LAND USE COMMISSION
MEETING MINUTES

September 6, 2012
Maui Arts and Cultural Center, Alexa Higashi Room
One Cameron Way
Kahului, Maui, Hawai`i, 96732

COMMISSIONERS PRESENT:	Chad McDonald Lance Inouye Sheldon Biga Ronald Heller Ernest Matsumura Thomas Contrades Napua Makua (arrived at 10:04 a.m. and departed at 2:00 p.m.)
COMMISSIONERS EXCUSED:	Kyle Chock Nicholas Teves, Jr.
STAFF PRESENT:	Daniel Orodenker, Executive Officer Scott Derrickson, Staff Planner Bert Saruwatari, Staff Planner Sarah Hirakami, Deputy Attorney General Riley Hakoda, Staff Planner/Chief Clerk
COURT REPORTER:	Holly Hackett
AUDIO TECHNICIAN:	Walter Mensching

CALL TO ORDER

Vice Chair Heller called the meeting to order at 10:00 a.m.

APPROVAL OF MINUTES

Vice Chair Heller asked if there were any corrections or additions to the August 23-24, 2012 minutes. Commissioner McDonald moved to approve the minutes. Commissioner Biga seconded the motion. The minutes were unanimously approved

by a voice vote (6-0). (Commissioner Makua arrives at 10:04- Seven Commissioners present)

TENTATIVE MEETING SCHEDULE

Executive Officer Orodenker provided the following:

- The tentative meeting schedule for the calendar year 2012 was distributed in the handout material for the Commissioners.
- The Commission 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 HCDH and SP09-403 Dept. of Environmental Services-Waimanalo Gulch Sanitary Landfill.
- The first meeting in October will be on October 4-5, 2012- still open, and on October 18-19, 2012, the Commission will be back on Maui.
- 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. Ms. Lincoln requested clarification on how to present her exhibits in a manner acceptable to the Commission. Discussion ensued to determine what exhibits Ms. Lincoln would be referring to and what formats would be acceptable. Mr. Yee provided his understanding that Ms. Lincoln was attempting to withdraw an existing accepted exhibit (Elle Cochran's testimony) and resubmit a revised exhibit in a format which was acceptable to Mr. Giroux and Maui County. Ms. Lincoln stated that she would also be referring to a DVD that she had submitted as an exhibit and that this exhibit had been accepted previously. Mr. Geiger expressed his concerns about not having seen the newly revised Cochran testimony and restated his objections to the musical background of the DVD that had been previously been submitted. Discussion ensued to determine how Ms. Lincoln should provide all Parties with the revised testimony of Ms. Cochran and Vice Chair Heller determined that the DVD had been previously allowed as an exhibit and that it could be presented to the Commission with the musical background intact. There were no further questions and Vice Chair Heller called for Public Witnesses.

PUBLIC WITNESSES

1. Clare Apana

   Ms. Apana submitted written testimony, and stated her concerns about what was happening to the Hawaiian people's culture and agriculture, and attempted to clarify her previous testimony on August 23, 2012. Discussion ensued on whether or not her testimony was cumulative or not. Mr. Geiger stated that the exhibit photos that she was referring to in her testimony were not of the Petition Area. Vice Chair Heller allowed Ms. Apana to continue and reminded her that her testimony should not be repetitive or cumulative to her prior testimony.

   Ms. Apana also expressed her concerns about piping infrastructure that was alleged to exist on the Petition Area, and water rights, and how the archaeological study performed on the proposed project site was inadequate. Mr. Geiger requested that Ms. Apana confirm the exhibit number that she had been referring to during her testimony and it was agreed that it was Figure 7 on page 3 of the M231 report. Mr. Geiger also stated that the full report did not include the Petition Area and provided Ms. Apana with the report map to refer to during his questioning to confirm her understanding of the location of the areas she was referring to during her testimony. Ms.

Apana was unable to identify the areas and map features that Mr. Geiger asked about.

Questions for Ms. Apana

County, OP, and Intervenor Lincoln had no questions.

Ms. Bolomet requested clarification on Ms. Apana's testimony. Discussion ensued to have Ms. Bolomet use questions with the witness and avoid commentary. Ms. Bolomet referred to Ms. Apana's Exhibit 1. Further discussion ensued to determine whether the Parties had received copies of the exhibit. It was discovered that the Parties had not received copies of Ms. Apana's exhibits and LUC staff shared the copies that had been submitted with the Parties. Ms. Bolomet continued on a line of questioning that led to further discussion on whether it was cumulative or not. Vice Chair Heller determined that he would allow questions relevant to the testimony that Ms. Apana had provided to the Commission and requested that Ms. Bolomet avoid attempting to read material into the record.

Ms. Bolomet asked Ms. Apana to identify a heiau on the map (identified as number 16) that she had submitted as an exhibit and questioned how the photos were oriented in relation to the heiau, and on various features of the Petition Area in the Public Works maps that she had also submitted. Ms. Apana provided her perspective of the Petition Area features and how they related to her submitted exhibits. Discussion ensued on whether or not new information was being introduced during Ms. Bolomet's questioning. Vice Chair Heller requested that Ms. Bolomet better focus her questioning.

Ms. Bolomet asked about Ms. Apana's perception on whether she felt water rights were being violated. Vice Chair Heller advised Ms. Bolomet that her questions were repetitive of questions that had been previously asked and requested her to move on.

Ms. Bolomet had no further questions.

Commissioner Inouye requested clarification on what area Ms. Apana was referring to and referred to page 2 of Exhibit 39's map area features (Figure 1 and Figure 2 on Map MAD5-7) that Ms. Apana had referred to during her testimony. Ms. Apana approached the Commission and was shown the map areas by Commissioner Inouye. Ms. Apana responded that she was not sure of how to transfer the map figures and had difficulty answering Commission Inouye's questions with certainty.

Mr. Geiger stated that he would like the record to reflect that he had used a map which he would be submitting as Petitioner's Exhibit 40 to question Ms. Apana. Mr. Yee requested a representation of what the document was and Mr. Geiger described the document and how it illustrated different portions of the Petition Area and surrounding locales. Ms. Bolomet inquired what the purpose of the document was and Mr. Geiger replied that it had been previously shown to Ms. Apana and that it was being identified for the record. There were no further questions or objections from the Parties regarding the use of this exhibit after they had the opportunity to review it.

Mr. Geiger stated that he would ensure that copies of the exhibit would be provided to the Commission and the Parties at the start of the September 7, 2012 meeting.

There were no further questions for Ms. Apana.

There were no further public witnesses. Ms. Bolomet stated that she had some farmers who were going to testify on Friday. Vice Chair Heller determined that their testimony would be addressed at that time and asked if the Parties had any exhibits to offer. Discussion ensued to determine what exhibits Petitioner had recently offered to the Commission.

PRESENTATION OF EXHIBITS

Petitioner

Mr. Geiger offered Petitioner's Rebuttal Exhibit List and Exhibit 39 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 had no exhibits.

Mr. Geiger provided confirmation that he had received Intervenor Bolomet's Exhibit 11 and argued that it was irrelevant to the proceedings. Vice Chair Heller requested that Petitioner proceed with its presentation.

PRESENTATIONS

Petitioner Witnesses

1. Heidi Bigelow

Ms. Bigelow updated and corrected her previously submitted written testimony and described the various development specifics regarding the proposed project. There were no objections or comments regarding her submitted testimony corrections.

Ms. Bigelow described the development history of the Petition Area and provided the details on the features that would be included in the proposed project's structures and the reasoning and considerations involved during the design and planning phases to make certain determinations for the Petition Area infrastructure.

Questions for Ms. Bigelow

County

Mr. Giroux requested clarification on the modifications and resolutions that had been made to accommodate the 201H requirements for the proposed project. Ms. Bigelow stated how the developer would cooperate with payments and performance to abide by its agreements and described the efforts and achievements that the developer had made to qualify the proposed project before the Maui County and State agencies.

OP

Mr. Yee requested clarification on mitigation measures recommended by the EIS and whether the conditions proposed by OP were acceptable to Petitioner. Ms. Bigelow provided additional details to satisfy Mr. Yee's questions on mitigation, and responded that the OP conditions were acceptable. Ms. Bigelow also mentioned how consideration for environmental/sustainability measures and flexibility to accommodate a wide range of housing needs had been made; and how the Petitioner expected to comply with all State and County deadlines, approvals and permitting requirements for infrastructure within 10 years of final subdivision approval.

Intervenor Lincoln

Ms. Lincoln requested clarification on how sustainability and infrastructure requirements would be handled; and how Petitioner would react if certain approvals/permits were not able to be obtained. Ms. Bigelow described how the Petition Area would be developed, what design features were engineered for it; and how the current landowner had obtained the Petition Area property and its preliminary County approvals.

Ms. Lincoln requested clarification on what had occurred at various community meetings and how the proposed project had been received; and on other development related activities had been performed. Ms. Bigelow shared her understanding of what occurred during the development approval process for the proposed project and how land area for the proposed project and park on site had been acquired and determined. Ms. Bigelow also expressed what land development activities the Petitioner had been involved with after its acquisition of the land area and how the ownership groups were organized; and how proposed project prices were fixed by its agreement with the County.

Ms. Lincoln requested clarification on the funding for the proposed project, and whether Habitat for Humanity had the ability to obtain funding and financial resources to complete the building on schedule.. Ms. Bigelow described the funding and estimated construction costs for the proposed project and how tax assessments were computed and how an attempt to sell the Petition Area to the County had fared.

Ms. Lincoln requested clarification on what would happen if the land remained designated agriculture. Ms. Bigelow replied that Petitioner would reassess the situation and attempt to continue its efforts to develop the Petition Area

Commissioner Matsumura excused himself at 11:50 a.m. and returned at 11:53 a.m.

Intervenor Bolomet

Ms. Bolomet requested clarification on Ms. Bolomet's role as Project Manager and the ownership structure for the properties in the area. Mr. Bigelow described the criteria, methodology and considerations that had been made to conduct and analyze and acquire the Petition Area and surrounding properties. Discussion ensued to have Ms. Bolomet refrain from interjecting extraneous comments and arguing her ownership title questioning.

Ms. Bolomet asked who Peter Martin was and what the scope of the environmental assessment for the Petition Area was. Ms. Bigelow explained that Mr. Martin was a Vice President of West Maui Land Company and one of the managing members of Kahoma Land Company and described how the environmental and cultural assessments had been performed and how it was project specific.

Commissioner McDonald excused himself at 11:56 a.m. and returned at 11:58 a.m.

Ms. Bolomet requested clarification on how Article 12, Section 7 of the cultural assessment concerns would be addressed. Ms. Bigelow shared her understanding of how possible impacts resulting from the project were considered and mitigated. Discussion ensued over questions regarding water and land use commission governance and Ms. Bigelow voiced how Petitioner was aware of the Army Corp of Engineer's involvement with stream diversion issues but had not been involved with any.

Ms. Bolomet requested clarification on how a heiau which she believed was in

the Petition Area had been dealt with. Discussion ensued over the presumption that a heiau existed on the site and the assuming method of questioning that Ms. Bolomet was using. Vice Chair Heller allowed the question and Ms. Bigelow replied that no evidence of a heiau on the Petition Area site had been discovered but that another area up further from the Petition Area contained evidence of a heiau. Ms. Bigelow added that the project archaeologist had been attempting to work with Ms. Bolomet, Mr. Lee and Ms. Apana to locate a heiau on the Petition Area.

Ms. Bolomet asked if permits for the use of the Lahaina Wastewater Facility were obtained. Ms. Bigelow described how permits could be obtained and what their estimated costs. Discussion ensued over facts not entered into evidence and relevance to the case. Mr. Giroux and Mr. Geiger shared their opinion that Ms. Bolomet's questioning was presumptive. Vice Chair Heller advised Ms. Bolomet that her method of asking questions which assumed facts that were not demonstrated or shown in evidence was not permissible and was the cause for the repeated objections that were being voiced and urged her to avoid that practice and consider how to better frame her questions during the upcoming recess.

The Commission went into recess at 12:07p.m. and reconvened at 1:17 p.m.

Ms. Bolomet requested clarification on how the proposed project met the criteria for amending urban boundaries. Discussion ensued to have Ms. Bolomet separate and then ask her questions to the witness. Ms. Bolomet responded by asking more specific questions. Ms. Bigelow described how the project had been planned to conform to the urban boundary amendment requirements; and had been vetted through various entities to assure that any concerns about the proposed project could be identified and addressed.

Ms. Bolomet requested clarification on various permits obtained for the project and what their specifics were. Ms. Bigelow could not locate the engineering report and explained how responsible agencies for the permits would have the information and why they did not need to be included in the EIS.

Ms. Bolomet requested clarification on the use of injection wells. Discussion

ensued over Ms. Bolomet's continued misuse of her questioning technique that triggered objections. Vice Chair Heller again advised Ms. Bolomet to frame her questions in the form of questions. Ms. Bolomet requested confirmation on other permits that needed to be included during the processing of a proposed project's EIS.

Ms. Bolomet requested clarification on the responsibility for maintenance of the proposed project's park. Ms. Bigelow replied that it was expected that the Homeowners Association would be responsible for the various costs associated with maintaining and upkeeping the park. Discussion ensued over the questioning method used by Ms. Bolomet in requesting clarification on the insurance coverage that needed to be maintained. Ms. Bigelow provided her understanding of how payments for insurance would be handled.

Mr. Geiger requested clarification on whether the County had demonstrated interest in using the Petition Area as a park. Ms. Bigelow replied that the County had been approached but how there had only been interest in using the Petition Area as a residential project.

Mr. Geiger also requested clarification on how the off-site impacts from the project would be addressed. Ms. Bigelow described how mitigation efforts for the proposed project were expected to reduce or eliminate concerns about off-site issues.

Commissioner Questions

Commissioner Biga requested clarification on what other projects West Maui had; who had ownership of the Old Mill area and the dedication timing plans for the Mill Road. Ms. Bigelow described other activities that West Maui Land was involved in and who owned the Old Mill Area; and stated that the Mill Road would probably be dedicated to the County upon its completion.

Commissioner Biga also asked what might happen if the Petition Area were sold; and how vacant land would be offered for dwelling construction. Ms. Bigelow stated that if a sale were to occur, all the Conditions would still be required of the buyer; and described how the proposed project units would be overseen by the County to ensure compliance with Conditions.

Commissioner McDonald requested clarification on who would maintain the detention basin. Ms. Bigelow responded that it was expected to be the Homeowners Association and described the various CC&Rs, BMP standards and estimated costs involved for the HOA.

Commissioner Biga requested clarification on the qualifications and process involved with the detention basin maintenance program. Ms. Bigelow shared how HOAs that she was familiar with hired consultants to monitor and maintain this type of facility.

Vice Chair Heller requested clarification on how vacant lot sales and construction upon them within the specified period would be addressed. Ms. Bigelow replied that CC&Rs would be put in place to assist in controlling the situation.

There were no further questions for Ms. Bigelow. Mr. Geiger stated that Mr. Frampton was available for rebuttal, but that he planned to make him available later in the proceeding. Vice Chair Heller called for County to begin its presentation.

County Witnesses

1. David Taylor, Director, Water Department
   Mr. Giroux submitted a position statement and resume on behalf of Mr. Taylor which the Parties did not object to.
   Mr. Taylor stated that the proposed project was exempt from the County's "Show Me The Water" Ordinance due to its 100 per cent affordable component and described how the proposed project could obtain water.

Petitioner Questions

Mr. Geiger had no questions.

OP

Mr. Yee requested clarification on whether the existing water system had the capacity to provide for the proposed project. Mr. Taylor shared his understanding of what additional capacity was available based on current available resources; and that a study was underway to better determine what level of water supply could be relied upon to serve community needs. Mr. Taylor also described how water meters for the

West Maui would be allocated and the processes that the Maui County Council used to arrive at its conclusions.

Intervenor Lincoln

Ms. Lincoln requested clarification on how the proposed project met the criteria for "infill", and how it was affected by the 201H exemption "infill" question to and described his understanding of what "infill" development issues were and how "infill" issues were resolved by his department. Discussion ensued to clarify that Ms. Lincoln was referring to a County Exhibit 8 and not a Petitioner's exhibit; and Vice Chair Heller requested that Ms. Lincoln focus her question and refrain from commenting, and being repetitive and cumulative. Mr. Taylor described portions of the water study that were completed and what type of information he expected the study to provide. Mr. Taylor provided the cost factors that determined rates for water meters and how they applied to the proposed project and described how the fees could be calculated and how service costs were quantitatively determined.

Intervenor Bolomet

Ms. Bolomet requested clarification on water quality and supply capacities for service to the proposed project. Mr. Taylor described what questions he could knowledgeably respond to and how his department conducted demand and cost analyses for proposed projects and what the County Council role in the final determination of prices was. Mr. Taylor suggested departments that he thought could better respond to Ms. Bolomet's questions and defined what his department's role was for Ms. Bolomet's benefit.

Ms. Bolomet referred to Ms. Apana's Exhibit 2 and described what she was attempting to inquire about. Mr. Taylor provided his opinion of what he thought the Exhibit reflected.

Commissioner Makua departed the meeting at 2:00 p.m. and did not return.

Ms. Bolomet continued her questioning regarding Exhibit 2 and Mr. Taylor continued to express his opinion on what the plans might be referring to and who was responsible for preparing the plans for the Army Corp of Engineers and how "hook up" piping systems were constructed to connect and supply the community. Discussion ensued and Ms. Bolomet was advised to properly frame her questions and that her line of questioning was cumulative to previous testimony. Ms. Bolomet argued that she was attempting to obtain information and Vice Chair Heller commented that her repeated questioning after the witness had already responded to having no knowledge was not being productive.

Ms. Bolomet requested clarification on how water quality was maintained and what methods and materials were used to ensure the safety of the water supply. Mr. Taylor described how his department conformed to Department of Health standards and how chlorine content met Federal and State regulations. Discussion ensued regarding how Ms. Bolomet's questions were not related to the witness' expertise and argumentative in nature. Vice Chair Heller requested Ms. Bolomet to move on.

Ms. Bolomet requested clarification on how stream diversion permits were obtained and used by Mr. Taylor's department. Mr. Taylor shared the details of the responsible agency that issued the permit, how records of the permits were kept and when/how it was decided that permits would be needed.

There were no Commissioner questions and the witness was excused.

2. Jo Ann Ridao
   Ms. Ridao had no changes to her submitted testimony and was offered as an Expert in Affordable Housing. There were no objections by the Parties.

   Ms. Ridao described why her Department supported the proposed project and summarized her written testimony for the Commission.

Commissioner McDonald excused himself at 2:20 p.m. and returned at 2:24 p.m.

Petitioner Questions

Mr. Geiger requested clarification on the demand for housing in the West Maui area that Ms. Ridao was aware of. Ms. Ridao shared her knowledge of the housing

demand information that her department receives and why housing demand for the area was so high.

OP Questions

Mr. Yee inquired whether the Petitioner and the County had signed off on an affordable housing agreement for the proposed project. Mr. Ridao responded that an agreement hadn't been reached yet and described the County's resolution and requirements for the proposed affordable housing project and what provisions the agreement was expected to contain.

There were no further questions.

Intervenor Lincoln

Ms. Lincoln asked whether or not the County had made decisions based on Ms. Bigelow's testimony about community input. Ms. Ridao described how she thought the community's input was accepted and how it factored in the County's decision-making for the proposed project.

Ms. Lincoln requested how impacts resulting from the proposed project would be addressed. Ms. Ridao described how the proposed project had an "infill" role and how it would have a minimal effect on the existing community. Discussion ensued regarding the definition of "infill" that Ms. Lincoln was referring to. Ms. Ridao clarified what her understanding of what the term meant.

Ms. Ridao described how the park feature factored into the overall plan for the area and how traffic in the area was envisioned to improve upon completion of the proposed project and shared her understanding of various questions that Ms. Lincoln had prepared about the proposed project and the price and income limits involved for units within it. Ms. Ridao also described how extensions could be applied for but was unsure of how they would be granted; and how non-compliance of terms and conditions would be handled by the County; and how housing demand for the area was being helped by the County; and under what circumstances.

Vice Chair Heller announced that the proceeding for A12-795 would be halted for the day and would resume on Friday, September 7, 2012 in order to hear the scheduled agenda item A94-706 Ka`ono`ulu Ranch.

The Commission went into recess at 2:45 p.m. and reconvened at 3:00 p.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 to consider a Petition to Intervene filed by Movant Maui Tomorrow Foundation, Inc., South Maui Citizens for Responsible Growth and Daniel Kanahele.

APPEARANCES

Joel Kam, Esq., represented Honua`ula Partners
Jonathan Steiner, Esq., represented Pi`ilani Promenade North LLC, Pi`ilani Promenade South LLC
Jane Lovell, Esq., Deputy Corporation Counsel, represented County of Maui Planning Department (County)
Michael Hopper, Esq., Deputy Corporation Counsel, County
Anne Cua, County Staff Planner
Bryan Yee, Esq., represented State Office of Planning (OP)
Rodney Funakoshi, 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. There were no questions or comments regarding the procedures.

PUBLIC WITNESSES

1. Robin Knox- Environmental Scientist
   Ms. Knox provided her credentials as an environmental scientist and stated that she was testifying as an individual and not as a representative of any group that she was involved with. Ms. Knox described her concerns about the impact of runoff water to near shore water quality and other safety and environmental concerns that she felt the Commission should be aware of.

There were no questions for Ms. Knox.
There were no other Public Witnesses.

Commissioner Inouye moved for an Executive Session. Commissioner Biga seconded the Motion.

The Commission went into Executive Session at 3:10 p.m. and reconvened at 3:30 p.m.

Vice Chair Heller stated to the Parties how the Commission would be procedurally handling the docket by dividing it into two phases- 1) to consider whether there had been a violation of the Decision and Order and 2) to consider what to do if a violation had been determined.

Mr. Pierce requested to reserve the right to brief the issue and argued why he felt contested case procedures should be followed. Vice Chair Heller described the considerations that factored into procedurally separating the docket into 2 phases and allowed Mr. Pierce to consider filing a Motion or memo and requested that the Petitioner present its case.

Mr. Pierce stated that he would rest on his pleading and requested to have members from the organizations he represented and Mr. Kanahele verify the facts that had been set forth in his Petition to Intervene. Discussion ensued on whether or not the verifications were necessary. Mr. Pierce stated the reasons why he felt it was necessary to build his record. Vice Chair Heller acknowledged Mr. Pierce's request and allowed the verification testimonies.

1. Irene Bowie-Movant Maui Tomorrow Foundation
There were no objections to Ms. Bowie's appearance to testify. Ms. Bowie stated that she verified the information in the Petition to Intervene to be accurate and true.
There were no questions for Ms.Bowie

2. Mark Hyde- President, South Maui Citizens for Responsible Growth

There were no objections to Mr. Hyde's appearance to testify. Mr. Hyde stated that he verified the information in the Petition to Intervene to be accurate and true.
There were no questions for Mr. Hyde.

3. Daniel Kanahele

There were no objections to Mr. Kanahele's appearance to testify. Mr. Kanahele stated that he verified the information in the Petition to Intervene to be accurate and true; and described his background and archaeological and historical and other interests in the Petition to Intervene and in the Petition Area.

Mr. Kam had no questions.

Mr. Steiner requested clarification on what cultural/historic sites that Mr.Kanahele was aware of other that what had been disclosed on the archaeological survey of the Petition Area. Mr. Kanahele responded that he was not.

Mr. Hopper, Mr. Hee and the Commissioners had no questions.

Mr. Pierce stated that he rested this portion of his case.

PETITIONER PRESENTATIONS

HONUA`ULA PARTNERS LLC.

Mr. Kam stated that he had nothing to add to his memo in opposition to the Petition and rested on his brief.

PI`ILANI PROMENADE LLCs

Mr. Steiner argued that no interest other than what had originally been indicated in the Petition had been shown and requested that the Petition to Intervene be denied.

COUNTY

Mr. Hopper stated that County had filed a statement of no opposition to the Petition to Intervene and rested on his briefing.

OP

Mr. Yee reserved the right to argue issues of relevance and stated that OP had no position on the Petition to Intervene.

Vice Chair Heller clarified how Mr. Pierce would be representing the three entities and that filings for all three entities would be combined; i.e., there would not be separate filings by each of the three. Mr. Pierce indicated that he would be the only representative for Maui Tomorrow Foundation, South Maui Citizens for Responsible Growth and Daniel Kanahele, and agreed that they would file on a combined basis. .

Commissioner Inouye moved to grant the Petition to Intervene with the condition that one attorney represent all three movants in the docket and they would not separate in the first phase as Vice Chair Heller had described in the event of any disputes among them. Commissioner Biga seconded the Motion.

The Commission voted as follows:

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

Nays: None

The Motion passed 6-0 with 3 excused.

Commissioner Contrades moved to adjourn for the day.

Commissioner Biga seconded the motion.

By a unanimous voice vote (6-0), the Commission elected to adjourn for the day at 3:56 p.m.

LAND USE COMMISSION
MEETING MINUTES

September 7, 2012
Maui Arts and Cultural Center, Alexa Higashi Room
One Cameron Way
Kahului, Maui, Hawai`i, 96732

COMMISSIONERS PRESENT:	Chad McDonald Lance Inouye Sheldon Biga Ronald Heller Ernest Matsumura Thomas Contrades Napua Makua
COMMISSIONERS EXCUSED:	Kyle Chock Nicholas Teves, Jr.
STAFF PRESENT:	Daniel Orodenker, Executive Officer 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 9:00 a.m.

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)
Kurt Wollenhaupt (County)
Bryan Yee, Esq., represented State Office of Planning (OP)
Rodney Funakoshi, OP
Michele Lincoln, Intervenor
Routh Bolomet, Intervenor
Michael Lee, assisting Routh Bolomet.

CONTINUATION OF HEARING

Vice Chair Heller stated that the proceedings would resume with the continued questioning of County's witness Jo Ann Ridao.

Before the proceedings began, Mr. Geiger noted that he had received documents referring to Intervenor Bolomet's Witness Michael Lee and questioned whether it was appropriate that the Commission be provided exhibit materials evidence past the agreed upon August 1st , 2012 deadline that had been established for the Parties earlier on. Vice Chair Heller determined that the evidence had not been offered yet and that the matter would be addressed at that time if they were.

Intervenor Lincoln stated that she would like to withdraw her Exhibit 9 (Elle Cochran testimony) and offer Exhibit 15 in its place. Ms. Lincoln stated that it was essentially the same exhibit but that it had been altered to remove references to Ms. Cochran's position on the County Council in response to County's objection. There were no objections to Ms. Lincoln's request, and Exhibit 15 was admitted to replace Exhibit 9. .

Intervenor Bolomet stated that the documents that Mr. Geiger received were copies of public testimony that had been distributed to share with the Commission and Parties. Discussion ensued regarding the validity of Ms. Bolomet's characterization of

what the documents were since an email to Ms. Bolomet was included that was not addressed to the Commission. Mr. Geiger and Mr. Giroux expressed their concerns about the repeated practice by Ms. Bolomet of submitting exhibits as public testimony and using them without the benefit of being able to challenge or confirm whether they were truthful and accurate. Vice Chair Heller noted the comments of Mr. Geiger and Mr. Giroux and described how the Commission perceived public testimony. Ms. Bolomet argued that Petitioner's Exhibit 40 had been accepted by the Commission and that her intention had been to use one of the papers she had circulated to dispute that exhibit and had been mistakenly been included in the distribution. Vice Chair Heller stated that if it was going to be an Intervenor Bolomet exhibit, it would be assessed if and when it was offered, and that the documents that were submitted as public testimony would be considered as such.

Questions for County Witness Ms. Ridao (continued from September 6, 2012)

Intervenor Bolomet

Ms. Bolomet requested clarification on Ms. Ridao's qualification to review environment assessments and accept them. Ms. Ridao described her background and experience in housing projects and dealing with and verifying EAs during the course of her work. Ms. Ridao also described how cultural aspects and sustainability criteria for the housing projects she was responsible for were addressed; and how the County monitored and enforced its project standards. Discussion ensued regarding Ms. Bolomet's method of questioning the witness and Ms. Bolomet was urged to use questioning instead of commentary.

Ms. Bolomet requested clarification on Ms. Ridao's responses to Ms. Lincoln's questions on traffic, and on how County departments communicated on housing matters. Discussion ensued to have Ms. Bolomet avoid argumentative, cumulative and repetitive testimony. Vice Chair Heller determined that Ms. Bolomet's questions were repetitive and cumulative and requested that she move on. Ms. Bolomet responded that she had no further questions.

Redirect

Mr. Giroux requested clarification on Ms. Ridao's responses to Ms. Lincoln's questions regarding the criteria the County used in selecting locations for its workforce

housing projects. Ms. Ridao described the various factors that were considered and noted that locations with close proximity to work and services was an important feature.

Mr. Giroux also requested clarification on whether there had been any challenges lawsuits or appeals filed against the environmental assessment and its acceptance for the proposed project. Ms. Bolomet responded that there were none that she was aware o f and acknowledged that a cultural assessment was a required component of the environmental assessment and that one had been provided for the proposed project.

Mr. Giroux asked whether an assessment had been done to consider the agricultural aspects of the Petition Area and its past use. Ms. Ridao shared her understanding of the agricultural sustainability for the Petition Area.

Mr. Giroux had no further questions.

Commissioner Questions

Commissioner McDonald requested clarification on what agencies were contacted during the EA. Ms. Ridao replied that a checklist of agencies was used to notify them of housing activity that was being considered and a comment period ensued to collect their input.

Commissioner Biga asked if it was possible for the proposed project to offer more homes at the 80 percent level for the Lahaina process. Ms. Ridao shared her opinion of how the development costs factored into putting pressure on price levels for the project developer and that the economic realities of the situation limited how many 80 percent units could be offered.

Commissioner Makua requested clarification on what cultural organizations were included in the list of entities that the EA used. Ms. Ridao replied that SHPD was the primary agency and that she was not sure of what entities at the County level were included and reviewed and identified entities that she thought would respond on cultural issues.

Commissioner Heller requested clarification on the public notice and its distribution. Ms. Ridao described the requirements and procedures involved for the EA.

There were no further questions for Ms. Ridao.

3. Rowena Dagdag- Andaya- Deputy Director of Public Works-Maui County

Ms. Andaya described her position with the County and Mr. Giroux offered her resume as Exhibit 9. Discussion ensued to determine if County's Exhibit 2 was being withdrawn. Mr. Giroux confirmed that he was withdrawing Exhibit 2 and that he was making the substitution in response to Ms. Andaya's appearance instead of Mr. Goode. There were no objections to Mr. Giroux's request and Ms. Andaya's appearance as an expert witness.

Discussion ensued to clarify that the written statement of Ms. Andaya was Exhibit 9, and her resume would be Exhibit 15. There were no objections to the updated exhibit numbers.

Ms. Andaya corrected her written submission and summarized her testimony for the Commission and described how the proposed project would be reviewed by her department.

Questions

Petitioner

Mr. Geiger asked if the Department of Public Works supported the proposed project. Ms. Andaya responded that it did and described how the proposed project had been reviewed by her agency and how the County was in the process of updating its rules, standards and guidelines to conform to nationwide standards. Ms. Andaya also described the roadway, sidewalks, wastewater, flood controls, and other infrastructure features that had been proposed and reviewed for the proposed project; and who would be responsible for their maintenance. Ms. Andaya stated that the County would monitor whether the necessary permits and approvals were obtained and shared how it responded to the Army Corp of Engineers directives to maintain the area.

OP

Mr. Yee requested clarification on how and when new proposed stormwater ordinances would be addressed by the Public Works Department. Ms. Andaya provided her understanding of the current status of the proposed rules and what her interpretation was of the terms rules and ordinances; and clarified that the County Council would be addressing rules.

Intervenor Lincoln

Ms. Lincoln requested clarification on whether or not an "after the fact" permit would be obtained for the fill that had been deposited in the Petition Area. Ms. Andaya expressed the procedure that would be used to inspect, test and remove the fill material from the Petition Area. Ms. Lincoln stated that she had several County questions and posed them for Ms. Andaya to answer since she was the final County witness. Ms. Andaya responded to questions that involved her department's work on existing and proposed infrastructure and traffic improvements for the Petition Area and had no response to answers outside the scope of her organization.

Intervenor Bolomet

Ms. Bolomet requested clarification on what practices the County needed to observe while performing work on its projects. Ms. Andaya shared her understanding of what procedures were performed for different aspects of public work projects. Discussion occurred during the questioning to have Ms. Bolomet discontinue her argumentative questioning. Ms. Bolomet asked if cultural rights monitoring occurred during the review process of the proposed project plans. Ms. Andaya responded that her department did not have a cultural practitioner to consult with and shared her opinion of what purpose underground pipes in the Petition Area may have had.

Ms. Bolomet also asked questions regarding the impact of climate change, low impact development and LEED; EPA rules, a proposed internal road in the Petition Area, clean water standards, water retention infrastructure; and the type of emergency preparedness practices that would be used to protect the community. Ms. Andaya provided her understanding of how her department addressed the various items that Ms. Bolomet wanted information on.

Redirect

Mr. Giroux requested clarification on Ms. Andaya's answers to questions regarding the design and safety features of existing and proposed infrastructure components in the Petition Area. Ms. Andaya shared her understanding of how the infrastructure components were designed, built and maintained and described how her department cooperated with the Army Corp of Engineer on various matters.

Commissioner Biga requested clarification on the status of the Old Mill Road in the Petition Area. Ms. Andaya responded that matters were still in the draft EA and planning and design phase and that there was no firm timeline in place at the present.

Commissioner Biga also requested clarification on the proposed traffic controls for the proposed project. Ms. Andaya described the various considerations that were being studied that she was aware of and what selection criteria might apply to them.

Vice Chair Heller requested clarification on stormwater runoff and pollution considerations under urban and agricultural conditions. Ms. Andaya replied that different drainage control and stormwater quality standards may be applied depending on the land use or how development on a property was occurring.

There were no further questions for Ms. Andaya.

The Commission went into recess at 10:35 a.m. and reconvened at 10:58 a.m.

Vice Chair Heller recognized members of the audience that he thought were going to provide public testimony. Ms. Lincoln commented that the audience members were testifying for her portion of the proceedings and Vice Chair Heller called for OP to begin its presentation.

OP

Mr. Yee offered Rodney Funakoshi, Planning Program Administrator and his testimony as an expert in planning. There were no objections.

1. Rodney Funakoshi

   Mr. Funakoshi summarized his testimony and described why OP recommended approval of the proposed project with conditions.

Questions for Mr. Funakoshi

Petitioner

Mr. Geiger requested clarification on the considerations and evaluations that OP had made for agricultural value of the Petition Area, sustainability features for the proposed project and the assessment and review processes that were performed in determining OP's position of recommending approval of the proposed project with conditions. Mr. Funakoshi provided his understanding of the different aspects of the proposed project and Petition Area and how his department had determined its position.

County

Mr. Giroux had no questions.

Intervenor Lincoln

Ms. Lincoln requested clarification on how OP perceived the "infill" characterization of the proposed project that County had used during its portion of the presentation and how discretionary approvals were obtained. Mr. Funakoshi declined responding on the County's behalf and shared how OP characterized the project

Ms. Lincoln also requested clarification on how OP had determined its position on the Petition and what "checks and balances" were in place within the approval process. Mr. Funakoshi described the controls, standards, methodology and information that were considered to arrive at its conclusions and provided his understanding on various other questions that Ms. Lincoln had regarding educational/recreational facilities, offshore reef protection, flood retention walls, community benefits, loss of open space, boundary amendment criteria, conformance to the State Constitution provisions and citizen rights.

Intervenor Bolomet

Ms. Bolomet requested clarification on the State Constitution and its relationship to rules, ordinances and statutes, the role of the Attorney General in the OP review process, and the criteria used during the evaluation of the Petition. Mr. Funakoshi

described the methodology used by OP and the personnel and agencies involved during the process. Discussion ensued regarding the archaeological portion of the Petitioner's presentation and the argumentative nature of Ms. Bolomet's questioning. Vice Chair Heller determined that Ms. Bolomet's questions were inappropriate and Ms. Bolomet argued why she asked such questions. Vice Chair repeated that it was not helpful to continue asking questions after the witness had responded that they had no knowledge about the subject matter.

Ms. Bolomet requested clarification on how the soil ratings for the Petition Area were determined. Mr. Funakoshi described how soil ratings had been developed and used over the years and how recent Important Agricultural Lands legislation factored in OP's decision making. Ms. Bolomet asked how the Oahu Hoopili case was decided upon and discussion ensued on whether the use of other cases was appropriate. Vice Chair Heller determined that the focus of Ms. Bolomet's questions should be on the Petition Area under discussion.

Ms. Bolomet requested information on how her questions should be asked in order to be allowed and Vice Chair Heller clarified his expectations for the questioning of the witness. Mr. Yee identified the subject areas that Mr. Funakoshi had already testified about and argued that Ms. Bolomet's questions were cumulative. Mr. Geiger joined in Mr. Yee's comment. Vice Chair Heller determined that Mr. Yee and Mr. Geiger were correct in their assessment of Ms. Bolomet's questioning and suggested that Ms. Bolomet reexamine Important Agricultural Land and ALISH definitions to be clear on what they meant and how they applied to the proceedings. Ms. Bolomet argued why she should be allowed to participate in the proceedings in a manner that would serve as a "check and balance" system. Vice Chair Heller replied that he appreciated her efforts and described why it was not productive to repetitively question a witness who could not provide an answer. Ms. Bolomet replied that she would move on.

Ms. Bolomet requested clarification on how the Hawaii State Plan protected native gathering rights to coral and limu that would be affected by runoff from the proposed project. Discussion ensued on the portions of the question that were argumentative. Vice Chair Heller determined that Ms. Bolomet's question was argumentative and requested that she ask her questions without assumptions included. Ms. Bolomet reframed her question and Mr. Funakoshi described how approvals and

permits were required to ensure water quality downstream and how the environmental review processes were followed and state concerns were addressed. Discussion again ensued as Ms. Bolomet continued her questioning and Mr. Geiger commented that evidence was argumentative and cumulative. Vice Chair Heller agreed and had Ms. Bolomet move on.

Ms. Bolomet requested clarification on where and how stormwater would be channeled in the Petition Area. Mr. Funakoshi provided his understanding of where the stormwater would go and how/when this water quality was checked; and what resources might be available to obtain more detailed information.

Redirect

Mr. Yee requested clarification on impacts to coral and limu. Mr. Funakoshi shared his recollection of different agencies that were contacted to review the plans for the proposed project and what type of comments or responses had been obtained from them. Mr. Funakoshi stated that no concerns about coral or limu were raised during the review and that OP had recommended low-impact development practices and best management practices be followed.

There were no further questions for Mr. Funakoshi.

The Commission went into recess at 12:03 p.m. and reconvened at 1:03 p.m.

Intervenor Lincoln

Ms. Lincoln called her witnesses to testify.

1. Jane Amai

   Ms. Amai submitted written testimony and described her familiarity with the Petition Area and why she opposed the proposed project.

   Mr. Geiger requested clarification on where Ms. Amai lived; if she had previously testified before the Maui Council and why she opposed the proposed project. Ms. Amai described where she lived and stated that she was currently testifying for the first time and opposed the proposed project since she did not want it in her "backyard".
   Mr. Giroux had no questions.

Mr. Yee requested clarification on what kind of areas Ms. Amai would consider to be safe for walking. Ms. Amai commented that she preferred having sidewalks or park areas to use.

Ms. Bolomet requested clarification on various features of the Petition Area and surrounding neighborhoods and on the presence of an owl in the vicinity. Ms. Amai recalled how the area appeared before the flood control measures for the region were implemented and shared that she had seen an owl in the area.

Redirect

Ms. Lincoln requested clarification on what types of sidewalk access issues Ms. Amai had in the neighborhood. Ms. Amai described the various situations that she encountered or would encounter if the proposed project were built.

Mr. Giroux requested clarification on what types of agricultural activities were performed in the Petition Area after the flood control project was completed. Ms. Amai stated that had seen mainly backyard gardening activity but no major activity.

Commissioner Biga requested clarification on why Ms. Amai loved the area so much. Ms. Amai replied that she enjoyed walking and having an area where she felt safe.

There were no further questions for Ms. Amai.

2. Herman Naiole

Mr. Naiole submitted testimony and described his concerns about traffic, congestion, safety, and lifestyle degradation

that the proposed project would bring to his neighborhood. Mr. Naiole stated that he had collected over 200 names on a petition objecting to the proposed project.

Mr. Geiger asked if Mr. Naiole had reviewed the conceptual plan for the proposed project. Mr. Naiole responded that he was aware of the proposed park and other roadway improvements that were included in the plan and restated his concerns about safety. Discussion ensued over Mr. Naiole's comments and Mr. Naiole stated that he had also shared his comments with the Maui County Council.

County and OP had no questions.

Intervenor Bolomet requested clarification on Mr. Naiole's traffic observations. Mr. Naiole commented how the area near his home lacked sidewalks and was already dangerous and shared his family's cultural heritage and guardian spirit legacy.

Redirect

Ms. Lincoln asked whether it was possible to restore the Petition Area to how it was. Mr. Naiole replied that he thought it was possible if water could be resupplied to the area.

3. Cynthia Cajugal

Ms. Cajugal shared her family history and described the Petition Area as it was before the flood control project diverted the water from the neighborhood and her recollection of the County's representations of how the Petition Area land would be used as open space. Ms. Cajugal shared why the West Maui residents opposed the proposed project and preferred keeping the area an open space.

Mr. Geiger requested clarification on the location of Ms. Cajugal's family home in relation to the Petition Area and the past usage of the area and confirmed if she had given similar testimony to the Maui County Council and seen the Maui Island Plan. Ms. Cajugal described where her house was located

and acknowledged that she had given similar testimony and had seen the Maui Island Plan but had limited participation with the plan's development.

County and OP had no questions

Intervenor Bolomet

Ms. Bolomet questioned Ms. Cajugal about Kahoma Land's ownership of the property. Discussion ensued to correctly identify the year of purchase and it was established that the correct date was in 1999 and that commercial farming on the property had ceased. Further questioning continued and discussion ensued regarding the speculative nature of the questioning. Vice Chair Heller determined that the questions were not appropriate and directed Ms. Bolomet to move on.

Ms. Bolomet requested clarification of pre-flood control land features that the Petition Area contained. Ms. Cajugal described her recollection of how the Petition Area used to look and the type of greenery that was on the site.

Redirect

Ms. Lincoln asked if Ms. Cajugal had anything else to share. Ms. Cajugal responded that she did not.

Vice Chair Heller noted that there had been several references to tamarind trees being on the property and requested clarification as to their specific location. Ms. Cajugal described where she believed the tamarind trees grew.

Vice Chair Heller asked if there were any more Intervenor Lincoln witnesses. Ms. Lincoln replied that her witness, Elle Cochran, was unable to appear and had submitted written testimony instead. Discussion ensued on whether the exhibit associated with Ms. Cochran had been admitted. Mr. Geiger recalled that earlier Commission action had admitted the exhibit. Vice Chair Heller concurred and Ms. Lincoln requested a recess. Vice Chair Heller granted her request.

The Commission went into recess at 1:45 p.m. and reconvened at 1:47 p.m.

Ms. Lincoln took the stand to testify and shared her reasons for intervening in the docket, how the representations of the Petition Area as "open space" over the years were made and why she opposed the Petition.

Vice Chair Heller inquired if Ms. Lincoln was near to completing her testimony and Ms. Lincoln replied that she needed more time. Vice Chair Heller stated that due to time constraints of the flight scheduling of the Commissioners, she could resume her testimony at the next meeting.

Commissioner Biga moved to adjourn the meeting and Commissioner McDonald seconded the motion. By unanimous voice vote (7-0), the Commission elected to adjourn at 2:15.