
**A10-787 MAUI R&T PARTNERS, LLC (Maui)**

APPEARANCES

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

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

William Spence, Director, County

Kurt Wollenhaupt, Planner, County

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

Rodney Funakoshi, OP

Charlene Shibuya, DOT

Chair Heller announced that this was oral argument and deliberation on Docket No A10-787 Maui R&T Partners LLC To Amend the Land Use District Boundary of Certain Lands Situated at Kihei, 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); and updated the record and described the procedures to be followed.

There were no questions or comments regarding the procedures.

Chair Heller announced that the Public Witness portion of this docket had been conducted earlier in the day and called for the Parties to make their presentations.

### PRESENTATIONS-Oral Argument

#### PETITIONER

Mr. Tabata described the proposed project and its benefits; and argued why Maui R&T Partners LLC's final proposed draft of the Findings of Fact, Conclusions of Law and Decision and Order should be adopted since there were no significant impacts to agriculture, no federal endangered or threatened species in the Petition Area, and that archaeological/cultural concerns had been satisfactorily addressed. Mr. Tabata stated that Petitioner was committed to building a reverse osmosis plant if necessary if County water was not available, and all traffic improvement measures as depicted in Petitioner's Exhibit 24, if approved by County and the DOT.

Mr. Tabata also described how the passage of time had affected the development of the initial proposed project and why the current project had more mixed use and different project areas containing different use districts; and how incremental districting would prohibit development of the larger Petition Area lots until the first increment was complete due to LUC rules requiring the completion of the first increment before qualifying to reclassify the second increment. Mr. Tabata summarized that the existing Master Plan couldn't be improved upon and that only approximately 10% of the land area had been developed; and that the proposed project had been planned and revised to maximize its potential to utilize the proposed project to create the greatest number of high-paying jobs possible.

#### COUNTY

Mr. Giroux argued why Maui County's Planning Department strongly supported the Petitioner's request for reclassification and its supporting motion involving Docket No.A84-585 and described how the proposed project conformed to the various State and County plans and requirements.

#### OP

Mr. Yee argued why OP strongly supported the Petition with conditions and cited the major concerns that OP had with the various Findings of Fact and conditions that OP was contesting; and argued why OP's proposals should be adopted. Mr. Yee described how a TIAR was used as a planning document and why it needed to be done earlier than final subdivision approval and how statutory criteria factored into the

process; and how the LUC could support DOT's efforts to ensure that developers pay their fair share for their proposed projects.

#### REBUTTAL

Mr. Tabata stated that Petitioner could live with FOF 138, and described what Petitioner's position was regarding FOF 166, DOT's FOF 177A-J, and F and G, Conditions 1, 4B and C. Mr. Tabata stated that Conditions 4 B and C had been previously handled in the MOA and described how an accepted TIAR would be incorporated into the MOA; and what details were involved with Petitioner's responsibility for funding construction and implementation of improvements and mitigation; and how the wording for this Condition had been successfully approved in other dockets.

#### COMMISSIONER QUESTIONS

Commissioner Inouye requested clarification on when Petitioner could commit to submitting the initial revised TIAR that was requested by DOT. Mr. Tabata replied that a revised TIAR had already been submitted for DOT's comments and had been attached to the final EIS. Mr. Yee shared that he thought Commissioner Inouye was referring to what would happen after the DOT had made its comments and was having its concerns addressed by a revised TIAR. Commissioner Inouye acknowledged that Mr. Yee's understanding of his question was correct. Mr. Tabata replied that without talking to the project traffic engineer, he felt that a revised TIAR could be done within 6 months.

Commissioner Inouye asked if OP had any objection to 6 months. Mr. Yee replied that OP had tied the acceptance of the TIAR to part of the process rather than a time period because it allowed the developer to time their involvement in the County process to when they were ready with the TIAR; and that OP's concern was not when they submit, but when they anticipated final zone change. Mr. Yee elaborated on how deadlines for submittals needed to be appropriately timed and how prioritizing zoning or subdivision approvals could be impacted negatively if they weren't. Mr. Tabata described why he thought DOT would not accept a revised TIAR until after DOT had reviewed it and how a Motion to Amend might be necessary if OP's condition was applied; and how Petitioner had no control over the situation in that circumstance.

Discussion occurred to clarify OP's position for requesting the condition. Commissioner Inouye asked why OP was so concerned about the deadline. Mr. Yee replied that Petitioner would not be able to obtain final subdivision without it.

Commissioner Inouye provided his understanding of the process and Mr. Yee stated that OP's concern about just having a submittal date was the quality of the TIAR submitted and described the reasons why OP was concerned about deadlines; and why OP felt that County and Petitioner should have TIAR information earlier in the process. Commissioner Inouye shared his concerns about DOT's ability to review the TIAR in a timely manner and about Petitioner's exposure to risk. Mr. Yee described the complexity of TIAR reviews and why the quality of the information contained in them was so important.

Commissioner McDonald requested clarification on the County's final subdivision approval process versus its tentative approval of the subdivision. Mr. Spence described the list of things that needed to be done as part of a 2-step process; and how bonding, zone change, DOT and other condition satisfaction had to be obtained before construction could begin. Commissioner McDonald also asked if construction could start prior to subdivision approval. Mr. Spence replied that certain things could be done but that it was difficult to proceed with improvements for the specific proposed project till final subdivision was obtained.

Commissioner Inouye requested clarification on the Phase 2 plans for the Petition Area. Mr. Tabata described how the various components of Phase 2 were planned to be developed and what restrictions were associated with them. Further clarification of what uses were planned for the Petition Area were provided and Commissioner Inouye expressed his concern about what the final outcome of the form-based code would look like. Mr. Tabata shared his perception of what the proposed project would look like based on the controls and limits that had been proposed by Petitioner.

Commissioner Inouye shared his concerns about how the flexible County zoning code would be applied and whether small retail shops were included in the 100,000 square foot residential district. Mr. Tabata replied that they were.

There were no further questions for Mr. Tabata.

## DELIBERATION

Chair Heller polled the Commission to verify that all members present were ready to deliberate on A10-787. The Commissioners unanimously responded that they were ready to deliberate .

Commissioner Biga moved to grant the Petition and Commissioner Chock stated that he seconded the motion.

Commissioner Inouye offered an amendment to the motion to have it approved as incremental districting which was allowed by HAR § 15-15-78 and shared his reasons for proposing the amendment. Commissioner Matsumura seconded the amendment. There were no questions or comments.

The Commission was polled and voted as follows:

Ayes: Commissioners Inouye, Matsumura, Biga and Torigoe

Nays: Commissioners McDonald, Chock, and Heller

The motion to amend the motion failed 4-3 with one excused.

Chair Heller noted that the motion to amend the motion had failed; and that the main motion remained on the table and suggested that more discussion on the conditions involved would be helpful.

Commissioner McDonald shared his perspective on Petitioner's Condition 4 and OP's Finding of Fact No. 138A and moved that the motion include Petitioner's Condition 4 to accept the TIAR prior to final subdivision approval and all of OP's other proposed revisions to the Findings of Fact (excepting those related to OP's Condition on the TIAR). Commissioner Biga seconded the motion.

The Commission voted unanimously (7-0) to accept Commissioner McDonald's amendment to the main motion's conditions and the revisions to the findings of fact.

Chair Heller asked if there was any further discussion regarding the main motion. Commissioner Inouye moved for an Executive Session. Commissioner McDonald seconded the motion.

By voice vote, the Commission unanimously (7-0) elected to enter into Executive Session at 1:20 p.m. and reconvened at 1:26 p.m.

Chair Heller acknowledged Commissioner McDonald's desire to make further comments about his motion.

Commissioner McDonald stated that he understood where OP was coming from in regards to the acceptance of the TIAR, but that he realized that Petitioner was also assuming risks while attempting to do any type of construction prior to TIAR acceptance and could take a project too far without the TIAR's acceptance by the DOT.

There was no further discussion, comments or questions regarding the main motion and its amendment.

The Commission voted unanimously (7-0) to grant the motion to accept OP's proposed findings of fact, and conclusions of law with the exception of OP's condition 4 (as proposed by Petitioner). Commissioner Inouye commented before casting his vote that he thought that this was a very important project and that it was important to have it "go"; and expressed his concerns about the wide openness of the zoning code, but that he was willing to forego that; and implored the Parties to use that latitude for the right purpose; and that he was voting "yes with reservations" because of that.

There were no questions or comments regarding Docket No. A10-787. Chair Heller moved on to the next agenda item.

### **ACTION**

#### **A84-585 Maui Economic Development Board (Maui)**

Chair Heller announced that this was an action meeting on Docket No. A84-585 Maui Economic Development Board, Inc. (Maui) to consider Petitioner's Motion for Order Amending the Amended Findings of Fact, Conclusions of Law and Decision and Order filed February 25, 1986 ("Motion for Order to Amend")

### APPEARANCES

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

Steve Perkins, Maui R&T Partners, LLC, Project Manager and Representative

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

William Spence, Director, County

Kurt Wollenhaupt, Planner, County

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

Rodney Funakoshi, OP

Charlene Shibuya, DOT

Chair Heller updated the record, noted that public testimony had already been received and described the procedures to be followed for the day.

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

Chair Heller clarified that the Motion to Consolidate this docket with A10-787 had been earlier heard and granted and called for the Parties to make their presentations.



PRESENTATIONS-MOTION TO AMEND THE AMENDED FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND DECISION AND ORDER FILED FEBRUARY 25, 1986  
(Hereafter referred to as the “Motion”)

Petitioner

Mr. Tabata described why Petitioner had decided to initiate the earlier Motion to Consolidate Docket No. A84-585 with Docket No. A10-787 and stated that he would like to make a modification to change Petitioner’s Position and accept OP’s findings of fact which would make the Motion to Amend consistent with what the Commission voted on in Docket No. A10-787 since the proposed Findings of Fact were the same and rested his case.

County

Mr. Giroux stated that County would rest on its pleadings and added that it strongly supported the Petition.

OP

Mr. Yee stated that OP would rest on its pleadings in support of the Petition.

Rebuttal

Mr. Tabata stated that he had no rebuttal.

There were no comments or questions.

Commissioner McDonald moved to approve the Motion for Order Amending the Amended Findings of Fact, Conclusions of Law, and Decision and Order dated February 25, 1986; subject to the conditions of Docket A10-787 which included the LUC’s standard conditions. Chair Heller asked if the motion included the basic format of OP’s proposed version. Commissioner McDonald acknowledged that it did. Commissioner Biga seconded the motion. There was no further discussion.

The Commission unanimously voted (7-0) to grant the Motion for Order Amending the Amended Findings of Fact, Conclusions of Law, and Decision and Order dated February 25, 1986; subject to the conditions of Docket A10-787 and including the LUC’s standard conditions.

There being no further business, Chair Heller adjourned the meeting at 1:25 p.m.