

LAND USE COMMISSION
MEETING MINUTES

February 16, 2012 – 10:00 a.m.
Molokini Room, Mākena Beach and Golf Resort
5400 Mākena Alanui
Mākena, Maui, Hawai`i, 96753

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

COMMISSIONERS EXCUSED: Napua Makua
Lisa Judge

STAFF PRESENT: Orlando Davidson, Executive Officer
Sarah Hirakami, Deputy Attorney General
Bert Saruwatari, Staff Planner
Riley Hakoda, Staff Planner/Acting Chief Clerk

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Walter Mensching

CALL TO ORDER

Chair Lezy called the meeting to order at 10:18 a.m.

APPROVAL OF MINUTES

Chair Lezy asked if there were any corrections or additions to the February 2-3, 2012 minutes. There were none. Commissioner Contrades moved to approve the minutes. Commissioner Teves seconded the motion. The minutes were unanimously approved by a voice vote (7-0).

TENTATIVE MEETING SCHEDULE

Executive Officer Davidson provided the following:

- The regular tentative meeting schedule for the calendar year 2012 was distributed in the handout material for the Commissioners.
- The March 1, 2012 meeting on Docket No. A06-771 D. R. Horton-Schuler Homes will run to 6:30 p.m. and may require having lunch for the Commission available on site to facilitate keeping the meeting on schedule.
- Any questions or concerns- please contact LUC staff.

A10-789 A&B Properties, Inc. (Wai`ale)

Chair Lezy announced that this was a hearing on Docket No. A10-789 A&B Properties, Inc.'s (Wai`ale) Petition To Amend the Agricultural Land Use District Boundary into the Urban District for approximately 545.229 acres at Wailuku and Waikapu, County of Maui, State of Hawai`i, TMK: 3-8-05: portion of 23 and 37, 3-8-07: 71, portion of 101 and 104.

Chair Lezy stated that the public notice for the meeting had indicated that the location of the meeting was at the Wailea Salon Room at the Makena Beach and Golf Resort and that signs had been posted to notify the public that the meeting has been relocated to the Molokini Room.

Chair Lezy updated the record and described the procedures to be followed for the hearing. There were no comments or objections to the procedures.

APPEARANCES

Benjamin Matsubara, Esq. and Curtis Tabata, Esq., represented Petitioner A&B Properties Inc. (A&B)

Dan Yasui, A&B

Grant Chun, A&B

Michael Hopper, Esq., Deputy Corporate Counsel, represented County of Maui Planning Department (County)

Danny Dias, County

Bryan Yee, Esq., represented State Office of Planning (OP)

(Please refer to LUC Transcript for more details on this matter)

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Jesse Souki, Director, OP
Robyn Loudermilk (OP)

Chair Lezy stated that the Commission had received additional written testimony from members of the public after the start of the hearing and added their names to the record.

PUBLIC WITNESSES

1. Eric Miyajima

Mr. Miyajima shared his reasons for supporting the proposed project. There were no questions for Mr. Miyajima.

2. Scott Sakakihara

Mr. Sakakihara submitted written testimony and shared why he supported approving the Petition.

There were no questions for Mr. Sakakihara.

3. Jacob Verkerke, President of the Waikapu Community Association

Mr. Verkerke stated the concerns that his organization had with the proposed project and suggested conditions that his association would like to have the Commission include if the Petition were granted.

Mr. Yee requested clarification on how many members were in the Association and whether the membership was voluntary. Mr. Verkerke responded that his organization had voluntary membership with 40-50 active members and about 75-100 attendees participating in community meetings.

There were no further questions for Mr. Verkerke.

4. Lyn McNeff – CEO- Maui Economic Opportunity

Ms. McNeff described the community role that she felt A&B had in the community and stated why her organization supported the Petition.

There were no questions for Ms. McNeff.

5. Hōkūao Pellegrino

Mr. Pellegrino submitted written testimony and shared his concerns about how he would be negatively impacted by the proposed project and

suggested amendments and conditions that the Commission should include if the Petition were granted.

Commissioner McDonald requested clarification on what perpetual water rights within kuleana lands Mr. Pellegrino had. Mr. Pellegrino described his understanding of the history of his family's rights and entitlements.

There were no further questions for Mr. Pellegrino.

6. Kay Fukumoto

Ms. Fukumoto shared her community activities and provided her reasons for wanting to have the Petition granted.

There were no questions for Ms. Fukumoto.

7. Laks Abraham- President and Chief Professional Officer, Maui United Way

Ms. Abraham stated that her organization supported the Petition and provided her reasons why.

There were no questions for Ms. Abraham.

8. Eric Yoshizawa

Mr. Yoshizawa stated that he supported the proposed project and described how his family and others in the community could benefit from it.

There were no questions for Mr. Yoshizawa.

Chair Lezy stated that public testimony would be temporarily suspended to allow the Commission to address agenda item V- Docket No. A11-790. The Commission went into recess at 11:15 a.m. and reconvened at 11:23 a.m.

A11-790 KULA RIDGE, LLC (Maui)

Chair Lezy announced that this was an action meeting on Docket No.A11-790 Kula Ridge LLC to approve the form of the order in this matter.

APPEARANCES

Steven Lim, Esq. and Martin Luna, Esq., represented Petitioner Kula Ridge LLC

(Please refer to LUC Transcript for more details on this matter)

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Clayton Nishikawa, Managing Director, Kula Ridge LLC

Michael Hopper, Esq., Deputy Corporate Counsel, represented County of Maui Planning Department (County)

Danny Dias, County

Bryan Yee, Esq., represented State Office of Planning (OP)

Jesse Souki, Director, OP

Robyn Loudermilk, OP

Chair Lezy updated the record and described the procedures to be followed for the hearing. There were no comments and/or objections to this course of action.

Chair Lezy asked Commissioner Contrades if he had the opportunity to review the record and transcripts in the docket and whether he was prepared to vote in the matter. Commissioner Contrades acknowledged that he was ready to deliberate and vote.

Chair Lezy asked for public testimony.

PUBLIC WITNESSES

None

DISCUSSION AND VOTE

Commissioner Heller moved to approve and adopt the Findings of Fact, Conclusions of Law and Decision and Order as drafted by LUC staff. Commissioner Teves seconded the motion.

There was no discussion.

The Commission voted as follows:

Ayes: Commissioners Heller, Teves, Matsumura, McDonald, Contrades, Chock and Chair Lezy.

Nayes: None

The motion was approved 7-0 with 2 excused.

Chair Lezy asked if there was any further business on docket A11-790. Mr. Lim thanked the Commission for its efforts.

There was no further business.

Chair Lezy announced that public testimony for docket A10-789 would resume.

A10-789 A&B Properties, Inc. (Wai`ale) (continued)

9. Michael Lee

Mr. Lee attempted to submit documents regarding his credentials for docket A06-771 and discussion ensued to determine the purpose of his submissions. Chair Lezy determined that Mr. Lee's credentials were not being challenged and that the submissions were not necessary for his public testimony. Mr. Lee stated that he was a cultural practitioner and shared his reasons for opposing the Petition and described why he felt that A&B did not have legal title to the Petition Area and should not be allowed to develop it.

There were no questions for Mr. Lee.

10. Clare Apana

Ms. Apana submitted written material, described her efforts to preserve the cultural significance of the Petition Area and provided her reasons for opposing the proposed project.

There were no questions for Ms. Apana.

11. Richard "Dick" Mayer- Vice -Chair Maui General Plan Advisory Group

Mr. Mayer submitted written testimony, shared his concerns about the proposed project and suggested conditions that the Commission consider during its deliberations on this Petition.

There were no questions for Mr. Mayer.

12. Robin Knox

Ms. Knox stated that she was an environmental scientist and described her concerns about the Petition Area and shared her recommendations for conditions for the proposed project.

There were no questions for Ms. Knox.

13. Lucienne DeNaie- The Sierra Club-Maui Chapter

Ms. DeNaie submitted written testimony and shared what her organization's involvement, concerns with and recommendations for the proposed project were.

Chair Lezy asked if The Sierra Club had conversations with Petitioner. Ms. DeNaie responded that there had been correspondence with the Petitioner but more dialog was needed to address community concerns.

There were no further questions for Ms. DeNaie.

14. Roderick Fong

Mr. Fong stated that his company, Fong Construction, supported the proposed project and provided his reasons why.

There were no questions for Mr. Fong.

15. David Kanahele

Mr. Kanahele submitted written testimony and stated that he echoed the sentiments of other cultural practitioners and opposed the Petition. Mr. Kanahele described conditions that he wished to have included if the Petition were granted and other concerns that he would like the Commission to consider.

There were no questions for Mr. Kanahele.

16. Kaniloa Kamaunu

Mr. Kamaunu described the vested Native Hawaiian ancestral rights that he felt entitled to and expressed his concerns about having them violated if the Petition were granted.

There were no questions for Mr. Kamaunu.

17. Johanna Kamaunu

Ms. Kamaunu shared her perspective of the native rights she felt she was entitled to and how water, kuleana settlement and ancestral matters needed to be better addressed.

There were no questions for Ms. Kamaunu.

18. Janet Six

Ms. Six stated that she was a plantation archaeologist and described the concerns she had with the Petition Area and what she would like the Commission to consider during deliberations on this docket.

There were no questions for Ms. Six.

19. Wilmont Kamaunu Kahaialii

Mr. Kahaialii shared his concerns about the proposed project and what spiritual and cultural rights and impacts had been overlooked by the Petitioner.

There were no questions for Mr. Kahaialii.

There were no further public witnesses

The Commission went into recess at 12:30 p.m. and reconvened at 1:57 p.m.

MAP ORIENTATION

LUC Staff Planner Bert Saruwatari provided a map orientation of the proposed project. There were no questions for Mr. Saruwatari.

Chair Lezy asked if Petitioner had been informed about the LUC's policy on hearing reimbursements. Mr. Tabata acknowledged that Petitioner had been informed and that Petitioner agreed to comply with the LUC's policy.

PRESENTATION OF EXHIBITS

Petitioner

Mr. Benjamin Matsubara offered Petitioner Exhibits "1"- "35" for the record. There were no objections to Petitioner's exhibits.

County

Mr. Hopper offered DPP's Exhibits "1"- "7" for the record. There were no objections to County's exhibits.

OP

Mr. Yee offered OP's Exhibits "1"- "11". There were no objections to OP's exhibits.

PETITIONER'S WITNESSES

1. Thomas Witten-

Mr. Witten was offered as an expert in community and environmental planning and land use. There were no objections to Mr. Witten's testimony.

Mr. Witten summarized the written testimony he had previously submitted and described the considerations and methodology used to plan and design the proposed project.

Questions for Mr. Witten

Maui County-

Mr. Hopper requested clarification on what “next steps” needed to be taken before construction could begin. Mr. Witten described additional entitlements that the proposed project needed to obtain to better conform to community and zoning plans for the region and how the origin and construction of roadways was being done.

There were no further questions by Mr. Hopper.

OP-

Mr. Yee requested clarification on Department of Health (DOH) concerns regarding the proposed buffer zones located in the Petition Area. Mr. Witten described the methodology used in designing the proposed buffer zones and the sizes of the various buffer zone features.

Mr. Yee requested clarification on how discrepancies with the Maui Island Plan were handled. Mr. Witten described the problem solving techniques and actions used to obtain an agreement in concept with County and stated that once the County gave its approval, construction was ready to begin.

Mr. Yee requested clarification on how “protected areas” would be sheltered and how other mitigation measures would be performed. Mr. Witten described how the Petition Area conformed to State, County and community plans and provided details of sustainability and low impact design measures that were part of the proposed project and how Petition Area sand dunes had been assessed for preservation.

There were no further questions for Mr. Witten and no redirect by Mr. Matsubara.

Commissioner Questions

Commissioner Heller requested clarification on plans for the elementary school planned for the Petition Area. Mr. Witten described the considerations that were made in locating the site for the school to best fit the needs of the anticipated community and the region.

Commissioner Teves asked if sand mining was currently being done in the Petition Area. Mr. Witten responded that he was not aware of any sand mining activity and described how the sand dunes in the preservation area of the proposed project would be protected.

Chair Lezy requested clarification on the green buffer areas that were planned for the Petition Area. Mr. Witten described the factors that

had been considered in locating and designing the buffer zones within the proposed project to conform to the community plans for the region.

There were no further questions.

The Commission went into recess at 2:57 p.m. and reconvened at 3:15 p.m.

2. Adrienne Wong

Ms. Wong was offered and admitted as an expert in engineering and read her submitted testimony describing the engineering and drainage plans for the Petition Area.

Questions for Ms. Wong
County-

Mr. Hopper requested clarification on the internal roadway, waste/storm water drainage and water treatment plant systems planned for the Petition Area. Ms. Wong described the standards and design features for the various infrastructure systems and the engineering considerations that were made during the planning process that determined the need for a waste water treatment plant, and the government agency approvals that had to be obtained.

OP-

Mr. Yee requested clarification on best management practices (BMP) for drainage and water resources for the Petition Area. Ms. Wong described how the engineering plans had prescribed onsite BMP procedures and how the existing County water system would be used to supply the proposed project.

Mr. Yee requested further clarification on what facilities needed to be built to support the project, whether endangered species were threatened, and how Petition Area aquifer issues would be handled. Ms. Wong stated that it was the intention of the Petitioner to build a new waste water treatment facility and that issues dealing with endangered species and aquifers still needed to be addressed. Discussion ensued to determine which witness would address OP's questions related to water. Mr. Tabata noted that Petitioner had another expert witness for questions related to Petition Area water resources. Mr. Yee had no further questions for Ms. Wong.

There was no redirect.

Commissioner Questions

(Please refer to LUC Transcript for more details on this matter)

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Commissioner Heller requested clarification on the planned waste water treatment plant capacity. Ms. Wong responded that the stated capacity levels were not final and subject to change.

Commissioner McDonald requested clarification on the specifications used to determine the drainage requirements for the proposed project. Ms. Wong described how the standards used in the infrastructure designs exceeded county requirements.

There were no further questions.

3. Lisa Rotunna-Hazuka

Ms. Rotunna-Hazuka was offered and admitted as an expert on archaeology and described her role in studying the Petition Area and making recommendations to establish and maintain cultural preservation areas within it.

Questions for Ms. Rotunna-Hazuka

County-

Mr. Hopper had no questions.

OP-

Mr. Yee requested clarification on the total acreage set aside for preservation areas and how the areas were identified and planned to be maintained. Ms. Hazuka replied that there were 5 separate areas totaling about 30 acres and described how the Petition Area had been surveyed for surface and underground burial sites and remains and how the data retention and detention plans had been drafted to best monitor and maintain them. Ms. Hazuka also described the protocols that would be followed when new discoveries were made onsite or during monitoring and how SHPD and other agencies would be advised; and stated that she was aware of the cultural sensitivities involved with her work.

Mr. Yee requested further clarification on the procedures that were to be followed when discoveries were made in different situations and whether any "untouched" sand dunes remained in the Petition Area. Ms. Hazuka provided her understanding of how burial discoveries were handled, and stated that most of the sand dunes in the area had been altered and that there were no "untouched" sand dunes outside of the preservation areas.

Redirect

Mr. Matsubara asked if Ms. Hazuka had prepared the SHPD data recovery plan and preservation plan for the Petition Area burial sites. Ms. Hazuka responded that she had and stated that SHPD had acknowledged her report; and described how SHPD based its decisions regarding burial matters.

Mr. Matsubara requested further clarification on whether burial findings in the Petition Area could include remains from a famous historical Hawaiian battle. Ms. Hazuka described her understanding of where the battle may have occurred and stated that she had been unable to locate historical evidence of the battle in the Petition Area.

Mr. Yee requested and was granted permission to re-cross Ms. Hazuka and asked what confirmation measures needed to be received from SHPD about preservation efforts. Ms. Hazuka described how SHPD usually communicated when discoveries were made.

Commissioner Questions

Commissioner Chock requested clarification on outreach efforts to determine lineal or cultural descendants. Ms. Hazuka stated that there had been no lineal or cultural descendant claims and described the current practices used for discovering claims. Ms. Hazuka stated that it was possible to be more pro-active and described the mitigation efforts used for the ongoing preservation efforts.

Commissioner Chock requested further clarification on the location of the burial sites in the Petition Area, what the significance of the burial findings were; and how it had been determined that burial remains related to the battle of Kakanilua were not onsite. Ms. Hazuka identified the various burial sites and described her findings and how she handled new discoveries of onsite burials. Ms. Hazuka expressed how she had performed her research on the battle and had determined the types of human remains she was seeking which would indicate that they were related to the Kakanilua battle.

Mr. Matsubara noted that Petitioner had another cultural expert witness to address lineal and cultural descendants of the Petition Area.

Commissioner McDonald requested further clarification on how locations and discoveries were preserved. Ms. Hazuka described how she handled and reported her discoveries and how she established a monitoring and preservation plan for them.

Chair Lezy asked whether Ms. Hazuka had interaction with any cultural expert and whether any of her discoveries failed to be included in the preservation plan. Ms. Hazuka shared how she had worked with the cultural expert and stated that all her discoveries had been included in the preservation plan.

There were no further questions for Ms. Hazuka.

4. Glenn Kunihisa- President CRE/ACM Consultants, Inc.

Mr. Kunihisa was offered and admitted as an expert witness in real estate market analysis and economic impacts.

Questions for Mr. Kunihisa

County-

Mr. Hopper had no questions.

OP-

Mr. Yee requested clarification on the methodology and criteria used to determine the market strength for the units in the proposed project. Mr. Kunihisa described how he conducted his study to determine and quantify demand for the housing units offered in the Petition Area and what market forces were anticipated to be in effect when the proposed project was completed. Mr. Kunihisa also expressed why he was confident that both residential and commercial components would be successfully absorbed in the marketplace and during what corresponding time frames of development.

Commissioner Questions

Commissioner Heller requested clarification on the data contained in Petitioner Exhibit #31-the Project's anticipated economic impact summary. As Mr. Kunihisa examined the exhibit, Mr. Tabata described why he had submitted the exhibit and what it was intended to depict. Mr. Tabata asked how the number of housing units shown in the exhibit were economically benefited by the project compared to those directly affected by the actual building of the units. Mr. Kunihisa described how he had

arrived at his findings and how he represented his findings in the exhibit to illustrate direct and indirect economic benefits and multiplier numbers.

There were no further questions for Mr. Kunihisa.

The Commission went into recess at 4:22 p.m. and reconvened at 4:32 p.m.

5. Robert Hobdy

Mr. Hobdy was offered and admitted as an expert witness in biology. County-

Mr. Hopper had no questions.

OP-

Mr. Yee requested clarification on whether the wastewater treatment plants posed a threat to endangered bird species in any way and if mitigation was needed. Mr. Hobdy provided his understanding of how birds and nene geese might be attracted to the treatment plant area and stated that he had not analyzed how to mitigate the "attractive nuisance" aspect of the treatment plants. Mr. Yee also asked how the blackburn sphinx moth might be impacted by development of the Petition Area. Discussion ensued to determine what Federal and State laws needed to be observed and what preservation measures needed to be practiced to conform to existing "taking" laws and enforcement standards. Mr. Hobdy provided his suggestions on how nene geese might be protected and described his findings and recommendations for protecting the blackburn sphinx moth and its supporting host plants.

There were no Commissioner questions and no redirect.

Chair Lezy introduced Sarah Hiramami, the new LUC Deputy Attorney General to the Parties and announced that the hearing would recess and reconvene at 8:30 a.m. on February 17, 2012.

The Commission went into recess at 4:46 p.m.

LAND USE COMMISSION
MEETING MINUTES

February 17, 2012 – 8:30 a.m.
Molokini Room, Mākena Beach and Golf Resort
5400 Mākena Alanui
Mākena, Maui, Hawai'i, 96753

COMMISSIONERS PRESENT: Ronald Heller
Ernest Matsumura
Chad McDonald
Kyle Chock
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Lisa Judge

COMMISSIONERS EXCUSED: Napua Makua
Thomas Contrades
Nicholas Teves, Jr.

STAFF PRESENT: Orlando Davidson, Executive Officer
Sarah Hirakami, Deputy Attorney General
Bert Saruwatari, Staff Planner
Riley Hakoda, Staff Planner/Acting Chief Clerk

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Walter Mensching

CALL TO ORDER

Chair Lezy called the meeting to order at 8:50 a.m. and announced that an Executive Session was the first item on the agenda for the day. Commissioner Judge moved and Commissioner Teves seconded the motion for an Executive Session. By voice vote (6-0) the Commission elected to enter into Executive Session at 8:50 a.m. and reconvened at 9:16 a.m.

A10-789 A&B PROPERTIES, INC (WAI'ALE) (Maui)

Chair Lezy announced that this was a continued hearing on Docket No. A10-789 A&B Properties, Inc.'s (Wai'ale) Petition To Amend the Agricultural

Land Use District Boundary into the Urban District for approximately 545.229 acres at Wailuku and Waikapu, County of Maui, State of Hawai'i, TMK: 3-8-05: portion of 23 and 37, 3-8-07: 71, portion of 101 and

APPEARANCES

Curtis Tabata, Esq., represented Petitioner A&B Properties Inc.(A&B)

Dan Yasui, A&B

Grant Chun, A&B

Michael Hopper, Esq., Deputy Corporate Counsel, represented County of Maui Planning Department (County)

William Spence, Director, County

Danny Dias, County

Bryan Yee, Esq., represented State Office of Planning (OP)

Jesse Souki, Director, OP

Robyn Loudermilk, OP

PETITIONER's WITNESSES (continued)

6. Kumu Maxwell Keli'i Tau'a

Kumu Tau'a was offered and admitted as a Cultural Assessment Expert Witness and described the historical significance of the ancient battle that occurred in the Petition Area and his role in gathering and reporting information from local cultural practitioners and lineal descendants in the community.

Kumu Tau'a described his interviews with Clare Apana, Hōkūao Pellegrino and Lucienne DeNaie; and noted that he had attempted to have Ms. Apana "sign-off" on her interview several times without success; and that Mr. Pellegrino declined to be recorded for his interview. Kumu Tau'a stated that Mr. Pellegrino was the only interviewee that lived in the area and described how the interviewee selection process attempted to gather information from a variety of community resources.

Questions for Kumu Tau'a

County-

Mr. Hopper had no questions

OP-

Mr. Yee requested clarification on the efforts that were made to contact the lineal descendants of the Petition Area and what information

had been obtained from them; whether “untouched dunes” still existed outside the cultural preservation areas; and how Petitioner had ensured that proper cultural guidelines were followed in planning to develop the Petition Area. Kumu Tau`a described the objectives of his study and how he had attempted to trace the lineal descendants in the area and how he had worked with the archaeologist, Ms. Hazuka, to make a determination that no “untouched dunes” remained outside the cultural preserve; and how cultural practices continued to be observed and needed to be respected to better co-exist in society.

Redirect

Mr. Matsubara requested further clarification on who was included in the Cultural Impact Assessment (CIA) conducted for the Petition Area and what the “Cultural Advice” recommendations included in the CIA were. Kumu Tau`a identified Ron Jacinto and Leslie Higa as other interviewees and described his recommendations to preserve the cultural integrity and activities for the Petition Area; and acknowledged that Petitioner had agreed to follow his suggestions regarding cultural preservation.

Commissioner Questions

There were no Commissioner questions.

7. Thomas Nance

Mr. Nance was offered and admitted as an expert on ground water and surface water, hydraulics, and water systems design. Mr. Nance described the potential water sources for the proposed project and the dual water system that he had proposed be used to obtain and deliver them.

Questions for Mr. Nance County-

Mr. Hopper requested clarification on why the Wai`ale water treatment plant might not be timely for the proposed project. Mr. Nance responded that this project was being done in conjunction with the Board of Water Supply (BWS) and that he was not directly involved in it; and described the possible delays in obtaining approvals and other factors that he thought could affect the delivery of the treatment plant on schedule. Mr. Nance confirmed that well sources would need to be relied upon for water and that ongoing discussions between Petitioner and the

well owners (Waikapu Country Town) to obtain water were being conducted; and that his plans and recommendations observed the local county and State requirements for demonstrating that the proposed project had water resources available to it. Mr. Nance stated that he was not aware of the current status of County negotiations for water resources and was not involved in them.

OP=

Mr. Yee asked what Mr. Nance's involvement was regarding the Wai`ale water surface treatment plant and for clarification on the water well yields and the capacities of its delivery system. Mr. Nance responded that he was not involved in discussions about the treatment plant and shared the details of the water system design and stated that there was no intention to place waste water disposal injection wells within the Petition Area. Mr. Nance also described the aquifers and well resources in the area and why he preferred to utilize the Waikapu aquifer for the proposed project.

Mr. Yee requested clarification on how the Wai`ale Treatment Plant might be affected by the Maui Na Wai `Eha decision regarding stream water flow management. Mr. Nance stated that the Water Commission standards were the latest that he was aware of that needed to be complied with and discussion ensued to determine if there was still an available water allotment for the proposed project. Mr. Nance did not specifically know if existing available uses would need to be converted to new uses and described the role of the Water Commission in making these determinations.

Mr. Yee requested clarification on what yields the available wells supplied for different areas and whether it was sufficient. Mr. Nance described how the wells and their distribution systems operated and would need to adapt to handle the additional needs of the proposed project.

Redirect-

There was no redirect.

Commissioner Questions

Commissioner Judge requested clarification on whether water from the Kahului aquifer would still be available if other water sources were not available or accessible. Mr. Nance described how the recharge

for the regional aquifers occurred and how the sources might be impacted under different circumstances.

There were no further questions for Mr. Nance.

The Commission went into recess at 10:22 a.m. and reconvened at 10:33 a.m.

8. Keith Niiya

Mr. Niiya was offered and admitted as an expert witness on Traffic Assessments. Mr. Niiya described the criteria and standards used to study and analyze traffic and roadway systems in and near the Petition Area and stated that it was not feasible for Petitioner to have the accepted TIAR be accepted for County review prior to final zoning approval and update the TIAR every 5 years.

Questions for Mr. Niiya

County-

Mr. Hopper requested clarification on why TIAR updates were necessary and how County subdivision ordinances and the Department of Public Works could impact the planned transportation conditions in the Petition. Mr. Niiya described why TIAR updates were necessary and acknowledged that the Petition conditions should address the Department of Public Works and County subdivision issues.

OP-

Mr. Yee requested clarification on how the DOT requirements for the proposed project's design requirements could eliminate the need for Road "E" and how the TIAR acceptance might be affected by it. Mr. Niiya stated that at a meeting with the DOT in January, 2012, it was agreed that Road "E" could be eliminated and a replacement connection road further south could be used instead to better space and improve the intersections for the Petition Area. Mr. Niiya also described why the County zoning and project district zoning processes were difficult and how the traffic plans could change as the engineering and planning for the Petition Area got started and underway. Mr. Niiya described why he felt it was unfair for Petitioner to do all the engineering and sizing of the roadways upfront; and how right of ways had been set aside for future improvements in the Petition Area.

Mr. Yee requested clarification on when the TIAR could be accepted by the DOT. Mr. Niiya responded that the TIAR was not typically accepted at the LUC level, but could be accepted at the project district zoning approval stage; and that TIAR revisions could be done if significant changes in a proposed project occurred which might affect traffic flow in and around it instead of following a schedule.

Redirect

Mr. Tabata requested clarification on whether Mr. Niiya was clear on when the TIAR would be accepted and described how project district zoning and zoning approval were the same in this case. Mr. Niiya replied that with that explanation of the process, his response to the state's questioning regarding TIAR acceptance needed to be changed and restated his understanding of how project zoning during the County approval process occurred first and then engineering and final design work would commence after zoning and then an update to the TIAR would be appropriate.

Commissioner Questions

Commissioner Heller requested clarification the term "minor movement" used in Mr. Niiya's written testimony. Mr. Niiya described how the 2022 traffic projections were factored into his findings; how the levels of service might be impacted and how different mitigation measures could adopted if needed, and added that he anticipated the local residents to develop alternate routes to adjust to the traffic changes resulting in little traffic impacts at that future date.

Commissioner Judge requested clarification on the situation with the Road E connection. Mr. Niiya referred to the Petition Map and described how it would not connect to the main roadway; and how Kamehameha Avenue would become the main access point.

9. Grant Chun

Mr. Chun stated that he was Vice-President of A&B Properties, Inc. and described how the proposed project evolved from conception to its current state.

Questions for Mr. Chun County-

Mr. Hopper requested clarification on what further entitlements the proposed project required if the Petition were granted. Mr. Chun described how Petitioner would seek additional approvals subject to the County adopting its new General Plan and then obtain a community plan amendment and the necessary zoning change to begin construction.

Mr. Hopper asked if the 50 acres of lands that were to be dedicated to the County by Petitioner had been identified. Mr. Chun replied that the dedicated lands issue was still under discussion and that the Maui County Council would have to approve and accept the lands. Mr. Chun stated that the proposed project was consistent with the draft urban growth boundaries, and the Maui Island Plan as a whole; and that Petitioner would have to comply with whatever boundaries are adopted by both plans.

Mr. Hopper requested clarification on whether Mr. Chun was aware of the Maui workforce housing policy and the "show me the water bill". Mr. Chun stated that he was and acknowledged that Petitioner had planned to provide sufficient affordable housing units and obtain water resources to comply with the policy.

Mr. Hopper requested clarification on the "open space" plans for the Petition Area. Mr. Chun described how Petitioner developed its plan to commit 65 acres for community recreational and open space use and what needed to occur with the County Department of Parks in the subdivision approval/zoning process.

Mr. Chun also stated that he did not anticipate any problems with complying with the County Planning Department's proposed conditions and shared his understanding of the current discussions between the Waikapu Town Center development and Mr. Atherton with respect to the water resources for the region. Mr. Chun further stated that dedicating the water wells to the public system would be Petitioner and well owner's preference; and that Petitioner could satisfy County's water availability requirement though no agreement on water supply for the proposed project had been reached.

OP-

Mr. Yee requested clarification on the mitigation measures that Petitioner planned to adopt for the proposed project. Mr. Chun replied that Petitioner would follow the recommendations cited in the EIS or use better ones if available.

Mr. Yee requested clarification on Petitioner's efforts to protect endangered species in the Petition Area and DOE contributions. Mr.

Chun stated that discussions were still being conducted on the endangered species issue and that additional contributions were expected in addition to the land being donated for schools.

Mr. Yee requested clarification on the status of the waste water treatment plant that the County desired for the Petition Area. Mr. Chun stated that he was reluctant to commit to the plant at this point of planning but that having the facility was the logical, feasible alternative at this time; and that if built, the plant would re-use wastewater as described by Mr. Nance's testimony.

Mr. Yee asked how Petitioner would react if the Petition was no longer consistent with the Maui Island Plan and the urban growth boundary. Mr. Chun described how Petitioner would seek compliance with the Maui Island Plan and stated that the described hypothetical situation regarding the urban designation was too abstract to address.

Mr. Yee requested clarification on the conditions that were agreeable to Petitioner. Mr. Matubara commented that there were four conditions that were still being discussed. Discussion ensued that resulted in conditions 2, 3, 7 and 11 being identified as still needing agreement, and that condition 6 was still awaiting feedback from Civil Defense regarding when sirens would be erected.

Redirect-

There was no redirect.

Commissioner Questions-

Commissioner McDonald requested information regarding the status of Petitioner's proposed projects. Mr. Chun described the current status of the various proposed projects that Petitioner had.

There were no further questions for Mr. Chun.

Mr. Matsubara stated that the Petitioner had no more witnesses and rests except for rebuttal.

COUNTY WITNESS

1. William Spence- Director, Maui County Planning Department

Mr. Spence described why the County was in support of the Petition with conditions; and how the Maui Island Plan and the urban growth boundaries and district boundary amendments for the island had evolved to manage growth and land use.

Mr. Spence also described the current status of the Maui Island Plan and what approvals it needed to obtain from different County entities. Mr. Spence stated why the proposed project could proceed under current conditions and used the Petition Area map to identify its location within the urban growth boundary; and read a portion of the draft Maui Island Plan to the Commission that provided for green space separation of urban areas. (Mr. Hopper had noted that the entire plan was not an exhibit and requested that he be allowed to provide copies of the excerpts at a later date. There were no objections to his request.)

Questions for Mr. Spence

Petitioner

Mr. Matsubara had no questions.

OP-

Mr. Yee requested clarification on what might happen at the County level if the district boundary amendment was granted but was inconsistent with current plans before the Maui Council; and the community plan; or if it failed to obtain County approvals. Mr. Spence described how he envisioned the Planning Department and the Petitioner would react to the situation.

There was no redirect and the Commissioners had no questions.

Mr. Hopper stated that the County had no other witnesses available.

Chair Lezy commented to the Parties that this was the second LUC meeting that had to terminate early due to lack of witnesses and urged the Parties to have their witnesses available for the next hearing to conclude the evidentiary portion of the proceedings. There were no questions /comments and no further business to attend to.

Chair Lezy stated that the Legislative update portion of the agenda would be deferred to a later date and adjourned the meeting at 11:55 a.m.

