

LAND USE COMMISSION
MINUTES OF MEETING

January 8, 2009

Waikoloa Beach Marriott Resort
69-275 Waikoloa Beach Drive
Waikoloa, Hawaii 96738

COMMISSIONERS PRESENT: Kyle Chock
Thomas Contrades
Lisa Judge
Duane Kanuha
Normand Lezy
Nicholas Teves, Jr.
Ransom Piltz
Reuben Wong

COMMISSIONERS ABSENT: Vladimir Paul Devens

STAFF PRESENT: Orlando Davidson, Executive Officer
Riley Hakoda, Staff Planner
Russell Suzuki, Deputy Attorney General
Holly Hackett, Court Reporter
Walter Mensching, Audio Technician

CALL TO ORDER

Vice Chair Ransom Piltz called the meeting to order at 10:13 a.m.

ADOPTION OF MINUTES

Commissioner Judge moved to adopt the minutes of November 6, 2008. Commissioner Contrades seconded the motion. The motion was unanimously approved by voice vote.

TENTATIVE MEETING SCHEDULE

Executive Officer Davidson noted that the meeting's start time was delayed due to a traffic accident delaying the arrival of Chair Kanuha and the Hawaii County representatives. Executive Officer Davidson advised the Commissioners of the 2009 schedule; and introduced new staff planner, Riley Hakoda.

A03-744 HILUHILU DEVELOPMENT, LLC (Kau, North Kona, Hawaii)

Vice Chair Piltz stated that this was an action meeting to consider Petitioner's Motion to Amend Condition 7 (Open Space) in the Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment, to allow an entry feature for the Palamanui Project.

APPEARANCES

Alan Okamoto, Esq., represented Petitioner
Guido Giacometti, Guy Lam, Roger Harris, and Gerald Yamamoto, Palamanui
Bryan Yee, Esq., represented State Office of Planning
Abe Mitsuda, State Office of Planning
Lorene Maki, State Office of Planning

There were no public witnesses providing oral testimony.

Vice Chair Piltz noted for the record that the Commission recognized County's absence to the proceedings and stated that the County has submitted a letter supporting this amendment.

There was discussion that no substantial changes were involved, and that the Petitioner is requesting to add an entry feature to the project. State Office of Planning deferred comment to the County.

Commissioner Wong moved to accept Petitioner's Motion to Amend Condition 7 (Open Space) in the Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment, to allow an entry feature for the Palamanui Project. Commissioner Contrades seconded the motion. The Commission was polled as follows:

Ayes: Commissioners Wong, Contrades, Chock, Judge, Lezy, Piltz, and Teves.

The motion passed with 7 ayes, 1 absent, and 1 excused.

A03-744 HILUHILU DEVELOPMENT, LLC (Kau, North Kona, Hawaii)

Vice Chair Piltz stated that this was an action meeting to consider Petitioner's Motion to Correct Errors in Findings of Fact and Conclusions of Law, Decision and Order for a State Land Use Boundary Amendment.

APPEARANCES

Alan Okamoto, Esq., represented Petitioner
Guido Giacometti, Guy Lam, Roger Harris, and Gerald Yamamoto, Palamanui
Bryan Yee, Esq., represented State Office of Planning
Abe Mitsuda, State Office of Planning
Lorene Maki, State Office of Planning

Mr. Okamoto stated that he admitted the oversight and requested to amend the Order to correct the tax map key numbers.

Commissioner Wong questioned if there were only three references to the tax map key numbers that needed correction. Mr. Okamoto responded in the affirmative.

State Office of Planning had no objections to the change.

Vice Chair Piltz stated that the County of Hawaii had no objections to the change.

Commissioner Contrades moved to accept Petitioner's Motion to Correct Errors in Findings of Fact and Conclusions of Law, Decision and Order for a State Land Use Boundary Amendment. Commissioner Teves seconded the motion. The Commission was polled as follows:

Ayes: Commissioners Contrades, Teves, Chock, Judge, Lezy, Piltz, and Wong.

The motion passed with 7 ayes, 1 absent, and 1 excused.

A06-771 D.R.HORTON-SCHULER HOMES, a Delaware limited liability company, d.b.a. D.R. HORTON-SCHULER DIVISION (Ewa, Oahu, Hawaii)

Vice Chair Piltz stated that this was an action meeting to consider Office of Planning's Motion to Declare Petition Deficient. The subject Petition is a request to reclassify approximately 1,553.844 acres from the Agricultural Land Use District into the Urban Land Use District in Ewa, Oahu, Hawaii.

APPEARANCES

Benjamin Kudo, Esq., represented Petitioner
Naomi Kuwaye, Esq., represented Petitioner
Bryan Yee, Esq., represented State Office of Planning
Abe Mitsuda, State Office of Planning
Lorene Maki, State Office of Planning

Mr. Yee indicated that Petitioner and the State Office of Planning have reached an agreement on this matter, and that Petitioner will submit its development plan at the Prehearing on January 14, 2009, after which they will submit their witnesses and exhibits lists by February 13, 2009. The hearing would be held around March 19 or 20, 2009. This would allow the State to review its case and prepare their response. The State Office of Planning indicated its plans to withdraw its motion on January 14, 2009, and asked that this matter be deferred. Petitioner indicated its concurrence with the State.

There was no public testimony on this matter, and this matter was deferred.

A06-771 D.R.HORTON-SCHULER HOMES, a Delaware limited liability company, d.b.a. D.R. HORTON-SCHULER DIVISION (Ewa, Oahu, Hawaii)

Vice Chair Piltz stated that this was an action meeting to consider Friends of Makakilo's Petition for Intevention. The subject petition is a request to reclassify approximately 1,300 acres of land currently in the Agricultural District into the Urban District at Honouliuli, Ewa, Oahu, for residential, commercial, sports complex, school site, park, and open space uses.

APPEARANCES

Benjamin Kudo, Esq., represented Petitioner
Naomi Kuwaye, Esq., represented Petitioner
Bryan Yee, Esq., represented State Office of Planning
Abe Mitsuda, State Office of Planning
Lorene Maki, State Office of Planning
Dr. Kioni Dudley, Friends of Makakilo

There was no public testimony on this matter.

Dr. Kioni Dudley, Friends of Makakilo presented its Petition to Intervene on this docket. He stated that he represented the people who will suffer as traffic burden increases with more development in the petition area. Dr. Dudley provided the Commission with his personal background, as well as his organization's purpose and its role and operation. He then asked the Commission's approval to intervene on this docket.

Commissioner Teves asked if Dr. Dudley had worked with the Neighborhood Board to take action. Dr. Dudley responded that the Neighborhood Board had no position.

Commissioner Judge asked Dr. Dudley if he had permission from the Board of Directors of the Friends of Makakilo to pursue this intervention. Dr. Dudley responded in the affirmative. Commissioner Judge asked if the Friends of Makakilo would seek legal counsel if this intervention was approved. Dr. Dudley stated he intended to represent Friends of Makakilo himself without legal representation. Commissioner Judge further asked if he would agree to limit the scope of his intervention to issues of traffic, education, open space, and loss of agricultural lands. Dr. Dudley indicated he had no objection, but asked to include sociological issues.

Petitioner asked that Dr. Dudley be sworn in for voir dire. Vice Chair Piltz then called for a 5-minute recess at 10:48 a.m. The Commission reconvened at 10:50 a.m.

Deputy Attorney General, Russell Suzuki, advised the Commission that Dr. Dudley should be allowed to testify on issues relating to standing to intervene only. Dr. Dudley was then sworn in as a witness.

The Petitioner advised Dr. Dudley of LUC's quasi-judicial proceeding format. Petitioner also questioned Dr. Dudley in order to qualify his organization as an intervenor. Mr. Kudo questioned Dr. Dudley regarding the origin of its organization, about its members, and if there was an official roster with names and addresses of its members available for examination.

Dr. Dudley responded that he would provide an email list of its members.

Executive Officer Davidson notified Dr. Dudley of the January 14, 2009 pre-hearing meeting on this matter, and advised Dr. Dudley to provide the email list at that time.

Commissioner Wong had questions of Dr. Dudley about his organization's credibility and reasons for why his organization is participating as an intervener versus a public witness. Dr. Dudley indicated that as a public witness, you can't do much, and felt that as an intervener, he would have more weight and subpoena power. Dr. Dudley further indicated that his organization would add a different perspective on the project and that his presence would make a difference.

Commissioner Judge moved to enter into Executive Session pursuant to §92.5, HRS. Commissioner Chock seconded the motion. The motion was unanimously approved by voice votes. The Commission entered into Executive Session at 11:15 a.m.

Chair Kanuha entered the proceedings at 11:26 a.m. Executive Session ended at 11:30 a.m. The Commission reconvened at 11:34 a.m.

Vice Chair Piltz recognized Chair Kanuha's presence at the proceeding. Commissioner Judge is not present at this time.

Mr. Yee indicated the State Office of Planning had no opposition to Dr. Dudley's Petition to Intervene. Commissioner Lezy moved to conditionally allow Friends of Makakilo as an Intervener provided that Dr. Dudley submitted his email list prior to or at the pre-hearing meeting. The motion was seconded by Commissioner Teves.

Commissioner Judge returned to the proceedings at 11:37 a.m.

The Commission was polled as follows:

Ayes: Commissioners Lezy, Teves, Chock, Contrades, Judge, Kanuha, Piltz, and Wong.

The motion passed with 8 yes, and 1 absent.

A06-771 D.R.HORTON-SCHULER HOMES, a Delaware limited liability company, d.b.a. D.R. HORTON-SCHULER DIVISION (Ewa, Oahu, Hawaii)

Vice Chair Piltz stated that this was an action meeting to consider Haseko (Ewa), Inc.'s Petition for Intevention. The subject petition is a request to reclassify approximately 1,300 acres of land currently in the Agricultural District into the Urban District at Honouliuli, Ewa, Oahu, for residential, commercial, sports complex, school site, park, and open space uses.

APPEARANCES

Benjamin Kudo, Esq., represented Petitioner
Naomi Kuwaye, Esq., represented Petitioner
Bryan Yee, Esq., represented State Office of Planning
Abe Mitsuda, State Office of Planning

Lorene Maki, State Office of Planning
Yvonne Izu, Esq., represented Haseko (Ewa), Inc.

The City & County of Honolulu, Department of Planning and Permitting advised the Commission that they would not be present at this hearing.

There was no public testimony on this matter.

Ms. Izu provided a background on its development and expressed its concerns regarding the Hoopili drainage plans not adversely affecting Haseko developments. Ms. Izu also indicated that Haseko was willing to limit its intervener participation to drainage issues. Mr. Kudo stated that they have an agreement in principle and had no objection to Haseko (Ewa), Inc.'s Petition for Intervention.

Mr. Yee stated that the State Office of Planning had no objections.

Commissioner Chock moved to approve the Petition for Intervention. Commissioner Contrades seconded the motion. Commissioner sought clarification of the motion, indicating issues are limited to regional drainage.

The Commission was polled as follows:

Ayes: Commissioners Chock, Contrades, Judge, Kanuha, Lezy, Piltz, Teves, and Wong.

The motion passed by 8 ayes, and 1 absent.

The Commission went into recess at 11:44 a.m. The Commission reconvened at 1:11 p.m.

Chair Kanuha thanked Vice Chair Piltz for opening and running the meeting.

A08-781 PAPA'IKOU POINT, LLC (Papa`ikou and Paihaaloa, South Hilo, Hawaii)

Chair Kanuha stated that this was an action meeting to determine whether the Land Use Commission was the appropriate accepting authority pursuant to Chapter 343, Hawaii Revised Statutes, for the reclassification of approximately 90.261 acres of land currently in the Agricultural and Conservation Districts into the Urban District for certain lands situated at Papa'ikou and Paihaaloa, south Hilo, Island of Hawaii.

Chair Kanuha stated that the LUC has received written testimony from the following individuals:

- Kim Magnuson
- John, Ellen, and Margaret Johnson
- Ed Johnston
- Cory Harden
- James Waugh
- Charlene Prickett

APPEARANCES

Jennifer Benck, Esq., represented Petitioner
Steven Shropshire, Papa`ikou Point, LLC
Norman Hayashi, County of Hawaii, Planning Department
Phyllis Fujimoto, County of Hawaii, Planning Department
Bryan Yee, Esq., represented State Office of Planning
Abe Mitsuda, State Office of Planning
Lorene Maki, State Office of Planning

There was no public testimony on this matter.

Ms. Benck provided the Commission with the background and intention of the project.

The County of Hawaii stated it had no objection to the LUC as accepting authority, and deferred to the Commission on whether an EIS was necessary.

The State Office of Planning stated it had no objection to the LUC as accepting authority.

Ms. Benck stated that Petitioner will prepare and process a full EIS.

Vice Chair Piltz moved that the LUC be the appropriate accepting authority pursuant to Chapter 343, Hawaii Revised Statutes, for the reclassification of approximately 90.261 acres of land currently in the Agricultural and Conservation Districts into the Urban District for certain lands situated at Papa`ikou and Paihaaloa, south Hilo, Island of Hawaii.

Commissioner Contrades seconded motion. Commissioner Judge asked that the Petitioner be given a copy of the Sierra Club letter that was received by the Commission.

The Commission was polled as follows:

Ayes: Commissioners Piltz, Contrades, Chock, Judge, Kanuha, Lezy, Teves, and Wong

The motion passed with 8 ayes and 1 absent.

A07-774 NORTH KONA VILLAGE, LLC (O`oma 2nd-Kaloko, North Kona, Hawaii)

Chair Kanuha stated that this was an action meeting:

- To determine whether the Land Use Commission is the appropriate accepting authority pursuant to Chapter 343, Hawaii Revised Statutes, for the reclassification of approximately 181.169 acres of land currently in the Conservation District to the Urban District for master planned residential, commercial, public and private recreation, open space, park, and coastal preserve uses at Ooma 2nd - Kaloko, North Kona, Hawaii; and

- To determine whether the proposed action may have a "significant effect" to warrant the preparation of an Environmental Impact Statement pursuant to Chapter 343, Hawaii Revised Statutes.

APPEARANCES

Steven Lim, Esq., represented Petitioner, along with Dennis Moresco and Tom Schnell
Norman Hayashi, County of Hawaii, Planning Department
Phyllis Fujimoto, County of Hawaii, Planning Department
Bryan Yee, Esq., represented State Office of Planning
Abe Mitsuda, State Office of Planning
Lorene Maki, State Office of Planning

PUBLIC WITNESSES

1. Sally Beavers, National Park Service

Ms. Beavers read the written testimony of the National Park Service dated January 8, 2009. The letter expressed both procedural concerns regarding the EIS process (lack of time to review FEIS) and substantive concerns about the technical work contained in the FEIS.

Commissioner Lezy asked if the Department of Interior, and the County and State Department of Health were involved on this matter. Ms. Beavers indicated that the Department of Health was not involved in this matter, and that the Commission on Water Resources Management and the Department of Water Supply are addressing the issues.

Ms. Beavers, in response to a question, stated that the Developer and the National Park Service have been in discussions, and that the inadequacies of the FEIS have been discussed with Peter Young and the Petitioner.

Mr. Lim asked Ms. Beavers if a draft agreement between the National Park Service and the Petitioner similar to the one included in the LUC Shopoff docket had been received by the National Park Service. Ms. Beavers said yes and the draft was under review.

The County and State had no questions.

2. Tracy Solomon, Surfrider Foundation

Ms. Solomon provided the Commission with the Surfrider Foundation's background and interest in this issue.

She mentioned that there was no time to respond to final draft. Ms. Solomon also cited concerns regarding the groundwater study, wastewater treatment plant placement, economic impact on fisheries, nitrogen/phosphorus sources, and human impact.

Ms. Solomon also indicated concerns about stormwater, species living near the discharge point, brine injected into wells, flora/fauna studies, archaeological maps, thorough research of cultural resources, and water quality concerns.

3. Dana Remy

Ms. Remy spoke on behalf of Dr. Rick Bennett, who had submitted written testimony dated January 6, 2007. She provided Dr. Bennett's background and indicated that Dr. Bennett's concerns challenges EIS assertion of no impact of nearshore environments, degradation in nearshore waters of project, water qualities, and felt that the EIS was incomplete and should be rejected.

The Petitioner, County and State had no questions.

4. Janice Palma-Glennie, Sierra Club

Ms. Palma-Glennie had concerns regarding the EIS. She asked, "What is the need to take away conservation status?" She indicated that EIS disregards the top 5 ranking of the coastline, and that developments are not being completed or started. She also had concerns about drinking water, noise, and water use. She also mentioned global warming, sea level rise, and endangered species. She further indicated that if the EIS is accepted, deficiencies may not be addressed.

The Petitioner, County and State had no questions.

The Commission went into recess at 2:18 p.m. The Commission reconvened at 2:38 p.m.

Seeing there was no additional public testimony, Chair Kanuha then called for the LUC staff presentation.

Riley Hakoda, staff planner, provided a brief staff report on the docket. There were no questions on the staff report.

Chair Kanuha then called for the Petitioner to make its presentation. Mr. Lim introduced Tom Schnell of PBR to provide a brief description and background of the project. Mr. Lim confirmed receipt and concurrence with the LUC staff report.

Mr. Schnell provided a presentation of the proposed development and how it complied with the requirements of Chapter 11-200 HAR. He referred the Commissioners to the EIS handouts and provided a brief overview of the project. He described the design principles utilized in the project and the features within the community. He continued by stating that the O'oma Beachside Village was consistent with the County of Hawaii General Plan and the Kona Community Development Plan.

Mr. Schnell stated that the draft and final EIS were prepared in accordance with all State laws and requirements and that copies of the draft EIS were sent to government agencies, private organizations and individuals.

Mr. Schnell said that per the EIS rules, the draft EIS was revised to incorporate substantive comments received. He stated that he received 56 comment letters during the comment period and that the final EIS included all comment letters received. He also described

how the comments were addressed on a point-by-point basis and how, when necessary, he consulted with the various experts used in preparing the EIS.

Mr. Schnell stated that they had hoped to come to an agreement with the National Park Service before coming before the Commission but that things that they had pledged to do in their response letters are part of the EIS text yet.

Mr. Schnell concluded that per the EIS Rules, the required content requirements for a Final EIS had been included and summarized them for the Commissioners and audience. He also responded to the concerns that he had heard in testimonies about ground water and marine water. Mr. Schnell advised that experts respected in their fields were hired to conduct the studies included in their report.

Mr. Schnell also addressed the archaeological inventory survey issue and explained how it had been conducted and submitted to historic preservation for their decision making.

The County indicated it had no questions and that it was in agreement with staff's report recommendation.

The State had no objection.

Commissioner Contrades moved to accept the Land Use Commission as the appropriate accepting authority pursuant to Chapter 343, Hawaii Revised Statutes, for the reclassification of approximately 181.169 acres of land currently in the Conservation District to the Urban District for master planned residential, commercial, public and private recreation, open space, park, and coastal preserve uses at Ooma 2nd - Kaloko, North Kona, Hawaii, and that the proposed action may have a "significant effect" to warrant the preparation of an Environmental Impact Statement pursuant to Chapter 343, Hawaii Revised Statutes. The motion was seconded by Commissioner Chock. The Commission was polled as follows:

Ayes: Commissioners Contrades, Chock, Judge, Kanuha, Lezy, Piltz, and Wong
Nays: Commissioner Teves

The motion passed with 7 ayes, 1 nay, and 1 absent.

The Commission went into recess at 3:03 p.m. The Commission reconvened at 3:08 p.m.

DISCUSSION on Act 183 (SLH2005) and Act 233 (SLH 2008); IMPORTANT AGRICULTURAL LANDS
(Taken out of Agenda Order)

APPEARANCES

David Arakawa, represented the Land Use Research Foundation (LURF)
Dean Okimoto, represented the Farm Bureau

Chair Kanuha recognized that the agenda was being taken out of order with this discussion on Acts 183 & 233 and acknowledged Mr. Arakawa and Okimoto's presence.

Handouts were distributed to commissioners and a discussion regarding IAL Acts 183 & 233 commenced.

Executive Officer Davidson provided background information from a previous meeting about this legislation and how it had triggered the requirement for the Commission to adopt administrative rules to accommodate the process. Mr. Davidson explained that at the previous meeting, public input was solicited and LURF and the Farm Bureau responded.

Mr. Okimoto, Farm Bureau representative, stated that his issue was how to keep viable agricultural lands properly categorized and using incentives to get land categorized –“IAL” (Important Agricultural Lands.)

Mr. Arakawa, representing LURF, gave a brief history and background of the acts. Mr. Arakawa referred the Commissioners to the circulated handouts and explained the IAL legislation and the role of the LUC in making the determination for IAL to clarify his points. Mr. Okimoto added that many farmers are looking at the IAL incentives with the current state of the economy and the industry, and that this legislation helps a lot of farmers.

Mr. Arakawa mentioned that Act 183 passed with specific language about IAL evaluation, and criteria for decision making. Their hope was for this procedure to be made simpler, and less complicated for quicker processing of applications and asked for the LUC’s help to expedite matters.

Chair Kanuha asked both men what they felt were the next steps that the LUC needed to do to implement the two pieces of legislation.

Mr. Okimoto suggested a “case-by-case” basis. This would mean checking to see if the land was actively being used for agriculture.

Executive Officer Davidson asked if there was any downside to the IAL designation on a voluntary basis when the land is actively engaged in agriculture and if there are other agencies involved with credits after such land designation. Mr. Okimoto answered that he could not think of any situation which could be a downside. He is hopeful that the incentives are used up by the first year to prove it is worth it for the state put more money into getting more lands put into IAL on a voluntary basis. He also stressed the need for an expedited permitting process to be developed at the county level which would involve other agencies.

Mr. Arakawa suggested that when a petition is received, the LUC staff should review that it meets the requirements and that parties are notified, it should then be moved to the agenda for a ruling if there is no change to land use or agricultural district, especially if landowner is designating land to take IAL benefits. He recommended that the LUC study the parcel only and not expand beyond it in the cases where it is the same land owner.

Chair Kanuha asked if Act 183 allowed this and if there are criteria in the LUC rules for declaratory ruling. Mr. Arakawa stated the criteria for IAL is in the state law, and in cases of declaratory ruling, the law of the land is the reference.

Commissioner Judge asked if there is a provision for an 85/15 designation situation. Her confusion exists with the LUC use of declaratory order process to change the land use. Mr. Arakawa says they haven't had a chance to examine Act 233 closely in regard to the 85/15 designation and thinks an administrative rule change may be needed. He agrees that if all of the land is already in agriculture, it should be IAL. Commissioner Judge recognized the need to simplify the process for those who wanted to designate 100% of their land. She also expressed concern over the cost of the process.

Mr. Okimoto explained that they want to help as many farmers as possible. He stated that the Farm Bureau is a non-profit that is financially challenged and trying to help the farmers, along with larger entities like A&B. Mr. Arakawa added that LURF is working with the Farm Bureau to gather information to conform to Act 183 to make a template to assist in providing information to farmers.

Vice Chair Piltz expressed concerns about abuses to the system and inquired about what measures are in place to control misuse. The requirements of the law and the measures that are in place are explained by both Mr. Arakawa and Mr. Okimoto.

Chair Kanuha asked about what happens to the rest of the land that is still in the district but not changed to IAL, how parcels of land fit IAL designation and by what standards and criteria.

Mr. Arakawa stated that this is disclosed in the petition and that the key is viable agricultural production. He gives an example of how coffee land is not class A, but still productive.

There were no other questions.

Chair Kanuha moved on to next agenda item.

**A92-686 AMFAC PROPERTY INVESTMENT CORP., A HAWAII CORPORATION,
AND HOUSING FINANCE & DEVELOPMENT CORPORATION, STATE OF HAWAII
(Hanakaoo, Lahaina, Maui, Hawaii)**

Chair Kanuha stated that this was an action meeting to consider Petitioner's Motion to Substitute Parties and Modify Certain Conditions and Other Matters in the Findings of Fact, Conclusions of Law, and Decision and Order dated May 5, 1993. He provided background information and advised that the County of Maui notified the LUC staff that it would not be attending this meeting.

APPEARANCES

Scott Radovich, Esq. represented Petitioner, along with Stan Fujimoto, HHFDC and Howard Hanzawa, Vice President, Kaanapali Land Management Corp.

Bryan Yee, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Lorene Maki, State Office of Planning

PUBLIC WITNESSES

1. Patricia Nishiyama, Puukolii long-time resident

Ms. Nishiyama stated her interest in the project and wants the project to move forward.

Ms. Nishiyama also spoke on behalf of her son, Anthony Vierra who lives in Pukalani. She read Mr. Vierra's letter which indicated that it's a wonderful place to have grown up and encourages the Commission to vote yes on the motion.

Ms. Nishiyama also spoke on behalf of Stanley Abihai, Jr. and read his letter stating that he asked that the affordable housing aspects be considered.

There were no questions from the Petitioner and State.

2. Clyde Hayashi

Mr. Hayashi spoke on behalf of Hawaii LASIC - a partnership between Laborers Union 368 and Signatory Contractors, in support of the project. He indicated that the project would resolve traffic problems, and would provide jobs and needed housing.

There were no questions from the Petitioner and State.

PETITIONER'S WITNESSES

Mr. Radovich introduced the parties that would be testifying before the Commission.

1. Howard Hanzawa, Vice President of Kaanapali Land Management Corp.

Mr. Hanzawa provided the project background and history. He stated that despite a huge need for affordable housing in west Maui, there is still no project after 16 years. The high cost of housing in the region has been a deterrent. However, in the last four years, attention has been focused on the Puukolii project since it would provide for worker housing, senior housing, recreational space, open space, and connectivity. He mentions that much effort has already been put into the project.

There were no questions for Mr. Hanzawa.

2. Stan Fujimoto, HHFDC

Mr. Fujimoto gave background information on the project. He then stated that the Legislature has made a commitment to this project and it should not be jeopardized. He said the project had gone through the process and had been approved, but will not be built if it is not feasible. He cited past reductions, and a waste of state resources as negative impacts. He also opposed Office of Planning's comments regarding more traffic-related conditions. He noted that the project will do traffic surveys and impact studies to provide intersection improvements. He also rejected the deferred funding of off-site roadway improvements until Kaanapali 2020 is built, or 10 years after occupancy of Pukolii

Mauka, Adjustments to Ka`alaneo Intersection with Bypass Highway when the Bypass Highway is built, and signalization at Ka`alaneo Drive and Hoonopiilani Highway prior to occupancy of Pukolii Mauka. He requested approval of the petition.

There were no questions for Mr. Fujimoto

Mr. Radovich clarified the mention of off-site improvements, intersection improvements and signalization, and that construction of the mauka portion of anticipated grade of the highway was proposed to Office of Planning for consideration.

There were no further questions for the Petitioner.

Deputy Attorney General Yee discussed the impact of the D&O and its requirement that developer pay for traffic impacts of the project. The State objected to any changes which might create a greater financial burden and said that any changes would be an accommodation to the developer. The Office of Planning submitted proposed amendment language for conditions #5, 8, 9, and objected to any change to #10. The State said that the proposed amendments would allow the project to move forward and that this was a DOT attempt to be reasonable and provide for larger community traffic needs.

Commissioner Judge questioned amendment #8. She felt that it seemed unfair. Discussion ensued regarding the Lahaina Bypass Road in regards to making sure that if the access road was built before the Bypass Road was completed, there would be interface modifications to be made. Commissioner Judge mentioned that some improvements to the highway are already done and should be credited and in addition there was already a document, the Lahaina Bypass Highway development agreement, that detailed the agreement between the DOT and the Petitioner regarding regional improvements.

The Petitioner argued for consideration of past and current efforts. They said that the State is not acknowledging commitments made and is overlooking them.

Commissioner Judge moved to approve the substitute petitioner on this docket. Commissioner Chock seconded the motion.

The Commission was polled as follows:

Ayes: Commissioners Piltz, Contrades, Chock, Judge, Kanuha, Lezy, Teves, and Wong

The motion passed with 8 ayes and 1 absent.

Commissioner Judge made a motion on the same docket to accept the petitioner's request to modify certain conditions as follows:

- Delete conditions 2, 12, 14, 23.
- Amend 1, 22, and 25 as requested by petitioner.
- On the remainders 5, 8, 9, and 10—delete 5, and amend 8a to show petitioner shall improve intersection and signalization when warranted with traffic study-delete sections that's covered by the bypass highway development. 8b-Petitioner shall

prepare a preliminary engineering plan and profile for that section of the Lahaina Bypass Road intersecting with Ka`alaneo Drive. The Engineering plan will be subject to review by the DOT to insure that conflicts between proposed roads are minimized. Delete 2nd paragraph, and 8c.

- Amend Condition 9- petitioner shall fund, design improvements necessitated by proposed project.

Vice Chair Piltz seconded the motion.

Chair Kanuha called a recess at 4:39 p.m. The Commission reconvened at 4:49 p.m.

Commissioner Judge moved to amend her motion to reflect that staff be authorized to amend the D&O. Vice Chair Piltz seconded the motion.

Executive Officer Davidson stated that the motion was to:

- Delete 2, 4, 12, 14, 23, modify 1, 22, 25 with regard to transportation as requested by petitioner, and to delete 5 in its entirety.
- To amend 8a to read: Petitioner shall improve intersection of Honoapiilani Highway and Ka`alaneo Road including traffic signalization when warranted to be established by a traffic study provided by Petitioner and approved by DOT.
- To amend 8b- Petitioner shall prepare a Preliminary Engineering (plan and profile) for the section of the Lahaina Bypass Road which intersects with Ka`alaneo Drive. The preliminary Engineering shall be subject to review and acceptance by the DOT to ensure that conflicts between the proposed Puukolii Mauka development and the proposed four-lane Lahaina Bypass Road are minimized.
- That proposed Amendment 8c be eliminated in its entirety.
- To amend Condition 9-Petitioner shall fund, design, and construct all roadway improvements necessitated by the proposed project. Ka`alaneo Drive shall be the Proposed Roadway and the main access road from Honoapiilani Highway to the Project, and
- To amend Condition 10- petitioner shall comply with the Lahaina Bypass Highway development agreement dated June 16, 1993 and as amended on March 10, 2008.

The Commission was polled as follows:

Ayes: Commissioners Judge, Piltz, Contrades, Chock, Kanuha, Lezy, Teves, and Wong

The motion passed with 8 ayes and 1 absent.

Chair Kanuha advised that the meeting would continue at 9 a.m. on January 9, 2009.

The meeting was adjourned at 4:58 p.m.

(For more details on the above matters, see LUC transcript of January 8, 2009.)