

LAND USE COMMISSION
MEETING MINUTES

November 1, 2012 – 10:00 a.m.
Marriott Courtyard Hotel, Haleakalā Room
Kahului, Maui, Hawai'i, 96732

COMMISSIONERS PRESENT: Chad McDonald
Kyle Chock
Lance Inouye
Ronald Heller
Ernest Matsumura
Thomas Contrades

COMMISSIONERS EXCUSED: Napua Makua
Sheldon Biga
Nicholas Teves, Jr.

STAFF PRESENT: Daniel Orodener, Executive Officer
Bert Saruwatari, 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 10:00 a.m.

APPROVAL OF MINUTES

Chair Chock asked if there were any corrections or additions to the October 19, 2012 minutes. There were none. Commissioner Heller moved to approve the minutes. Commissioner Matsumura 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.
- The A09-406 Ka`ono`ulu Ranch docket continued hearings are planned for November 15-16, 2012.
- The A12-795 West Maui docket's oral arguments and decision making will be on December 6, 2012, continuation of A09-406 Ka`ono`ulu Ranch if necessary and a site visit for A12-796 Waiko Industrial Investment is planned.
- The A12-795 West Maui docket's Adoption of Order will be on January 10-11, 2013.
- The 2013 LUC calendar has been circulated and will be adopted as is.
- Any questions or conflicts, please contact LUC staff.

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

ACTION

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

Chair Chock announced that this was a hearing and action meeting regarding Docket No. A94-706's Order to Show Cause and subsequent motions.

APPEARANCES

Joel Kam, Esq., represented Honua`ula Partners ("HP")

Jonathan Steiner, Esq., represented Pi'ilani Promenade North LLC, and Pi'ilani Promenade South LLC, ("PP")

Jane Lovell, Esq., Deputy Corporation Counsel, represented County of Maui Planning Department ("County")

Michael Hopper, Esq., Deputy Corporation Counsel, represented County

William Spence, Director, County

Jesse Souki, Director, State Office of Planning ("OP")

Rodney Funakoshi (OP)

Tom Pierce, Esq., represented Maui Tomorrow Foundation, South Maui Citizens for Responsible Growth and Daniel Kanahele ("Intervenors")

Mark Hyde, South Maui Citizens for Responsible Growth

Irene Bowie, Maui Tomorrow Foundation

Daniel Kanahele

Chair Chock stated that this was a hearing and action meeting regarding Docket No. A94-706's Order to Show Cause and its subsequent motions and updated the

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

Chair Chock stated that the Commission would first address amending the agenda to include County's Motion to Exclude Evidence Related to the 1998 Kihei-Makena Community Plan and Determination of Scope of Review received by the Commission on October 29, 2012.

Commissioner Heller moved and Commissioner McDonald seconded the motion to amend the meeting agenda. Executive Officer Orodenker polled the Commissioners and the Commission voted unanimously (6-0) to amend the agenda.

Chair Chock stated that the Commission would next address the County's Motion to Exclude Further Public Testimony.

County's Motion to Exclude Further Public Testimony

County

Ms. Lovell presented the Motion and argued the reasons why the County's Motion should be granted.

Petitioner PP

Mr. Steiner stated that PP joined with the County's Motion and would abide the Commission's decision in this matter and shared his concerns about further public testimony.

Petitioner HP

Mr. Kam stated that HP had nothing to add and rested on its written submissions.

OP

Mr. Souki stated that OP generally opposed the Motion and argued why it had taken this position.

Intervenors

Mr. Pierce stated that Intervenors supported allowing Public Testimony and deferred to the Commission on the matter.

Rebuttal

Ms. Lovell stated that County had no rebuttal.

Commissioners

The Commissioners had no questions.

Chair Chock determined that the County's Motion to Exclude Further Public Testimony would be denied and called for Public Witnesses.

Chair Chock advised the audience of the protocol that the Commission would follow during public testimony and how a 2 minute time limit for each witness would be observed.

PUBLIC WITNESSES

1. Patricia Ross

Ms. Ross shared her opinion on how further public input for the proposed project was needed and what her expectations were of its development process.

There were no questions for Ms. Ross.

2. Tom Kelly

Mr. Kelly submitted written testimony and voiced his concerns about the lack of public input in the proposed project and the traffic issues for the region.

There were no questions for Mr. Kelly.

3. Bill Kamai

Mr. Kamai stated that he was service representative for the Hawaii Regional Council of Carpenters and voiced why he felt the Commission should support the proposed project.

There were no questions for Mr. Kamai.

4. Ivan Lay

Mr. Lay stated that he was also a representative for the Hawaii Regional Council of Carpenters and expressed why his organization supported the proposed project.

There were no questions for Mr. Lay.

5. Christian Tackett

Mr. Tackett voiced his support for the proposed project.

There were no questions for Mr. Tackett.

6. Mike Moran (Robin Knox)-

Mr. Moran stated that he wanted to switch his testimony position with Robin Knox. Chair Chock acknowledged his request and allowed Ms. Knox to testify.

Ms. Knox shared her concerns about potential impacts that the proposed project posed to stormwater runoff, increasing impervious surfaces, jeopardizing watershed resources and other issues.

There were no questions for Ms. Knox.

7. Katherine Andrade

Ms. Andrade described why she supported the proposed project.

There were no questions for Ms. Andrade.

8. Eric Yoshizawa

Mr. Yoshizawa shared his reasons for supporting the proposed project.

There were no questions for Mr. Yoshizawa.

9. Mike Moran

Mr. Moran stated that he represented the Kihei Community Association and described his organization's concerns about the proposed project.

There were no questions for Mr. Moran.

10. Esther Juan

Ms. Juan expressed her support for the proposed project.

There were no questions for Ms. Juan.

11. Elden Liu

Mr. Liu stated that he was a descendant of the Royal Patent for the land and submitted additional testimonial materials regarding his ownership claim.

There were no questions for Mr. Liu.

12. Robert Martin

Mr. Martin shared his concerns about the proposed project and the lack of public input for the proposed project.

There were no questions for Mr. Martin.

13. Abel Kahoochanohano Jr.

Mr. Kahoochanohano Jr. voiced his support for the proposed project.

There were no questions for Mr. Kahoochanohano.

14. Robert Offerman

Mr. Offerman described his concerns about the compliance issues that the proposed project seemed to have in abiding by its original decision and order.

There were no questions for Mr. Offerman.

15. Marilyn Chapman

Ms. Chapman expressed her support for the proposed project.

There were no questions for Ms. Chapman.

16. Tom Blackburn-Rodriguez

Mr. Blackburn-Rodriguez submitted a list of names that he had collected that stated their support for the proposed project and provided his perspective of how the region would benefit from it.

There were no questions for Mr. Blackburn-Rodriguez.

17. Mary Jo Phillips

Ms. Phillips shared her concerns about the proposed project.

There were no questions for Ms. Phillips.

18. Patricia Nuckolls

Ms. Nuckolls expressed her concerns about the proposed project.

There were no questions for Ms. Nuckolls.

19. Richard Emery

Mr. Emery voiced his concerns about the proposed project.

There were no questions for Mr. Emery.

20. Pamela Tumpap- Maui Chamber of Commerce

Ms. Tumpap submitted written testimony for Nelson Okumura and for herself and voiced her organization's support for the proposed project.

There were no questions for Ms. Tumpap.

21. Joan Martin

Ms. Martin submitted written testimony and shared why she supported the proposed project.

There were no questions for Ms. Martin.

22. Perry Artates

Mr. Artates stated his union affiliation and described why his organization supported the proposed project.

There were no questions for Mr. Artates.

23. Dennis Collier

Mr. Collier shared why he supported the proposed project.

There were no questions for Mr. Collier.

There were no further public witnesses. Chair Chock declared a recess at 11:25 a.m. The Commission reconvened at 11:40 a.m.

Chair Chock announced that the Commission would next address Intervenor's Pre-Hearing Motion on Burden of Proof.

Intervenor's Pre-Hearing Motion on Burden of Proof

Intervenor

Mr. Pierce stated his purpose in filing the Motion and argued why it should be granted.

Petitioners PP & HP

Mr. Steiner stated that Mr. Kam would be addressing the Motion. Mr. Kam described how the Petitioners disagreed with the Motion and argued why it should be denied since the landowners did not initiate the proceedings and how there had been no standard of proof that the Commission applied for the current proceedings on the

Order to Show Cause; and that no determination had yet been made that a violation had occurred. Mr. Kam acknowledged that having the landowners making their presentations first would enable an efficient flow of the proceedings and help the Commission to understand the context of the situation and weigh the presented evidence.

County

Ms. Lovell stated that the County joined in the opposition to the Motion.

OP

Mr. Souki stated that OP agreed with the Intervenor that the burden of proof is on the landowners and described why OP took that position.

Rebuttal

Mr. Pierce summarized his argument for the Motion and why he felt the Commission should grant it.

Commissioners

The Commissioners had no questions. Commissioner Heller commented that the suggestion of the landowners going first made sense for the order of presentations; and provided his perception of how the burden of proof would become important in the event that the evidence is very close and whether or not it was clear that a violation had occurred; and that it may not be important to make the decision on the burden of proof at this time.

There were no other comments or questions. Chair Chock determined that the Motion on the Burden of Proof would be deferred.

Intervenor's Pre-Hearing Motion in Limine Regarding Scope of Evidence

Intervenor

Mr. Pierce stated his purpose in filing the Motion and argued why it should be granted.

Petitioners PP & HP

Mr. Steiner and Mr. Kam respectively argued why the landowners opposed the Motion and why the Commission should deny it. Mr. Steiner argued why the four areas the Mr. Pierce identified in his argument were relevant to the original representations made to the Commission. Mr. Kam stated that he joined Mr. Steiner in opposing the Motion and in the reasons that were expressed by him; and emphasized

that the representations made to the Commission in 1994-1995 were the crux of the proceedings and are not just what was set forth in the Decision and Order; and provided his perspective of why the Intervenor wanted to limit the evidence in the hearing.

County

Mr. Hopper argued why the County's exhibits should be included and considered; and why the Motion should be denied. Mr. Hopper also argued why Mr. Spence should be allowed to participate in the proceedings as an expert, and why County's official notices should be considered by the Commission as well.

OP

Mr. Souki stated that OP had not filed a written response to this Motion but was orally responding to opposing it; and argued why the Motion should not be granted; why the DOT testimony and OP Exhibit 6 was relevant.

Rebuttal

Mr. Pierce argued why representations were an issue and restated his reasons why the Motion should be granted; and described the difficulties in interpreting Condition 5 of the original Decision and Order.

Commissioners

Commissioner Inouye stated that he wanted to hear all the facts of the case and shared why being presented with all of the evidence was important to him.

Commissioner McDonald echoed Commissioner Inouye's concern about limiting evidence and shared his opinion on why hearing all the relevant evidence was necessary in his decision making and moved to deny the Motion.

Commissioner Contrades seconded the Motion.

Commissioner Heller suggested adding "denying the motion without prejudice" to clarify the motion before the Commission and provided his reasoning for adding the friendly amendment. Commissioners McDonald and Contrades accepted the friendly amendment.

There was no further discussion.

Executive Officer Orodener polled the Commissioners and the Commission voted unanimously (6-0) to deny the Pre-Hearing Motion *in Limine* Regarding the Scope of Evidence without prejudice.

County's Motion to Exclude Evidence Related to the 1998 Kihei-Makena Community Plan and Determination of Scope of Review

County

Mr. Hopper presented the Motion and argued the reasons why the County's Motion should be granted.

Petitioner

Mr. Steiner stated that PP and HP had joined in County's Motion for the reasons set forth in their briefs and argued why the Motion should be granted. Discussion occurred and Mr. Hopper clarified that County had identified the pages of Expert Testimony from the 1998 Community Plan that it wished to have excluded. Mr. Kam stated that he had nothing to add.

OP

Mr. Souki stated that OP had no position on the Motion.

Intervenor

Mr. Pierce argued how the County was inconsistent in its arguments regarding the Community Plan and why the Motion should be denied.

Rebuttal

Mr. Hopper argued how the zoning for the original Community Plan was in place and the specific uses of the zoning was discussed and representations were made; and that the 1998 Community Plan was not in existence yet and only in its conceptual stage; and why the Motion should be granted.

Commissioners

Commissioner Inouye restated his interest in obtaining all the evidence to weigh in his decision making and moved to deny the Motion without prejudice to objecting to the evidence as it is presented.

Commissioner McDonald seconded the Motion.

Commissioner Heller commented that having the landowners go first would allow the Commission to be in a better position to evaluate the information presented and that making a decision on this motion prematurely was not necessary. There was no further discussion.

Executive Officer Orodenker polled the Commissioners and the Commission voted unanimously (6-0) to deny the Motion to Exclude Evidence Related to the 1998 Kihei-Makena Community Plan and Determination of Scope of Review without prejudice.

Chair Chock stated that the Commission would next hear Intervenor's Motion to Take Testimony of Carla M. Flood via Telephone.

Intervenor's Motion to Take Testimony of Carla M. Flood via Telephone

Intervenor

Mr. Pierce stated his purpose in filing the Motion and argued why it should be granted.

Petitioners PP & HP

Mr. Steiner acknowledged the Commission's interest in gathering information and stated his reasons for opposing the Motion and argued why it should not be granted. Mr. Steiner requested an "offer of proof" to substantiate the need for Ms. Flood's testimony.

Mr. Kam stated that he rested on his submitted brief.

County

Ms. Lovell stated her reasons for opposing the Motion and argued why it should not be granted.

OP

Mr. Souki stated that OP had no position on this matter.

Rebuttal

Mr. Pierce argued how Ms. Flood was a material witness; why an "offer of proof" was not necessary and why her telephone testimony should be allowed.

Commissioners

Commission Heller expressed his perspective of effective cross-examination and moved to grant the Motion subject to the condition that written text of Ms. Flood's testimony be provided to all the Parties 7 days in advance of her telephone testimony to allow for the preparation of questions and exhibits (testimony to be limited to the subject matter of the written testimony). Commissioner Matsumura seconded the motion.

Commissioner Contrades shared his reasons for not supporting the Motion.

Commissioner Inouye shared his opinion about the Motion and voiced his support.

There was no further discussion.

The Commission voted on Commissioner Heller's motion to grant Intervenor's Motion subject to the condition as follows:

Yeas: Commissioners Heller, Matsumura, and Inouye

Nays: Commissioners McDonald and Contrades, Chair Chock.

Executive Officer Orodenker reported a 3-3 tie. Chair Chock stated that he had the discretion to rule on Intervenor's Motion, and given the tie on Commissioner Heller's motion, Chair Chock ruled to deny Intervenor's Motion.

Chair Chock announced the Commission's plans for the remainder of the day. Mr. Pierce requested clarification on opening statement and exhibit presentation procedures. Discussion occurred on the details of exhibit presentation that Mr. Pierce was concerned about. Chair Chock provided guidance on what the Commission expected and declared a recess.

The Commission went into recess at 12:50 p.m. and reconvened at 2:05 p.m.

PRESENTATION OF EXHIBITS

Petitioner PP

Mr. Steiner offered PP's exhibits 1-11, and 13-46.

County and OP had no objections.

Mr. Pierce stated that he had no objections to PP exhibits 1-11 and objected to PP exhibits 16, 35, 36, and 38-46 till introduced (of exhibits 13-46). Discussion occurred on the nature for the objections. Mr. Pierce expressed why he objected to the exhibits. Chair Chock determined that PP exhibits 1-11 and 13-46 would be admitted with the exception of PP exhibits 16, 35, 36, and 38-46. Ms. Lovell restated the exhibits that she perceived as being admitted. Chair Chock restated that PP exhibits 16, 35, 36, and 38-46 would be deferred and the remainder of exhibits would be admitted. Mr. Steiner stated for clarification that PP Exhibits 12 had been withdrawn.

Petitioner HP

Mr. Kam offered HP's exhibits 1-3, 5-10, and 12.

County and OP had no objections.

Mr. Pierce reviewed his documents and also stated that he had no objections.

Chair Chock admitted HP's exhibits 1-3, 5-10, and 12.

County

Ms. Lovell offered County's exhibits 1-7.

Petitioners HP and PP; and OP had no objections.

Mr. Pierce stated that he objected to County exhibits 1, 4, and 7.

Chair Chock asked if Intervenor's objections were on the same basis as HP's exhibits. Mr. Pierce acknowledged that they were and Chair Chock deferred on County exhibits 1, 4, and 7; and admitted exhibits 2, 3, 5, and 6. Ms. Lovell questioned how County could be expected to present its case when exhibit 1 was County's testimony. Chair Chock responded that an "offer of proof" could be presented when it was County's turn to make its presentation. Discussion ensued and Mr. Pierce disclosed why he objected to County's testimony. Ms. Lovell shared her concerns about County's exhibit 1 being stricken. Chair Chock stated that the Commission would defer and argue on the merits of exhibit 1 when County made its presentation. Chair Chock noted that Mr. Spence had appeared before the Commission as an expert in planning many times and the Commission could weigh and consider his testimony accordingly and requested that the proceedings move on.

OP

Mr. Souki offered OP exhibits 1-13.

Petitioners HP and PP, County and Intervenor had no objections.

Chair Chock admitted OP's exhibits 1-13.

Intervenor

Mr. Pierce offered Intervenor exhibits 1-37 and clarified how he numerically identified his expert witnesses' written testimony (I35-Mike Foley, I36-Victoria Huffman, and I37 Dick Mayer).

Mr. Steiner objected and requested deferral on Intervenor exhibits I 6, I 7, I 8, I 11, I 21, I 24, I 30 and I 35-37.

Mr. Kam stated that he joined with Mr. Steiner.

Ms. Lovell objected to Intervenor exhibits I 9, I 11, I 27, I 30, and I 34. Mr. Hopper added that in conjunction with County's Motion to Exclude the 1998 Kihei-Makena Community Plan that the County also objected to portions of Intervenor exhibits I 35 and I 37.

Mr. Steiner added that his objections to Intervenor exhibits I35 and I 37 were along the same lines as the County and stated that he withdrew his objection to I 36.

Mr. Souki stated that OP had no objections.

Chair Chock noted the objections for the record and stated that they would be dealt with when Intervenor put on their case; and restated what exhibits would be admitted without objection to the record (I 1- I 5, I 10, I 12- I 20, I 22- I 23, I 25, I 26, I 28, I 29, I 31- I 33, and I 36).

Chair Chock concluded the Exhibits portion of the proceedings and announced the order of presentations for the hearing (Landowners, County, OP and Intervenor).

PRESENTATIONS

Petitioner PP

Mr. Steiner stated PP's position and expressed how Petitioner planned to demonstrate that Conditions 5 and 15 of the original 1995 Decision and Order had not been violated and how its proposed project would substantially comply with the representations made by it; and how the island economy and nearby communities would benefit during and after its construction.

Petitioner HP

Mr. Kam stated that HP was not in violation with the 1995 Decision and Order since it had not done anything yet and described how HP had only considered alternatives regarding its portion of the Petition Area and not acted on them. Mr. Kam also voiced why the Commission should find that there had been no violation.

County

Mr. Hopper described the circumstances that he felt were confronting the Parties involved in determining whether the conditions for the 1995 Decision and Order had been violated; and why the County held the position that no violation of the order had occurred and how the proposed project conformed to its M1 zoning and designated land uses; and how the County intended to demonstrate to the Commission how the representations made in the past still applied to the current proposed project.

OP

Mr. Souki stated the reasons why OP felt that the current proposed project substantially differed from what had originally been approved by the Commission for the Petition Area and described what OP's expectations of the hearings outcome were.

Intervenors

Mr. Pierce attempted to exhibit and compare enlarged representations of the original and current proposals (PP exhibits 1 and PP 31) for the Petition Area. Discussion ensued to determine what exhibit reference numbers applied to each exhibit. Ms. Lovell asserted that the exhibits were not accurate. Mr. Steiner indicated how his exhibit differed from what was displayed. Further discussion ensued till the Parties were able to agree on what conditions the displayed exhibits could be used in Mr. Pierce's presentation.

Mr. Pierce stated the reasons why the Intervenors had taken a stance against the current proposed project and referred to his displayed exhibits to show how it had changed from its original plan and described why Intervenors felt that the landowners should have sought to amend the original Petition to reflect the proposed changes and

how Intervenor would demonstrate that conditions 1, 5, 15 and 17 of the original 1995 decision and order had been violated; and how PP and HP were not in substantial compliance with them.

Chair Chock asked if the Commissioners had any questions for the Parties before the start of presentations. There were none.

PRESENTATIONS

Petitioner PP

Mr. Steiner offered Martin Luna to the Commission as a witness. Mr. Pierce requested an "offer of proof" for Mr. Luna's appearance. Discussion ensued to clarify why Mr. Luna was appearing before the Commission. Chair Chock noted Mr. Pierce's objection and allowed Mr. Luna testimony.

1. Martin Luna

Mr. Luna described his involvement with the 1995 decision and order and shared his recollection of the considerations involved in the crafting of the original Petition; and how the market feasibility study was used by the Petitioner to make its representations to the Commission at that time. Discussion occurred during this portion of Mr. Luna's testimony regarding how the transcripts of the past proceedings already captured what had happened. Chair Chock requested that the proceedings move on.

Mr. Luna continued to describe the various other aspects of the past proceedings that were involved in developing Petitioner's position and representations to the Commission regarding proposed retail and other uses for the Petition Area parcels. Mr. Luna summarized the conceptual aspects that were part of his representations and described how no definite plans were included. Discussion occurred regarding how the transcripts were being interpreted. Chair Chock noted Mr. Pierce's comments. Mr. Luna continued his recollection of what Commissioner Kajioka's concerns about Petition Area land uses were during the 1995 proceedings.

Chair Chock declared a recess at 3:25 p.m.

The Commission reconvened at 3:45 p.m. (Commissioner Matsumura returned at 3:48 p.m.)

Mr. Luna resumed his testimony and his recollections about the discussions that occurred during the original proceedings. Mr. Pierce restated his objection on how the past transcripts already captured the discussions. Chair Chock noted Mr. Pierce's objection.

Discussion also occurred regarding Mr. Luna's testimony and how it conflicted with the "offer of proof" given at the onset of his appearance. Mr. Steiner described

what the intent of his questioning was. Chair Chock stated that he noted Mr. Pierce's continued objection and allowed Mr. Luna to continue. Mr. Luna described his understanding of what the term "light industrial use" meant as related to the zoning code and within the planning community; and how it was applied by Maui County planning.

Questions for Mr. Luna
Petitioner HP

Mr. Kam requested clarification on what type of permitted uses were proposed for the Petition Area during the original proceedings. Mr. Luna provided his recollection on the discussions involving future permitted uses in the Petition Area.

Mr. Kam had no further questions.

County

Ms. Lovell stated that she had no cross examination for the witness.

OP

Mr. Souki requested clarification on the context of the original proceedings and why the various Petitioner Exhibits (2, 3, and 6) depicted representations which were not the same representations made in the current proposed project. Discussion occurred regarding the form of the questions being used. Mr. Souki acknowledged the comment and rephrased his questions. Mr. Luna provided his recollection of the circumstances surrounding the original conceptual plan for the proposed project.

Mr. Souki continued his questioning regarding the discussions that occurred during the original Petition proceedings. Discussion occurred regarding how the transcript was being read. Chair Chock determined that the questioning was appropriate and stated that the transcript was before the Commission. Mr. Luna provided his recollection of how much commercial development was proposed within the Petition Area. Discussion reoccurred regarding the transcripts. Ms. Lovell noted that the transcripts were not complete. Mr. Steiner shared his rationale for submitting the portions of testimony that he had as exhibits. Chair Chock asked why the County had not objected to Petitioner's Exhibits of the transcript. Ms. Lovell stated how the transcript was not inclusive of all the discussions that had occurred at the original proceedings. Further discussion occurred and Mr. Souki stated that he would move on.

Mr. Souki requested clarification on County's responses to 1994-1995 Commission questions regarding the large number of uses permitted by "light industrial" use. Mr. Luna read the portions of the transcript that involved the exchange of questions and described how the County would address the types of uses planned for the Petition Area. Discussion occurred over whether the 2012

Commission could rely on the County's past testimony and whether it was relevant to what was currently being represented to the Commission; and to the context and relevancy by which it would be received. Chair Chock agreed that the Commission should be familiar with the County's past representations and allowed the questioning to continue.

Mr. Souki requested clarification on the apartment zoning proposed for the Petition Area. Mr. Luna provided his perspective of how the County's responded to questions about that issue and concluded his questioning.

Intervenors

Mr. Pierce requested that the Parties be permitted to rely upon and use the entire transcript in their final arguments and in preparing their Findings of Fact, Conclusions of Law and Decision and Order; and that it get incorporated into the record. Chair Chock responded that the Commission would take notice of the request.

Mr. Pierce requested clarification on Mr. Luna's perception of what obtaining M1 zoning approval allowed the Petitioner to do in developing the Petition Area. Mr. Luna described the various types of uses that he thought the Petitioner was entitled to after obtaining the County's B1, B2, and B3 permitted zoning uses within the M1 category.

Mr. Pierce requested clarification on whether the original representations included the types of residential and retail types of facilities like those included in the current proposed project; and what legal services Mr. Luna had performed for Petitioner Ka'ono'ulu Ranch as the proceedings for the docket concluded. Mr. Luna responded that the past representations of the proposed project did not include the types of facilities that were currently being depicted for the Petition Area; and described what his duties to the Petitioner consisted of when the proceedings concluded; and how he had ensured that the conditions in the decision and order had been recorded to put every landowner thereafter on notice about them.

Rebuttal

Mr. Steiner requested clarification on who Mr. Miskae was speaking for in the transcript and whether limits on the amount of retail were imposed. Mr. Luna replied that Mr. Miskae was representing the Maui County Planning Department and that the Commission, at that time, left it up to the County to make the final determination on the retail limiting issue.

Commissioner Questions

Commissioner Heller requested clarification on what the permitted uses under M1 industrial were and what the past two Amendments to the Petition for the proposed project addressed. Mr. Luna provided details of how apartment zoning was allowed by M1 zoning and how the planning department and the County interpreted its allowance despite confusion in how the stated permitted uses were worded and stated that he could not recall what the specifics of the two amendments were.

Commissioner Inouye requested clarification on how Mr. Luna perceived the Commission's latitude on the imposed conditions after a Petition had been granted. Mr. Luna shared his opinion of how various different uses would be considered by the Petitioner without undermining the entitlement process and how detailed plans needed to be obtained in a district boundary amendment; and what role that conceptual plans had in the process; and whether the Commission should establish limits within its conditions over issues of concern.

There were no further questions for Mr. Luna.

Chair Chock described the meeting scheduling plans for November 2, 2012 and stated that the Commission would begin its meeting at 9 a.m.

Mr. Souki stated that he had discussed taking two witnesses out of order with the Parties and there had been no objections to his request. Chair Chock confirmed with the Parties that they had approved to the witnesses being taken out of order and acknowledged that he concurred with having the OP witnesses appear out of sequence. Discussion occurred over the length of the presentations and there were no further comments or questions.

Commissioner Inouye moved and Commissioner Heller seconded the motion to adjourn for the day. By a unanimous voice vote (6-0), the Commission voted to recess until November 2, 2012.

LAND USE COMMISSION
MEETING MINUTES

November 2, 2012 – 9:00 a.m.
Marriott Courtyard Hotel, Haleakala Room
Kahului, Maui, Hawai'i, 96732

COMMISSIONERS PRESENT: Chad McDonald
Kyle Chock
Lance Inouye
Ronald Heller
Ernest Matsumura
Thomas Contrades
Nicholas Teves, Jr.

COMMISSIONERS EXCUSED: Napua Makua
Sheldon Biga

STAFF PRESENT: Daniel Orodenker, Executive Officer
Bert Saruwatari, 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 9:00 a.m.

HEARING

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

Chair Chock announced that this was a continued hearing on Docket No. A94-706 Order to Show Cause

APPEARANCES

Joel Kam, Esq., represented Honua'ula Partners

Jonathan Steiner, Esq., represented Pi'ilani Promenade North LLC, Pi'ilani Promenade South LLC, and Honua'ula Partners

Jane Lovell, Esq., Deputy Corporation Counsel, represented County of Maui Planning Department (County)

Michael Hopper, Esq., Deputy Corporation Counsel, represented County

William Spence, Director, County

Jesse Souki, Director, State Office of Planning (OP)

Rodney Funakoshi (OP)

Tom Pierce, Esq., represented Maui Tomorrow Foundation, South Maui Citizens for Responsible Growth and Daniel Kanahele

Mark Hyde South Maui Citizens for Responsible Growth

Irene Bowie, Maui Tomorrow Foundation

Daniel Kanahele

Chair Chock stated that the Commission would begin by hearing OP's witnesses out of order as agreed to by the Parties. Mr. Souki acknowledged that both his witnesses Ken Tatsuguchi -DOT and Heidi Meeker- DOE were present and ready to testify.

Presentations

OP (Expert Witnesses taken out of order)

1. Ken Tatsuguchi- DOT Expert- Transportation Planning and Engineering

Mr. Tatsuguchi was offered and admitted as an expert witness for OP and described the various issues that he had to address when comparing the current proposed project to the 1995 proposed project. Mr. Tatsuguchi described how the Traffic Impact Assessment Reports (TIAR) differed due to the proposed facilities for the Petition Area and what measures needed to be taken to adjust and update DOT plans for the area as a result. Mr. Tatsuguchi also described how the proposed "frontage road" was no longer feasible due to the evolution and anticipated changes in regional development and transportation modes that had occurred in the years since the original decision and order; and how other transportation routes could be implemented to mitigate any future expected traffic volumes.

Questions for Mr. Tatsuguchi

Petitioner PP

Mr. Steiner requested clarification on the status of the current TIAR that was being reviewed by DOT. Mr. Tatsuguchi described how he had been working with Petitioner's Traffic Expert Phillip Rowell to resolve various transportation issues that confronted the proposed project. Discussion occurred over relevancy of the

questions and whether Mr. Tatsuguchi could qualify Mr. Rowell as an expert. Mr. Steiner responded that he was asking if Mr. Tatsuguchi felt that Mr. Rowell was competent in performing his work for Petitioner. Chair Chock requested that Mr. Steiner move on with his questioning.

Mr. Steiner requested clarification on the number of lanes that Pi'ilani Highway had during the span of years since the original Petition was before the Commission and the present; and whether the extra added lanes since had mitigated traffic conditions. Mr. Tatsuguchi stated that he was not a traffic engineer but was a transportation engineer and acknowledged that based on his experience in coordinating the reviews of the TIARs for the proposed project, the additional added lanes helped to mitigate any traffic generated by the proposed project.

Mr. Steiner had no further questions.

Petitioner HP

Mr. Kam stated that he had no questions.

County

Ms. Lovell requested clarification on whether the DOT required mitigation measures be adopted for the Petition Area before or after the LUC issued its decision and order. Mr. Tatsuguchi described how mitigation measures were implemented for more general considerations to area and regional issues when the Petition was at the LUC level and how the more detailed mitigation measures occurred at the County level after the decision and order had been issued. Discussion occurred over the phrasing of Condition 5 and how it was being represented. Further discussion occurred over Condition 5 on whether all Parties were reviewing the same document. Chair Chock advised Mr. Pierce that a copy of the original Condition 5 was available on the LUC website. Ms. Lovell requested clarification on whether Mr. Tatsuguchi considered Mr. Rowell's working with him on the proposed project's traffic matters - "coordination". Mr. Tatsuguchi responded that he did.

Ms. Lovell had no further questions.

Intervenors

Mr. Pierce introduced himself and described how he would be asking his questions. Discussion occurred to have Mr. Pierce focus on questioning the witness.

Mr. Pierce requested clarification on the difference between a traffic engineer and a transportation engineer; the ongoing coordination activities occurring with Mr. Rowell on the current project and on the methodology and terminology involved with the review of the Petition Area traffic. Mr. Tatsuguchi provided his understanding on the differences between the two job descriptions and discussion

occurred over the relevance of Mr. Pierce's questions. Chair Chock requested that Mr. Pierce move on with his remaining questions and directed that Mr. Tatsuguchi respond to questions regarding traffic impacts of the proposed project.

Mr. Tatsuguchi shared his perspective on transportation alternatives in the Petition Area and the traffic impacts between the original project and the current project. Discussion ensued regarding the representation of the transcript and Mr. Pierce rephrased his questions. Mr. Tatsuguchi continued to provide his understanding of the current proposed project and what information the TIAR included; what various calculations were missing; and why a frontage road was not feasible.

Mr. Pierce had no further questions.

Rebuttal

Mr. Souki requested clarification on whether the coordination for the proposed project was final and on how DOT reviewed information related to the Petition and made its recommendations. Mr. Tatsuguchi described how the proposed project was still being reviewed and what the DOT review process entailed.

Mr. Souki had no further questions.

Mr. Steiner requested clarification on LUC procedures. Chair Chock described the usual protocol involved with questioning witnesses.

Commissioner Questions

Commissioner McDonald requested clarification on what concerns the DOT had with the proposed project during coordination. Mr. Tatsuguchi stated that he did not recall exactly.

Commissioner McDonald referred his question to OP. Mr. Souki responded that OP's focus for the order to show cause hearing was whether there was a difference in what had been proposed in the 1995 decision and order and what the current proposal consisted of; and was not ready to respond to the question. Discussion ensued on how the frontage road requirement did not appear to make sense. Mr. Souki noted how changes of that magnitude usually required amending a Petition and how the determination of mitigation measures was an ongoing process. Mr. Tatsuguchi confirmed that he was involved in an ongoing process.

Commissioner McDonald had no further questions.

Commissioner Heller requested clarification on whether the widening of Pi'ilani Highway was part of the project mitigation plans; and whether an assessment had been made to determine mitigation options for the original proposed project versus the current proposed project. Mr. Tatsuguchi acknowledged that the long range

plans for the area included the Pi'ilani highway widening project and was not specific to the mitigation plans for the proposed project; and responded that he was not familiar with the past project and would need to continue the current assessment to determine measures for the current project.

Commissioner Heller requested clarification on the inception of the frontage road proposal. Mr. Tatsuguchi responded that he was not sure how it had become a recommendation.

Commissioner Heller had no further questions.

There were no further questions for Mr. Tatsuguchi.

2. Heidi Meeker- DOT Expert- Educational Facilities and Planning

Ms. Meeker was offered and admitted as an expert witness; and described how Project impact fees and her department were related; and how negotiations for the Honua`ula portion of the Petition Area had been conducted.

Questions for Ms. Meeker

Petitioners PP and HP

Mr. Steiner stated that Mr. Kam would handle this portion of the proceedings for the landowners.

Mr. Kam requested clarification on the DOE's authority to impose and collect impact fees or "fair share" contributions. Ms. Meeker described how the DOE had to obtained fees in the past and how more recent State Legislative action empowered the DOE to have the authority to negotiate fees on its own behalf with Petitioners and what components needed to be present in a Petition to cause DOE to have provisional conditions included in the decision and order to ensure fees were set aside for it.

Discussion occurred over provisions made for "fair share" contributions in the original proposed project and other projects of the time. Ms. Meeker shared her opinion of how the expected fees would be collected and described how the Honua`ula proposed project differed from other proposals; and what might have been involved in past and current situations to address DOE impact fee concerns. Further discussion ensued regarding relevancy of the direction of the questions. Chair Chock allowed Mr. Kam latitude to continue but noted that he should focus his questions.

Mr. Kam had no further questions.

County

Ms. Lovell stated that County had no questions.

Intervenors

Mr. Pierce had no questions.

Redirect

Mr. Souki requested clarification on whether there had been any reference to residential units in the original proposed project. Ms. Meeker provided her opinion of what DOE's likely assumption might have been and how it would have assessed the situation.

Mr. Souki had no further questions or comments.

The Commissioners had no questions.

The Commission went into recess at 10:20 a.m. and reconvened at 10:40 a.m.

Petitioner's Witness

1. Phillip Rowell- Expert Traffic Engineering and Transportation

Mr. Rowell was offered and admitted as an expert witness. There were no objections.

Mr. Rowell clarified his written testimony on the frontage road and on planned traffic improvements using displayed maps (previously submitted Petitioner exhibits 28 and 29 which had been enlarged) that would be installed for the current proposed project.

Discussion occurred over Mr. Rowell's commenting on Intervenor's 'witness, Victoria Huffman's testimony during his current appearance to expedite the proceedings and avoid additional expenses during the rebuttal portion of the proceedings. Chair Chock requested an "offer of proof" on why it was relevant to address Ms. Huffman's testimony at this meeting. Mr. Steiner argued that Ms. Huffman's testimony was already in evidence and how the Intervenor could be allowed the same opportunity to comment on Mr. Rowell's testimony during their portion of the proceedings. Chair Chock determined that Mr. Rowell would be allowed to comment on Ms. Huffman's testimony.

Mr. Rowell described the differences in technical resources, methodologies and criteria used by Ms. Huffman in her report when compared to his; and how the respective collected data was analyzed and interpreted; and why he disagreed with various points that she had made.

Questions for Mr. Rowell

Petitioner HP and County had no questions.

OP

Mr. Souki requested clarification on why the 1994 TIAR could not be used for the current proposed project. Mr. Rowell replied that it was a different project with industrial use with no specification of how much industrial use would be occurring and that there had been many changes in the years since; it did not include the updated information on the proposed upcountry highway and the analysis techniques used had been refined over time.

Mr. Souki requested clarification on the reference to “lots” in his testimony and on whether mitigation included provisions for housing. Mr. Rowell recollected the number of “lots” that had been referred to and described the 2012 mitigation housing provisions for housing.

Mr. Souki had no further questions.

Intervenors

Mr. Pierce requested clarification on Mr. Rowell’s previous involvement with the landowners. Mr. Rowell described his prior engagement with the Ka’ono’ula Partners and the Honua’ula Partnership and what his services consisted of. Mr. Rowell also described his relationship and services for Eclipse Development in the Petition area and how he was attempting to resolve DOT issues in the near and distant future for the region.

Mr. Pierce had no further questions.

Redirect

Mr. Steiner requested clarification on whether Mr. Rowell was working with the DOT regarding the TIAR to address condition 5 of the decision and order. Mr. Rowell responded that he was and that this was the seventh version of the traffic report.

Commissioner Questions

Commissioner McDonald requested clarification on PP Exhibit 28 and the permitted access to Pi’ilani Highway. Mr. Rowell responded that the exhibit depicted proposed permitted access points and that no current permitted access point existed in the area; and provided the background reasoning for illustrating the proposed access.

Commissioner McDonald also requested clarification on the termination points of the acceleration and deceleration lanes in the exhibit. Mr. Rowell stated that he did not know why the lanes were depicted and referred the question to the civil engineer.

Commissioner Heller requested clarification on the differences in traffic mitigation requirements for the past and present proposed projects. Mr. Rowell opined what types of mitigations would be involved by examining the background conditions and comparing them to the separate types of projects with a commercial/light industrial use and with a retail use.

There were no further questions for Mr. Rowell.

2. Tom Holliday- Expert Market Studies

Mr. Steiner stated that Mr. Kam would be handling this portion of the proceedings. Mr. Holliday was offered as expert witness by Mr. Kam.

County and OP had no objections.

Mr. Pierce stated that he objected to portions of Mr. Holliday's testimony that appeared to be legal conclusions and non-relevant. Chair Chock noted the objection, and allowed, in consideration for cost/expense, Mr. Holliday to comment on the rebuttal portions of submitted testimony, and commented that he would afford the similar opportunity to Intervenors. Chair Chock also commented that the Commission would determine the relevancy of the portions of Mr. Holliday's testimony that were being challenged.

Mr. Kam requested confirmation that Mr. Holliday's written testimony had been admitted and accepted into evidence. Chair Chock confirmed that it was.

Mr. Holliday described his perception of how market conditions had affected the evolution of the original proposed project into the current proposed project and how it was still consistent with the original representations made about it; and why it had to adjust and adapt to meet market demands to be financially viable.

Mr. Holliday was also asked to comment on Intervenors Witness, Richard "Dick" Mayer's testimony to the Commission. Discussion ensued as Mr. Pierce continued his objection to comments being allowed on rebuttal witnesses during this portion of the proceedings. Chair Chock noted the objection and advised that due to time and cost considerations he would allow the questioning to continue.

Mr. Holliday elaborated on how he disagreed with portions of Mr. Mayer's testimony. Discussion occurred on relevance and Mr. Kam refocused his questions on how Home Depot-type businesses had altered traditional business practices and nomenclature. Mr. Holliday provided his perspective on market condition changes and how they related to the proposed project and zoning conformance.

The Commission went into recess at 12:18 p.m. and reconvened at 12:32 p.m.

Continued Testimony-Tom Holliday

Questions for Mr. Holliday

County had no questions.

OP

Mr. Souki requested clarification on why flexibility was important for master plans. Mr. Holliday described why master plans had to be generalized to compensate for changes in market and economic conditions. Mr. Souki also requested clarification on the various changes that had affected past and present market conditions and the proposed land uses for the Petition Area. Discussion occurred over concerns about ensuring that responses of the witnesses were captured for the record and on what was actually planned for the Petition Area.

Mr. Souki requested clarification on what impact a Home Depot-like operation would have on the current proposed project. Mr. Holliday described how similar, yet different, that type of operation would be, and how the original proposed project differed in scope from the current one.

Mr. Souki had no further questions.

Intervenors

Mr. Pierce requested clarification on Mr. Holliday's opinion on the viability of the original proposed project plans. Mr. Holliday expressed his concerns about light industrial use and described why the current proposed project made more economic sense. Discussion ensued regarding the questioner allowing the witness to complete his response to the question. Chair Chock requested that more decorum be practiced during the questioning.

Mr. Holliday continued his response and described how other industrial developments on Maui differed from the proposed project and how "highest and best use" goals for the Petition Area matched up to "best market opportunities".

Mr. Pierce requested clarification on how Mr. Holliday determined that the proposed project was a conforming use on the entitlement structure that was sought and approved. Mr. Holliday shared how he made his conclusions.

Mr. Pierce had no further questions.

Redirect

Mr. Kam requested clarification on whether the term "conforming use" implied compliance with County zoning. Mr. Holliday shared his understanding on how the M1 zoning allowed for various uses that derived from the original entitlements; and

described what he intended the term “conforming use” to mean in the context of his testimony.

Mr. Kam had nothing further to add.

Discussion occurred over how to best utilize the remaining time for the meeting. Mr. Steiner expressed his concerns over being able to present a cohesive presentation in the remaining allotted time. Ms. Lovell expressed a similar concern. Chair Chock determined that Mr. Steiner should proceed with his presentation to continue the flow of the proceedings; and that Petitioner’s witness Charles Jencks appear.

3. Charles Jencks- Landowners Representative

Mr. Jencks was offered as Petitioner’s representative and shared his work experience and familiarity with the Petition Area; and his recollection of meetings and discussions in regards to the Petition Area and its allowed use and what limits would be imposed upon it. Discussion occurred regarding the representations being made during the questioning. Mr. Steiner refocused his questions and commented that he was about to proceed to a new segment of his questioning.

Chair Chock acknowledged that it was an appropriate time to conclude the proceedings for the day and asked if there were any questions or comments the Parties had.

Mr. Steiner requested clarification on the scheduling and timing for the next meeting. Executive Officer Orodener announced how the Parties could expect the meetings to be scheduled.

There were no further questions.

Chair Chock adjourned the meeting at 1:25 p.m.

