

LAND USE COMMISSION
MEETING MINUTES
August 23, 2012
The Royal Lahaina Resort Maui Ball Room
2780 Keka`a Drive
Lahaina, Maui, Hawai`i, 96761

COMMISSIONERS PRESENT: Chad McDonald
Ernest Matsumura
Lance Inouye
Nicholas Teves, Jr.
Ronald Heller
Sheldon Biga

COMMISSIONERS EXCUSED: Napua Makua
Kyle Chock
Thomas Contrades

STAFF PRESENT: Daniel Orodenker, Executive Officer
Bert Saruwatari, Staff Planner
Scott Derrickson, Staff Planner
Sarah Hirakami, Deputy Attorney General
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Walter Mensching

CALL TO ORDER

Vice Chair Heller called the meeting to order at 10:38 a.m.

APPROVAL OF MINUTES

Vice Chair Heller asked if there were any corrections or additions to the August 2, 2012 minutes. Commissioner Teves moved to approve the minutes. Commissioner Biga 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 for the calendar year 2012 was distributed in the handout material for the Commissioners.
- The September 6-7, 2012 meeting is tentatively set to be held on Maui for Docket No. A12-795 and other Maui matters.
- The Commission also is planning to attend the HCPO Conference in Honolulu on September 12-14, 2012 and will be having a meeting on September 14, 2012 to address Docket No. A99-728 DHHL and SP09-403 Dept. of Environmental Services-Waimanalo Gulch Sanitary Landfill.
- The first meeting in October will be on October 4-5, 2012, location to be determined.
- Any questions or concerns- please contact LUC staff.

CONTINUED HEARING

A12-795 WEST MAUI LAND COMPANY, INC- KAHOMA RESIDENTIAL LLC (Maui)

Vice Chair Heller announced that this was a continued hearing on Docket No. A12-795 West Maui Land Company, Inc., Kahoma Residential LLC, to consider the reclassification of approximately 16.7 acres of land from the Agricultural District to the Urban District at Lahaina, Maui, Hawai'i for a residential subdivision to provide 68 single-family affordable housing units to families earning less than 160% of the median family income of families in Maui County, Hawaii, TMK Nos. (2) 4-5-10:005

APPEARANCES

James Geiger, Esq., represented West Maui Land Inc.

Heidi Bigelow, West Maui Land Inc.

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

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

Rodney Funakoshi, OP

Michele Lincoln, Intervenor

Routh Bolomet, Intervenor

Michael Lee, assisting Routh Bolomet.

Vice Chair Heller updated the record and explained the procedures to be followed for the proceedings. There were no comments, questions or objections to the procedures. Mr. Geiger stated that he had no questions but was concerned that Petitioner had not received copies of some of the items that were submitted to the Commission. Vice Chair Heller replied that those matters would be addressed when exhibits were offered to the Commission. Mr. Geiger acknowledged Vice Chair Heller's comment. There were no further questions and Vice Chair Heller called for Public Witnesses.

PUBLIC WITNESSES

1. Clare Apana

Ms. Apana submitted written testimony, described her relationship and knowledge about Intervenor Bolomet and summarized the burial rights, cultural impacts, water rights, agriculture and other concerns that she had regarding the Petition Area for the Commission. Ms. Apana also shared experiences that she had while visiting the Petition Area and requested that the Commission consider her testimony during decision-making on the docket.

Mr. Geiger had no questions.

Mr. Yee requested clarification on what cultural and archaeological impact issues Ms. Apana was testifying to and what issues Michael Lee would address. Discussion ensued to determine what Ms. Apana's public testimony specifically addressed and what Mr. Lee's testimony would be. Mr. Yee stated that he was seeking clarification to determine who he should address his questions to regarding archaeological and cultural matters. Ms. Apana stated that she did not know what Mr. Lee would be addressing and described what her testimony consisted of and deferred to Mr. Lee to respond to detailed questions on cultural and archaeological issues regarding the Petition Area. Mr. Yee had no further questions.

Ms. Lincoln had no questions.

Ms. Bolomet requested clarification on what events she and Ms. Apana had experienced together during their site visit to the Petition Area. Ms. Apana provided her recollection of the events that occurred during an earlier visit to the Petition Area and described the activities and

experiences that she, Mr. Lee and Ms. Bolomet had while on site. Discussion occurred and Vice-Chair Heller requested that Ms. Bolomet focus her questioning on the specific issues of the docket. Ms. Bolomet acknowledged Vice Chair Heller's comment and requested clarification on the areas bordering the Petition Area and how various area names applied to different sections. Ms. Apana shared her understanding of what names applied to what areas. There were no further questions for Ms. Apana.

There were no further public witnesses.

PRESENTATION OF EXHIBITS

Petitioner

Mr. Geiger offered Petitioner Rebuttal Exhibits 37 and 38 for the record. There were no objections by the Parties or the Commissioners to Petitioner's exhibits and they were admitted to the record.

County

Mr. Giroux stated that he had no exhibits at the current time and reserved the opportunity to submit exhibits when his witnesses were called.

OP

Mr. Yee offered no exhibits.

Intervenor Lincoln

Ms. Lincoln offered no exhibits.

Intervenor Bolomet

Ms. Bolomet described the difficulties she had in receiving material from Petitioner and stated that she submitted rebuttal testimony to Petitioner's rebuttal of Mr. Lee's submitted testimony. Discussion ensued to clarify what exhibit numbers had been assigned to the material Ms. Bolomet had submitted, and whether or not the exhibits abided by the Commission order requiring exhibit submittals by August 1, 2012. Petitioner and County objected to allowing further submittals by Intervenor Bolomet and OP stated that they were not sure what Intervenor Bolomet had submitted. Further discussion ensued to identify what Intervenor Bolomet had submitted, how it was identified, and whether or not it had been submitted by the imposed deadline. Vice Chair Heller deferred admitting any submittals by

Intervenor Bolomet until they had been properly identified and the Parties assured that they had the proper copies of what had been submitted.

Ms. Bolomet stated that she had requested the Parties supply her with emailed copies of their submittals due to poor mail service in her area and described the efforts she had made to submit her exhibits; and asserted that she had submitted Exhibits 11 and 17 on August 1, 2012. Discussion ensued to determine what exhibits had been submitted and Exhibit 17 was admitted to the record based on the initial examination of the Commission's records.

There was continued discussion on what would be admissible and Vice Chair Heller determined that the proceedings should continue and that exhibit identification problems be resolved and re-addressed later; and requested that Petitioner begin its presentation.

PRESENTATIONS

Petitioner Witnesses

1. Keith Niiya- Traffic Expert

Mr. Niiya updated and corrected/updated his submitted written testimony. Mr. Niiya summarized his report and stated that the proposed project would not have a significant impact on the area and that the proposed traffic improvements were appropriate for the Petition Area and that a TIAR was not required.

Questions for Mr. Niiya

County

Mr. Giroux inquired if any mitigation needs were uncovered by Mr. Niiya's study. Mr. Niiya responded that the proposed project did not create any need for mitigation and described how he had performed this aspect of his study.

OP

Mr. Yee requested clarification of a section of page 4 of Mr. Niiya's report. Mr. Niiya provided additional details to satisfy Mr. Yee's questions.

Intervenor Lincoln

Ms. Lincoln requested clarification on various details of Mr. Niiya's report. Mr. Niiya clarified his findings about area pedestrian/traffic patterns and how community streets evolved or were evolving to locally accommodate area growth and how the proposed project would affect the situation.

Intervenor Bolomet

Ms. Bolomet requested clarification on what considerations were made to determine the scope of the traffic study that had been performed. Mr. Niiya described the criteria, methodology and considerations that had been made to conduct and analyze his study and how its findings applied to the proposed project. Discussion ensued to have Ms. Bolomet refrain from interjecting extraneous comments and arguing her case during her questioning.

Petitioner Rebuttal

Mr. Geiger asked if the ultimate decision regarding the proposed project was that it would have no impact on existing traffic. Mr. Niiya confirmed that his findings indicated no impact to existing traffic.

The Parties had no further questions for Mr. Niiya.

Commissioner Questions

Commissioner Biga requested clarification on whether a portion of the Petition Area would be exposed to future traffic from the Lahaina bypass road. Mr. Niiya described how he envisioned traffic in the area would flow and stated that he did not anticipate significant traffic from the future bypass road.

Commissioner McDonald requested clarification on how the traffic generation figures compared between Mr. Niiya's study and a TIAR performed by the Wilson Okamoto firm. Mr. Niiya stated that both he and the Wilson Okamoto study estimated less than a 100 trips being generated by the proposed project, and that it had been submitted as Petitioner's Exhibit 7.

There were no further questions.

The Commission went into recess at 11:45 a.m. and reconvened at 11:58 a.m.

Vice-Chair Heller stated that he had reviewed Intervenor Bolomet's submittals during the recess and that they did appear to contain Exhibit 11. Mr. Geiger responded that he would need to re-check his documents and records to confirm receipt of Intervenor Bolomet's exhibit. Vice-Chair Heller suggested that Ms. Bolomet could file a Motion to have Exhibit 11 admitted at the next meeting. The Parties concurred that Vice-Chair Heller's proposal was acceptable.

2. Michael Dega- Archaeologist

Mr. Dega stated that he had no corrections to his submitted written testimony and described how his study had been conducted, and what sampling methods he had used to collect his data; and stated that there had been no findings of adverse impact and no significant archaeological findings in the Petition Area.

Mr. Dega also described how and why he filed his report as an Archaeological Assessment instead a survey due to State Historic Preservation Division (SHPD) requirements at the time it was conducted since he had negative archaeological findings in the Petition Area; and confirmed that SHPD had acknowledged and accepted his findings report.

Questions for Mr. Dega

County-

Mr. Giroux requested clarification on what other additional outside resources had been used for the archaeological study. Mr. Dega described the types of resources that he found to be more helpful and reliable in his work, and expressed why he relied more on SHPD records than others; and how no archaeological information regarding the Petition Area had been discovered.

OP

Mr. Yee requested further clarification on how the Petition Area had been studied and whether or not any evidence of burial sites (heiau) or other archaeological findings had been made. Mr. Dega described how he and his team had performed their study and acknowledged that no heiau or archaeological findings had been noticed in the Petition Area.

Mr. Yee asked if Mr. Dega had any comments on Ms. Apana's testimony, both written and oral. Mr. Dega shared his perspective of Ms. Apana's testimony and how his findings contradicted portions of it.

Mr. Yee also asked if Mr. Dega had any comments on Mr. Lee's testimony. Mr. Dega recognized Mr. Lee's work and credentials and commented on how his findings differed from what Mr. Lee claimed to have discovered about the Petition Area.

Intervenor Lincoln

Intervenor Lincoln had no questions.

Intervenor Bolomet

Ms. Bolomet requested clarification on how the references listed in Mr. Dega's report had been used; and posed questions regarding various features that she believed to have archaeological value on the Petition Area. Discussion ensued to clarify how Ms. Bolomet should identify exhibits and references for the record; and focus on questions for the witness. Ms. Bolomet acknowledged Vice-Chair Heller's comments. Mr. Dega requested that Ms. Bolomet identify the location of the heiau that she claimed to exist on a map of the Petition Area. Ms. Bolomet indicated where she believed a heiau existed. Mr. Dega stated that he believed the area where Ms. Bolomet was identifying existed outside the Petition Area and described his findings for various rock formations that he had studied. Further discussion ensued to have Ms. Bolomet focus on asking questions rather than making arguments on the testimony. Ms. Bolomet acknowledged Vice-Chair Heller's comment.

Ms. Bolomet requested clarification on a portion of the Petition Area that she believed to have archaeological value. Mr. Dega described his findings and how the Petition Area had changed over time and how observations of material having archaeological value had been documented by him and his staff. Discussion ensued as Ms. Bolomet contested Mr. Dega's findings. Vice-Chair Heller again reminded Ms. Bolomet not to be argumentative and to ask questions. Ms. Bolomet referred to additional features and questioned why certain features were not reported in the descriptions of the area. Mr. Dega described why the features did not have archaeological value. Ms. Bolomet continued to contest the findings that Mr. Dega had and was again reminded to restrict her comments. Mr. Dega re-stated how he had

documented his findings and how archaeological determinations and criteria applied to his work.

Ms. Bolomet referred to her Exhibit 17 and asked Mr. Dega whether karsts existed in the area she was referring to on the map. Discussion ensued to establish a question and answer format within the proceedings for the record to accurately reflect what was occurring. Vice Chair Heller again requested Ms. Bolomet to follow proceeding protocol and she responded by asking how Mr. Dega's interpretation of the map could supersede the findings of a state hydrologist. Mr. Dega responded that the 1942 map Ms. Bolomet was using had since been updated using better technology and that more recent information had been used to formulate his opinions about the Petition Area.

Ms. Bolomet requested clarification on Exhibit 2- Public Works Maps that Clare Apana had submitted. Discussion ensued to clarify what exhibit Ms. Bolomet was referring to. Mr. Geiger stated that he had not received such an exhibit. Mr. Dega responded that he had not seen the map she was referring to and Vice Chair Heller again requested that Ms. Bolomet use questions to extract information from the witness. Mr. Geiger objected to the additional comments that Ms. Bolomet made regarding Mr. Dega's familiarity with his submitted material and Vice Chair Heller again requested that Ms. Bolomet use appropriate questioning with the witness. Ms. Bolomet responded that she had no further questions.

Rebuttal

Mr. Geiger requested clarification on the difference between igneous and limestone rocks. Mr. Dega described the differences and stated that he had not found evidence of limestone in the Petition Area, only igneous basalt rock.

Mr. Geiger requested clarification on a Phase I-Archaeological Survey Kahoma Flood Control Project Area, Lahaina, Maui dated October 11, 1974 from the Kahonoi Study. Mr. Dega acknowledged that he had seen the document and described his findings for a terraced area in Figure 1, page 2 and stated that it was located upland from the Petition Area.

Mr. Geiger also asked how the area had been used in more recent times. Mr. Dega replied that it had been involved in sugar cane cultivation and described how that

activity had affected his archaeological research efforts and how his excavation samplings in the Petition Area did not uncover any archaeological findings.

County, OP and Ms. Lincoln had no further questions.

Ms. Bolomet requested clarification of page 5, Figure 2 of the Connelly Report. Mr. Dega provided his understanding of what the arrow designations on the illustration meant. Discussion ensued again regarding Ms. Bolomet's questioning of the witness. Vice Chair Heller stated that the Commission would go into recess and advised Ms. Bolomet to utilize the time to better frame her questions for the witness.

The Commission went into recess at 12:53 p.m. and reconvened at 1:32 p.m.

Ms. Bolomet requested clarification of whether Mr. Dega ever had to modify an AIS. Mr. Dega shared his recollection of how many times he had modified an AIS and stated the conditions that would prompt him to take that action. Discussion ensued and Vice Chair Heller again cautioned Ms. Bolomet to refrain from making arguments and comments during the questioning of the witness.

Ms. Bolomet requested clarification on where sedimentary rock could be found in the Petutuib Area. Mr. Dega described where he thought sedimentary rock would be located; and how the terrain had been altered by construction in the area; and how his study's excavations had made adjustments and accommodations for any "fill" land in the search for archaeological material.

Ms. Bolomet requested clarification on how findings were documented and reported by Mr. Dega. Mr. Dega described how various situations required different types of investigation and specialties and how they were documented and reported. Ms. Bolomet asked if Mr. Dega would alter his report if he was shown archaeological findings in the Petition Area. Mr. Dega responded that he would and agreed to meeting with Ms. Bolomet and being shown archaeological features in the Petition Area.

Mr. Geiger commented that Mr. Dega had been asked to identify a terraced site on the 1884 map Exhibit before the break and requested clarification on the matter for the Commission. Mr. Dega identified the terraced area as being above the proposed project area.

Commissioner Questions

Commissioner Biga asked what other projects Mr. Dega had done. Mr. Dega provided his recollection of projects that he had been involved in and the nature of work that he had performed.

There were no further questions for Mr. Dega.

Mr. Geiger stated that he would submit the referenced Connelly report during testimony as Petitioner's Exhibit 39. Vice-Chair Heller acknowledged Mr. Geiger's offer.

3. Charles Biegel- Soil Engineer Expert

Mr. Biegel had no corrections or changes to his written submitted testimony and Mr. Geiger commented that Mr. Biegel's testimony was Petitioner's Exhibit 7 and there were no objections to Mr. Geiger's testimony or appearance as a witness.

Mr. Biegel summarized his finding for the Petition Area and stated that he did not encounter any limestone, lava tubes, groundwater, or underground caverns on the proposed project site and described how he had conducted his soils engineering study.

Questions for Mr. Biegel

County and OP had no questions.

Intervenor Lincoln

Ms. Lincoln requested clarification on different aspects of the terrain and soil coverings of the Petition Area. Mr. Biegel provided his understanding of how the terrain had changed over the years and what the impact of the various soil coverings and their coverage depth were on his study's findings as they related to vertical construction of structures.

Ms. Lincoln asked if an archeologist was present when the soil study excavations occurred in the Petition Area. Mr. Biegel replied that he did not recall. Discussion ensued to encourage Ms. Lincoln to question the witness and not interject comments or argument. Ms. Lincoln acknowledged Vice Chair Heller's request and concluded her questioning.

Intervenor Bolomet

Ms. Bolomet asked if Mr. Biegel was familiar with kiawe trees and whether there was evidence of water in the Petition Area. Mr. Biegel responded that he was a soils engineer and not an expert on kiawe trees and that he would be surprised by a finding of water in the Petition Area; and provided the various details of his findings regarding the soils and their moisture content. Discussion ensued to have Ms. Bolomet pose questions to the witness and she asked a question about having a cultural monitor on site when excavations were performed. Mr. Biegel voiced his understanding of how arrangements were made for him when his services were needed on a project and how arrangements for cultural monitoring had been made by the party hiring him.

Rebuttal

Mr. Geiger requested clarification on what was included in Mr. Biegel's report when "fill" land was involved; and what sand and water discoveries on the proposed project site would involve. Mr. Biegel described how he would report his findings in the circumstances where "fill" land was discovered; how sand was categorized in soil studies; and why he had not discovered water during his excavations.

County, OP, and Ms. Lincoln had no further questions.

Intervenor Bolomet

Ms. Bolomet requested clarification on whether or not maps of underground infrastructure had been provided to him prior to excavation occurring. Discussion ensued on whether the question was appropriate and Vice Chair Heller advised Ms. Bolomet that he would allow her question but that she was expected at this time to confine her questioning to testimony that had been already been provided by the witness on redirect. Mr. Biegel described the preparations that he had to make prior to performing any excavations. and stated that he did not know of any subterranean piping infrastructure.

Commissioner Questions

Commissioner McDonald asked how deep the borings were. Mr. Biegel responded that the borings had a depth of between 6 and 8 feet below grade, and 13.75

feet -17.75 feet below grade. Mr. Geiger commented that Petitioner's Exhibit 7 contained further details about the borings.

There were no further questions for Mr. Biegel.

4. Robert Hobdy- Environmental Expert on Flora/Fauna

There were no objections by the Parties to Mr. Hobdy's submitted testimony and appearance as a witness; and he described his findings of plants, animals and insects in the Petition Area during his survey.

Questions for Mr. Hobdy

County-

Mr. Giroux requested clarification of native plants found in the Petition Area. Mr. Hobdy provided additional information on the native plants that he had found in the proposed project area.

OP-

Mr. Yee requested clarification of what Mr. Hobdy thought about the downshielding of lights in the Petition Area. Mr. Hobdy replied that he concurred with the downshielding recommendation and explained why he thought it was an important feature.

Intervenor Lincoln

Ms. Lincoln requested clarification on factors that might contribute to helping preserve the Blackburn sphinx moth. Mr. Hobdy shared his opinion of what might help the moth and other endangered species survive and prosper; and how the Petition Area could be used as an educational or educational "green tour" feature.

Intervenor Bolomet-

Ms. Bolomet asked whether Mr. Biegel was aware of how Hawaiians traded plants with Westerners. Mr. Hobdy shared his understanding of how various food plants which were non -native to Hawaii were traded and used; and how they seasonally populated the Petition Area. Discussion ensued and

Vice Chair Heller again cautioned Ms. Bolomet to ask questions and avoid being argumentative with the witness. Ms. Bolomet concluded her questioning by asking whether Mr. Hobdy had discovered any algae or seaweed evidence in the Petition Area and he responded that he had not.

Rebuttal

Mr. Geiger requested clarification on the habitats of the Blackburn sphinx moth, the local owl population and 3 plant species. Mr. Hobdy indicated where the moth and owl were known to exist and where 3 species of plants could be found.

Vice Chair Heller stated that the Commission would take a recess and Vice Chair McDonald would preside in his place. The Commission went into recess at 2:38 p.m. and reconvened at 2:53 p.m. (5 Commissioners in attendance- Vice Chair McDonald presiding)

Vice Chair McDonald asked Mr. Geiger how many more witnesses Petitioner had. Mr. Geiger responded that he had Mr. Singleton-Agronomy Expert, Mr. Tanaka- Civil Engineering Expert, and Ms. Bigelow- Developer's Representative remaining; and that the Parties had agreed to allow the written testimony of Leonard Neko Jr., and Anthony Rikki-Gonzalez without cross-examination; and that he would be withdrawing archaeological witness, Mr. Perzinski, since his testimony would be cumulative to Mr. Dega's. There were no comments or objections to Mr. Geiger's comments.

Mr. Giroux requested permission to release his witness, Joanne Ridao, since it did not appear that there was sufficient time for her to appear. Vice Chair McDonald granted this request.

Vice Chair McDonald advised the Parties that unlike Vice Chair Heller, he would only allow a single round of questioning of the witness. There were no comments, questions or objections to Vice Chair McDonalds change of proceedings format.

5. Paul Singleton- Agronomy Expert

Mr. Singleton made several corrections to his submitted written testimony.

There were no objections to Mr. Singleton's corrections of his written testimony; or to his appearance as an expert witness.

Mr. Singleton summarized his testimony and described the methodology, objectives, and findings of his study of the Petition Area to determine if it was an economically viable agricultural site; and drew comparisons of the Petition Area to his farming operation.

Questions for Mr. Singleton
County

Mr. Giroux had no questions.

OP

Mr. Yee had no questions.

Intervenor Lincoln

Ms. Lincoln-requested clarification of Mr. Singleton's role in the proceedings and how his findings were determined. Mr. Singleton stated that he had been asked to appear before the Commission to address questions regarding the agricultural economic potential of the Petition Area; and clarified different portions of his testimony for Ms. Lincoln. Discussion ensued and Vice Chair McDonald requested that Ms. Lincoln follow a question and answer format and avoid speaking over the witnesses' reply. Ms. Lincoln acknowledged the request and was satisfied with Mr. Singleton's responses to her questions and concluded her questioning.

Intervenor Bolomet

Ms. Bolomet requested clarification on how Hawaiians might have cultivated the local area. Mr. Singleton provided his understanding of how the Lahaina area had been cultivated by Hawaiians during the pre-contact period, and by the sugar plantation; and stated that he was not aware of any water source in the Petition Area. Mr. Singleton also provided his understanding of various issues that Ms. Bolomet had questions about regarding farming and farming methods and noted the difficulties that would confront profitable farming operations on the Petition Area.

Rebuttal

Mr. Geiger requested clarification on the term “rock land” and whether the Petition Area could be economically viable if used for agriculture. Mr. Singleton shared his perception of the source of the term and how it was used to describe soils, and stated that, in his opinion, the land was not likely to be used for agriculture in current times.

The Commission went into recess at 3:50 p.m. and reconvened at 4:03 p.m.

6. Kirk Tanaka- Civil Engineer

Mr. Tanaka had no changes or updates to his testimony and the Parties had no objections to his appearance as an expert witness.

Mr. Tanaka described the proposed drainage, waste water, and water retention infrastructure planned for the Petition Area and provided details about the design criteria, county requirements, stormwater treatment, and fire and water department considerations that were involved in his study.

County-

Mr. Giroux had no questions.

OP-

Mr. Yee requested clarification on the quality of water, stormwater mitigation, and how the proposed project would deal with County water standards. Mr. Tanaka replied that there were no finalized plans currently in place since the County was still working on rules/standards for the proposed project; but that his plan was to have the Petition Area comply with all the final rules that would be in place when the construction of the proposed project neared completion and the new rules implemented. Mr. Tanaka stated that “best management practices” would be in place during the construction period and that the draft rules had been taken into consideration and that the timetable for completion of the proposed project was still incomplete although progress was expected soon. Mr. Tanaka also described the design criteria used for planning the future infrastructure and determining its specifications.

Mr. Yee also requested clarification of offsite roadway improvements, the type of mitigation measures that would be in place and on potable water availability for the Petition Area. Mr. Tanaka replied that he was not yet aware of what the final rules would be for mitigation measures, and was waiting for a County grading permit; but was aware that new 201 H rules would apply to the proposed project; but did not know of any 201H exemptions that would be allowed for drainage.

Mr. Yee inquired about what mitigation measures would be in place and whether a potable water review or analysis had been done to determine potable water availability for the project. Mr. Tanaka described his understanding of how proposed drainage basins would be maintained and what mitigation measures would be used and replied that he had been in contact with the County water supply department and had been advised that there was sufficient potable water and a water source to allow meters and provide County water for the proposed subdivision. Mr. Tanaka also provided other various specifics of how water supply for the proposed project had been determined and what his conversations with the Department of Water Supply were like.

Intervenor Lincoln-

Ms. Lincoln requested clarification on the retention basin design and how it would be constructed. Mr. Tanaka described his understanding of how the basin would be constructed and how the water, wastewater and sewage needs of the proposed project would be met.

Ms. Lincoln requested clarification on how stormwater runoff would be handled. Mr. Tanaka shared his understanding of how stormwater was currently occurring and how the drainage infrastructure design would function when completed. Ms. Lincoln also requested clarification on an exhibit and discussion occurred to identify what specific exhibit it was. Mr. Geiger stated that he believed it was Petitioner's Exhibit 30, page 35. Ms. Lincoln questioned why it had been included as a Petitioner's Exhibit. Mr. Geiger explained why it had been submitted to support Ms. Bigelow's testimony to come.

Ms. Lincoln asked if land development changed runoff patterns and increased flood risk. Mr. Tanaka replied that the infrastructure design included various features to prevent flooding from occurring and described how the infrastructure would function during storms and would need to be maintained. Ms. Lincoln requested clarification on how the Kahoma dam would withstand a natural disaster. Discussion ensued to determine what dam Ms. Lincoln was referring to and Mr. Geiger stated that he was not aware of a dam being part of the Petition Area. Vice Chair McDonald asked what exhibit contained a photo of the facility. Ms. Lincoln replied that it was on page 64 of her submitted materials. Mr. Tanaka examined the photo and replied that he was not able to identify the structure and was not qualified to answer her question. Discussion continued on how Ms. Lincoln's question was relative. Vice Chair McDonald stated that since the structure abutted the Petition Area and could pose a flood hazard, he felt it was a valid question. Ms. Lincoln replied that she would direct the question to the County instead.

Ms. Lincoln had several questions regarding flood diversion and Mr. Tanaka shared his understanding of how water could be diverted till Ms. Lincoln exhausted her prepared questions.

Intervenor Bolomet

Ms. Bolomet requested clarification Mr. Tanaka's awareness of legal decisions regarding retention basins and on the location of the planned retention basins in the Petition Area. Mr. Tanaka responded that he was not aware of the judicial cases that Ms. Bolomet cited and described where the proposed retention basins would be located and how they were expected to function. Mr. Tanaka also stated that he did not know what the long term effects the retention basins would have on Mr. Lee's "limu" gathering practice and that he was not aware of any law or court ruling regarding the control of heavy metal deposit resulting from runoff. Discussion ensued to have Ms. Bolomet focus her question and Mr. Tanaka confirmed that he did not know of any such requirement.

Ms. Bolomet requested clarification of the considerations made for wastewater and stormwater collection and disposal, and sewage treatment for the proposed project. Mr. Tanaka described the design considerations that were made to develop the systems for these functions and the communication that he

had with various agencies to ensure conformity to Federal, County and State standards. Discussion ensued regarding the capacity of the Lahaina Wastewater Facility and how the County made its capacity determination. Mr. Giroux stated that Ms. Bolomet was making statements about matters which had not been entered into evidence. Ms. Bolomet responded that she was making reference to Robin Knox's submitted written testimony. Vice Chair McDonald requested that Ms. Bolomet to repeat her question and stated that the witness could then respond to whether or not he could answer the question. Mr. Tanaka responded that he was not aware of the "Clean Water Act" citations that Ms. Bolomet was referring to.

Ms. Bolomet stated that she had no more questions.

Rebuttal

Mr. Geiger requested clarification on Mr. Tanaka's response to the capacity of the West Maui domestic water system and referred to Petitioner's Exhibit 11 to have Mr. Tanaka verify various capacities that the County had represented to him. Mr. Yee commented that it was Petitioner's Exhibit 13 and Mr. Geiger acknowledged the correction.

Commissioner Questions

Commissioner Biga requested clarification on whether the Association would have to maintain the basin; and the sewer line approval by the Army Corp of Engineers. Mr. Tanaka provided his understanding of why the Association would assume the responsibility of maintaining the basin and described how the proposed project affected the Army Corp of Engineers structure.

There were no further questions.

Mr. Geiger stated that he still had Ms. Bigelow and Mr. Frampton as his remaining witnesses. Vice Chair McDonald noted that they would be heard at the next meeting.

The Commission went into recess at 5:07 p.m.

LAND USE COMMISSION
MEETING MINUTES
August 24, 2012
The Royal Lahaina Resort Maui Ball Room
2780 Keka`a Drive
Lahaina, Maui, Hawai`i, 96761

COMMISSIONERS PRESENT: Chad McDonald
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Sarah Hirakami, Deputy Attorney General
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Walter Mensching

CALL TO ORDER

Vice Chair Heller called the meeting to order at 9:00 a.m.

ACTION

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

Vice Chair Heller announced that this was a hearing and action meeting regarding Docket No. A94-706 and Movant Maui Tomorrow Foundation, Inc., South Maui Citizens for Responsible Growth and Daniel Kanahale's Motion for Hearing,

Issuance of Order to Show Cause and Other Relief (hereafter referred to as Movant's Motion) filed on May 23, 2012.

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, County

William Spence, Director, County

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

Jesse Souki, Director, OP

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

Irene Bowie, Maui Tomorrow Foundation

Vice Chair Heller updated the record and explained the procedures to be followed for the proceedings. Ms. Lovell requested procedural clarification on whether witness testimony was going to be allowed other than during the public testimony phase. Discussion ensued determine whether the Parties' witnesses would be allowed to testify and if so, during what part of the proceeding it would occur. Vice Chair Heller stated that the witnesses would be restricted to the Motion that was being heard today and clarified the circumstances of what the nature of the docket proceedings were for; and how they would be conducted. There were no further questions, comments or objections to the procedures.

PUBLIC WITNESSES

1. Danny Collier-

Mr. Collier stated that he supported the proposed project and provided his perspective of how Maui needed to support its projected growth with adequate infrastructure and services.

There were no questions for Mr. Collier.

2. Perry Artates- Hawaii Operating Engineers Representative

Mr. Artates stated that he opposed the motion and described how his organization's members and the island economy would benefit from the proposed project.

Commissioner Biga asked what would happen if the proposed project moved forward and how many workers would be needed.- Mr. Artates provided his perspective of how his organization and the associated companies would perform and shared his estimate of how many workers would have employment due to the proposed project.

There were no further questions for Mr. Artates.

3. Mike Foley

Mr. Foley stated that he supported the motion to show cause and read his submitted written testimony that described why the motion should be granted.

Commissioner Biga requested clarification on what opposition to the proposed project was based on. Mr. Foley responded that he felt that the proposed project needed to be better assessed and evaluated with a different set of measures since it had been altered from when it had originally been proposed, and described the issues that he felt needed to be resolved to make a better decision on the Petition Area.

There were no further questions for Mr. Foley.

4. Renee Richardson-

Ms. Richardson submitted several pages of a petition she had circulated and stated that she supported the motion to show cause and described her reasons why.

There were no questions for Ms. Richardson.

5. Patricia Stillwell

Ms. Stillwell stated that she supported the motion and referenced her submitted written testimony during her testimony.

There were no questions for Ms. Stillwell.

6. Mike Moran-

Mr. Moran read Carla Flood's testimony supporting motion

There were no questions for Mr. Moran.

7. Mark Hyde-

Mr. Hyde read Victoria Huffman's (licensed California State Traffic Engineer) testimony regarding traffic in the Petition Area and-supporting the motion.

Commissioner Biga asked if Ms. Huffman was still a highway expert in California. Mr. Hyde responded that she was.

There were no further questions for Mr. Hyde.

8. Mary Starr Little-

Ms. Little stated that she supported the motion and described her reasons for taking that position.

There were no questions for Ms. Little.

9. Tom Blackburn Rodriguez- Piilani Promenade and Honuaula rep.

Mr. Blackburn-Rodriguez stated that he supported the proposed project and submitted approximately 500 postcards with signatures that also supported the proposed project.

There were no questions for Mr. Rodriguez.

10. Ann Cua- Maui County Planner

Ms. Cua submitted written testimony and a portion of a past transcript of the original LUC hearing for the initial district boundary amendment and described her role as the County Planner involved with the Petition Area. Ms. Cua described her experience with the proposed project and why she felt the LUC had not imposed any conditions restricting the Petition Area; and why the proposed project should be allowed since it complied with the Maui County M-1 zoning.

Questions for Ms. Cua

County

Ms. Lovell had no questions.

OP-

Mr. Yee requested clarification of Ms. Cua's recollection of the 1994 LUC meetings on the docket and the considerations that were made which resulted in the final decision and order. Discussion occurred as Ms. Lovell challenged Mr. Yee's line of questioning. Vice Chair Heller acknowledged Ms. Lovell's comment and allowed Mr. Yee's question. Ms. Cua provided her understanding of what the M-1 light industrial use zoning ordinance permitted and described her perception of various "land use" planning terms including "light industrial", "residential" and "commercial" uses. Ms. Cua also described what types of county approvals would and would not be necessary for the proposed project and whether or not opportunities for further community input was possible.

Mr. Yee had no further questions.

Movant

Mr. Pierce requested clarification on Ms. Cua's understanding of HRS Chapter 205 requirements and asked if it was her understanding that there could be a land use condition that was more restrictive than county zoning. Ms. Cua responded that it was possible.

Mr. Pierce had no further questions.

Petitioner- Honua`ula Partners LLC

Mr. Kam requested clarification on Ms. Cua's attendance and participation in the original district boundary amendment proceedings and on her recollection of the understanding that the LUC had when it granted the Petition and the considerations that were made regarding zoning issues and other restrictions for the Petition Area. Discussion ensued to determine what, if any, restrictive conditions were imposed by the decision and order. Ms. Cua stated that there were none imposed and referenced how restrictive conditions had been imposed on another nearby Petition Area (Condition 19- Maui Business Park).

Mr. Kam had no further questions.

Commissioner Questions

Commissioner Biga requested clarification on how far into the future the Community Plan projected. Ms. Cua responded that the Community Plan forecasted 20 years into the future for development in the area and described how land use would be specified in the Community Plan and how the LUC and County differed in assessing land use determinations.

Commissioner McDonald requested clarification on what plan was presented by Petitioner when it went to County zoning in 1998. Ms. Cua replied that a "light industrial subdivision" type of development was presented and that an M-1 industrial zoning designation had been sought; and clarified that it was the same plan as had been presented to the LUC. Ms. Cua also described the zoning considerations that the County made in its decision making and determination of zoning recommendations. Discussion ensued to determine what type of permitting requirements remained for the Petition Area. Ms. Cua provided her understanding that just building, grading and landscaping permits remained to be issued.

Commission Inouye requested clarification on whether Ms. Cua had the opinion that the LUC approval of a district boundary amendment was like the approving of County zoning. Ms. Cua described how the Commission would make a land use determination and how the County would make a zoning determination; and what the B1, B2, and B3 business district zonings respectively included; and how the M-1 zoning designation was consistent with the urban district.

11. William Spence-Planning Director, Maui County

Mr. Spence provided written testimony and described how Maui County zoning evolved to accommodate growth on the island and referred to the Maui comprehensive island plan to describe what the future growth of Maui might look like.

Mr. Pierce requested clarification on how LUC imposed conditions could be more restrictive than County zoning. Mr. Spence stated that an LUC condition could be more restrictive than County zoning and described how

early zoning districts were determined and what factors the County zoning process considered when making zoning determinations. Mr. Spence also described how the Planning Department considered the State Zoning 205 process during its determination and what his understanding was of the County and Land Use Commission roles in the procedure.

There were no further questions for Mr. Spence.

12. Cynthia Groves-

Ms. Groves submitted written testimony and stated her reasons why she supported the motion and what her concerns were about the proposed project.

Ms. Lovell requested clarification on Ms. Groves' reference to Maui County Zoning Ordinance-Chapter 19. Ms. Groves shared her understanding of what the zoning ordinance meant and how it applied to the proposed development's history.

There were no further questions for Ms. Groves.

13. Juan Lay

Mr. Lay shared his reasons for opposing the Motion.

There were no questions for Mr. Lay.

14. Bill Kamai

Mr. Kamai stated that he opposed the motion and expressed his reasons why.

There were no questions for Mr. Kamai.

Vice Chair Heller entertained a motion for an Executive Session.

Commissioner Biga moved and Commissioner McDonald seconded the motion for Executive Session. By a unanimous voice vote (6-0) the Commission voted to enter Executive Session.

The Commission went into Executive Session at 10:37 a.m. and reconvened at 11:15 a.m.

PRESENTATIONS

Petitioner

Mr. Kam and Mr. Steiner stated that they had no witnesses.

Movant

Mr. Pierce stated that the Movants opposed the "abuse of process" and argued why the Order to Show Cause should be granted and provided the details of his argument on behalf of the Maui Tomorrow Foundation, South Maui Citizens for Responsible Growth and Daniel Kanahele. Mr. Pierce requested that the Commission set a hearing, issue an order shortening the time for the hearing because of imminent threat of development of the Petition Area; issue an Order to Show Cause why the Petition Area should not revert to its former boundary classification because of the landowners failure to use the Petition Area consistent with the Commission's 1995 Findings of Fact, Conclusions of Law, and Decision and Order; conduct a contested case hearing on the factual and legal issues supporting the reversion of the Petition Area's classification and issue an order compelling the owners of the Petition Area to withdraw all previously filed annual reports that do not correctly represent the status of the Project and file amended annual reports with the Commission, OP and the County of Maui that accurately describe the status of the Petition Area and the Project and why the Movants felt that the current landowners were in violation of Condition Nos. 5 and 15 of the Commission's Decision and Order.

Petitioners

Vice Chair Heller asked if the Petitioners representatives would be presenting separately. Mr. Steiner stated that Mr. Kam would be presenting for Honua'ula and that he would be presenting for the Piilani North and South entities and that he would precede Mr. Kam. There were no objections to Petitioner's proposed presentations.

Petitioner- Piilani Promenade South, LLC and Piilani Promenade North, LLC

Mr. Steiner stated that the landowners opposed the Movant's Motion and argued why the Movants had no standing to file the Motion; had failed to identify any condition of the Decision and Order or representation that had not been complied with and how Conditions 15 and 5 had not been violated. Mr. Steiner also argued how the proposed use of the Petition Area was in substantial compliance with all representations made to the Commission; and that there was no condition imposed to restrict the development to a commercial and light-industrial subdivision; and that the

Commission was made well-aware that the County's M-1 light industrial zoning allowed a variety of uses and chose not to impose a condition prohibiting uses including apartments and retail uses; and that since no development had occurred on that portion of the Petition Area owned by Honua`ula nor any permits issued to commence construction, Honua`ula contends that the Motion was not ripe and should therefore be denied.

Petitioner- Honua`ula Partners

Mr. Kam argued that the Commission should focus on the Conditions of the decision and order and how Petitioner's efforts were in compliance with them, and how the LUC had the authority to have imposed more specific, restrictive conditions if it wanted, but did not.

County

Ms. Lovell stated that Maui County opposed the Movant's Motion and argued how the Movant's allegation that Condition No. 5 of the Decision and Order had been violated was not accurate and how the Movant's had not demonstrated that the required traffic improvements would not be built or that the DOT would not require the developer to construct traffic improvements satisfactory to DOT.

Ms. Lovell also argued how Condition 15 of the Decision and Order did not prohibit the use of the Petition Area for affordable apartment units and commercial shopping center purposes; and how the representations made to the Commission were not inconsistent, and that the County Council did not amend the M-1 zoning ordinance.

Ms. Lovell stated that the Maui Planning Commission recommended a condition that would have limited the commercial uses of the development but elected to impose a condition requiring Petitioner to only "...use its best efforts in attracting traditional light industrial uses and shall consider locating these on the perimeter and focus non-industrial uses on the major traffic corridors."; and did not impose any condition limiting the use of the Petition Area. Ms. Lovell argued that Movants failed to demonstrate that the conditions of the Decision and Order had been violated, and that the Petition Area was not being used in a manner contrary to the Decision and Order and that the more appropriate way to address Movant's concerns was the Declaratory Order provision under Hawaii Administrative Rules subchapter 14.

OP

Mr. Yee stated that OP supported Movant's Motion and recommended that an Order to Show Cause be issued with a subsequent hearing on the matter; and that OP did not take any position as to whether the Petition Area should be reverted to its previous classification at this time.

Mr. Yee described why OP felt that a Motion to Amend filing was a more appropriate action since it would allow the re-examination of impact concerns of the proposed project and why the County's decisions were not being challenged but rather the State's; and referred to HAR 15-15-49 and summarized how it would apply to the proceedings.

Mr. Yee also argued how the absence of a light industrial component to the proposed project made substantial compliance to representations made to the LUC and documented in the original decision and order questionable; and that the current Petitioners failed to comply with the representation that a commercial and light industrial subdivision would be developed on the Petition Area as required by Condition 15; and that the proposed structures were not disclosed during the Commission's original proceedings; and that no attempt had been made to file a Motion to Amend the Decision and Order to reflect the current proposed development as had occurred with other land use changes in other dockets.

Rebuttal

Movant

Mr. Pierce described how the infrastructure promised by the Petitioner for the proposed project would avert public review and Condition 5 of the original decision and order; as well as the proper associated agencies if the motion to show cause were not granted; and that possible needed conditions could not then be included. Mr. Pierce also described how the Movants agreed with portions of OP's presentation and how the original findings of fact had specific references to "light industrial use" which required further review of the new proposed project and public input.

The Commission went into recess at 12:30 p.m. and reconvened at 1:10 p.m.

Petitioner- Piilani Promenade North LLC and Piilani Promenade South LLC

Mr. Steiner argued that Petitioners did not perceive that they had violated the decision and order's conditions and why there was no need to file for an amendment; and how Ms. Cua had described how the other uses of the Petition Area would be "market driven". Mr. Steiner added that what had been represented to the LUC in the original Petition had been accurate and consistent; and that there were no condition violations; and that the Commission should deny the motion.

Intervenor- Honua`ula

Mr. Kam also argued that there had been no violations of the original decision and order and described how the Petitioner had complied with its representations and disputed OP's position regarding the current landowner's need to comply with representations that had been made in the original Petition and Mr. Pierce's statement about post-decision outcomes since County and other State agencies approvals and permits needed to be satisfied to ensure that the conditions imposed by the LUC's decision and order were followed.

County

Ms. Lovell argued how the County and the sitting Commissioners for the original decision and order had interpreted the presented information from the proceedings in similar fashion and determined "substantial compliance" requirements; and why the motion for the order to show cause should be denied.

OP

Mr. Yee argued how the representations made by Petitioner had to be balanced when determining "substantial compliance" and described how the Lanai water case's situation differed from this docket and how the decision and order in the original Petition spoke for itself and why a review and another hearing on the Petition was needed.

Commissioner Questions

Commissioner McDonald asked if an Environmental Assessment had been performed for the development plan for the Petition Area. Mr. Kam shared his understanding of the environmental work that had been done in the Petition Area and nearby projects and stated that he would need to check on whether the Wailea project

encompassed the affordable housing area to answer Commissioner McDonald's question. Mr. Steiner described the Environmental Assessments that he was aware of that had been conducted in the area and stated that he did not have all the details for the area.

Commissioner McDonald asked Mr. Yee if OP was aware of any EA having been done for the Petition Area. Mr. Yee responded that OP was not aware of any EA being performed in the original Petition Area. Ms. Lovell added that she thought that the reason why no EIS was that there had been no trigger and described the factors that she thought existed that made the EIS unnecessary. Discussion ensued to determine whether or not enough consideration had been given to the use of State lands/facilities. Ms. Lovell described how the original Petition Area had been assessed and why it did not trigger the EIS after the assessment; and how Chapter 343 requirements at the time of the Petition approval till the present might apply.

Mr. Kam provided his understanding of how more recent Supreme Court decisions on other LUC dockets and law changes regarding EIS requirements might be related to the questioning about EIS triggers. Mr. Yee added that the time period where the legal requirements changed for EISs was in 2006. Commissioner McDonald had no further questions.

Commissioner Biga requested clarification from Mr. Steiner on why the annual reports had not been consistently filed with the Commission. Mr. Steiner replied that his understanding was that an annual report had been filed in 2011 and in years prior also; and that the current year's report was being withheld pending the results of this proceeding.

Commissioner Biga asked if he should re-direct his question to Mr. Kam, and Mr. Steiner provided additional information on what annual reports had been filed to satisfy Commissioner Biga's question.

Commissioner Inouye asked if Mr. Steiner had a record of the 2005-2009 annual reports. Mr. Steiner responded that he could not give a definitive answer on the annual reports; and that the current landowners did not own the property during that time period. Mr. Steiner described the changes of ownership that occurred since the original Petition had been granted and stated that the current landowners took possession of the Petition Area in September, 2010.

Commissioner Inouye requested clarification on what date the 2012 annual report needed to be submitted by and noted that it should have been submitted by the Petition anniversary date that had occurred earlier in 2012. Mr. Steiner responded that he was not aware of the requirement.

Commissioner Inouye requested clarification on the status of the Movant's appeal before Maui County on this matter. Mr. Steiner responded that the County filed a motion to dismiss the appeal for lack of jurisdiction and that the Motion had been granted and the order submitted by the County was accepted. Commissioner Inouye had no further questions.

Vice Chair Heller requested clarification from Mr. Kam and Mr. Steiner on what was going on in the Petition Area for their respective landowners. Mr. Kam replied that nothing was happening at the current time and there was no established time frame of when development activity for the affordable homes should occur on the Honua`ula portion of the Petition Area. Mr. Steiner stated that his understanding was that grading permits had been issued to the Pi'ilani Promenade entities's remaining portions of the Petition Area and that equipment had been staged on it and that best management practices were in place and activity was ready to start once it was determined to be permissible to do so.

Vice Chair Heller requested clarification on Condition 5 and the frontage road requirement for the Petition Area. Mr. Steiner shared his understanding of how the frontage road would be addressed and applied to the current proposed project.

Commissioner Inouye acknowledged and thanked the Parties for their efforts and described the considerations that he had made regarding Condition 15 while deciding to make a motion to grant the Motion for an Order to Show Cause. Commissioner Biga seconded the motion .

Discussion on the Motion

Commission Biga commented that he felt that there were a lot of questions that needed to be answered and urged the Parties to settle this matter quickly.

Vice Chair Heller described how the decision being made by the Commission specifically was to decide whether or not to grant an Order to Show Cause to take the

next procedural step for a hearing to decide whether or not the Conditions of the Decision and Order were being complied with.

There was no further discussion.

The Commission voted as follows:

Yeas: Commissioners Inouye, Biga, Matsumura, Teves, McDonald and Vice Chair Heller.

Nays: None

The Motion passed 6-0 with 3 excused.

Vice Chair Heller asked if there were any questions or comments for the Commission before it adjourned. Mr. Steiner requested that the Commission move expeditiously on this matter. Vice Chair Heller advised him to contact staff regarding scheduling and assured him that it was the Commission's intention to address and resolve this matter as soon as possible.

There being no further business, the Commission adjourned at 1:45 p.m.

