

LAND USE COMMISSION
MINUTES OF MEETING

January 23, 2009

HALEAKALA ROOM
Maui Prince Hotel
Makena Resort
5400 Makena Alanui
Makena, Maui, Hawaii

COMMISSIONERS PRESENT: Kyle Chock
Normand Lezy
Ransom Piltz
Reuben Wong
Vladimir Paul Devens

COMMISSIONERS ABSENT:
Thomas Contrades
Lisa Judge
Duane Kanuha
Nicholas Teves, Jr

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

CALL TO ORDER

Vice-Chair and Presiding Officer Piltz called the meeting to order at 9:07 a.m.

Executive Officer Davidson advised the Commission that there was a tentative change to the February 5, 2009 site visit schedule. The current plan under consideration was to visit Hawaiian Memorial Park at 10:00 a.m. and Hoopili at noon. The estimated finishing time of the meeting was 1:00 p.m.

CONTINUED HEARING

A05-760 PUKALANI ASSOCIATES, LLC (MAUI)

Vice-Chair Piltz announced that this was a continuation of a hearing to consider the reclassification of approximately 87.702 acres of land currently in the Agricultural District to the Urban District at Kula, Makawao, Maui, for an urban residential community of approximately 165 single-family residential homes, together with community recreational facilities at TMK Nos. 2-3-09: 07 and 64.

APPEARANCES

William Yuen, Esq., represented the Petitioner
Sharon Wright, Development Manager, Michael Wright & Associates, Inc., Petitioner's representative
Michael Hopper, Esq. represented County of Maui Planning Department
Jeffrey Hunt, Director, County of Maui Planning Department
Ann Cua, County of Maui Planning Department
Bryan Yee, Esq., represented the State Office of Planning
Abe Mitsuda, State Office of Planning
Mary Alice Evans, State Office of Planning

PETITIONER'S WITNESSES

1. Philip Rowell, PE

Mr. Yuen advised the Commission that there was a mistake in Exhibit 13, Table 4. He indicated that Mr. Rowell had corrections that he would like to make. Mr. Rowell reviewed the corrections with the Commission and Mr. Yuen stated that he would submit an Exhibit with the corrections.

Commissioner Chock asked Mr. Rowell if he had a chance to further review the letter from DOT Director Morioka that called his traffic study inadequate (OP Ex. #9).

Mr. Rowell discussed his December, 2008 report and the DOT response, and stated that his oversight may have been not submitting his Level of Service worksheets to DOT.

Commissioner Chock noted that the DOT letter's point #11 stated that the mitigation measures that Mr. Rowell suggested were not acceptable. Mr. Rowell had not heard anything that would cause him to change his report and he was willing to submit additional information to back up his conclusions.

Commissioner Lezy asked Mr. Rowell if he had responded to the letter. Mr. Rowell indicated that he would respond with a revised plan and response to the comments in the letter. He would also have a meeting to find out exactly how the DOT wanted to resolve these issues.

Vice Chair Devens asked Mr. Rowell if there were plans to rebut the January 2009 letter from the Director of the DOT. Vice Chair Devens stated that the information in evidence would be considered in the decision making process. Mr. Rowell stated that he would submit additional material.

Vice Chair Piltz mentioned his concerns over the no left turn coming downhill at the intersection on to Old Haleakala Highway. Mr. Rowell indicated that there was a left turn but the volume was currently very small and with additional development in the area, there could be a significant increase.

Vice Chair Devens asked if additional information would be provided. Mr. Yuen advised Vice Chair Devens that they would be preparing testimony to rebut the DOT letter.

2. Christopher Hart, ASLA

Mr. Yuen called Christopher Hart, ASLA, as an expert witness in Land Use Planning and referred to Exhibit 29-his resume, Exhibit 36-his written testimony, and Exhibit 37-his powerpoint presentation. Mr. Yuen indicated that Mr. Hart would be covering the Maui Community Plan, available governmental services, and Land Use District boundary standards. There were no objections to Mr. Hart being recognized as an expert witness.

Mr. Hart set forth the manner in which the Kauhale Lani project complied with the Makawao-Pukalani-Kula Community Plan (MPK), Maui Island General (MIG) Plan, and the proposed urban growth boundaries.

Mr. Yuen asked Mr. Hart how Kauhale Lani conformed to the State urban district reclassification standards. Mr. Hart indicated that the project was bordered on two sides by Pukalani Terrace Subdivision in the Urban District and was surrounded by city-like features and that the re-districting criteria could be met. Mr. Hart indicated there was a high demand for housing with urban growth and it was reasonably necessary to redistrict the land for urban growth to prevent urban sprawl and not impair agricultural operations.

Mr. Hopper asked Mr. Hart about the County of Maui Plan update. Mr. Hart indicated that the initial document was expected by March 1, 2009 for submission to the Maui Planning Commission. Mr. Hart noted that the area was designated for planned single family residential use.

County of Maui had no further questions for Mr. Hart.

Mr. Yee asked Mr. Hart about a vacant parcel of land belonging to A&B that he referenced in his testimony to determine its location and current use. Mr. Hart replied that it was a piece of land below the Hamakua ditch that was currently being used for sugar cane and agriculture. The 49 acre parcel that this DBA covers was used for pineapple. Mr. Yee asked about another vacant parcel's ownership but Mr. Hart didn't know who owned the land. Mr. Yee observed that if the DBA was granted, this parcel would be a pocket of agriculture designated land. Mr. Yee asked if he knew how people would pass between the Kauhale Lani area and the park. Mr. Hart thought they would cross at A'elo Road. Mr. Yee asked if the plan considered methods to allow people to pass through. Mr. Hart stated that they would use unsignalized crosswalks.

There were no further questions from the State.

Commissioner Lezy asked Mr. Hart why the remnant parcel 64 needed to be urbanized. Mr. Hart indicated it was due to its location within the urban boundary. Commissioner Lezy asked if there were contingency plans if the dedication of the park was declined by County of Maui. Mr. Hart indicated negotiations had occurred with various people and organizations regarding the land. A BMX bike riding group is interested. He noted that the land was also in a trail system and talks were ongoing with the County and that horseback riding was being considered too. Commissioner Lezy asked if the County had expressed interest in receiving the land as an open park. Mr. Hart indicated interest was varied and added that if it were a baseball field, the response from County of Maui would be stronger.

Mr. Yuen asked if the open space parcel was in the upcountry greenway plan. Mr. Hart indicated yes and used the Community Plan map to illustrate the extent of the greenway plan.

Mr. Yuen concluded the Petitioner's direct case.

The Commission went into recess at 9:55 a.m. The Commission reconvened at 10:00.a.m.

3. Sharon Wright

Ms. Wright was recalled to answer questions about the managers of Pukalani Associates. Mr. Yuen recalled Ms. Wright to the witness stand and referenced Exhibit 28-the powerpoint testimony of Joseph Daneshgar.

Commissioner Lezy asked her to identify the Pukalani Associates' members. She indicated she did not have the full information and would get back to the Commission. Commissioner Lezy asked if Pukalani Associates LLC owned other lands on Maui. Ms. Wright answered that they own the Petition Parcel 38, the Pukalani Triangle piece, Maui Lu, and Wailuku Heights-260 acres on the slopes of Iao. Individuals connected with Pukalani Associates also own several parcels on Oahu and one other subdivision.

Commissioner Lezy asked if the financing had been secured for the property yet. Ms. Wright answered that it was the construction financing that was not secured yet and that the land was owned free and clear. Commissioner Lezy asked if construction financing was contingent upon receiving entitlements for this property. Ms. Wright answered that was the usual procedure for construction financing. Commissioner Lezy then inquired about the purchase price for the property. Ms. Wright indicated that the three properties were bundled and purchased together for \$18 million with numerous contingencies for the purchase. Commissioner Lezy then inquired what the total build out cost would be. Ms. Wright answered approximately \$37.1 million, which was a combination of hard and soft costs. Commissioner Lezy asked what the projected sales prices would be and wanted to confirm amounts in the range of \$375-435,000. Ms. Wright affirmed the price range. Commissioner Lezy then asked if a break-even analysis was done. Ms. Wright says that it had not been determined yet due to the many factors which played into it. She indicated that the price points were obtained from the Hallstrom Group's report.

Commissioner Lezy asked if a member's equity report for 2008 would be forthcoming. Ms. Wright indicated she would have to obtain that information. Mr. Yuen intervened and indicated that he would have the member's equity figures when they came in for rebuttal.

There were no questions from the County of Maui.

Mr. Yee asked Ms. Wright if the figure of \$5 million of outstanding debt for the purchase of the three parcels was correct. Ms. Wright indicated that she would have to confirm that to answer Commissioner Lezy's request. Mr. Yee advised Ms. Wright that his reference was Petitioner's Exhibit 12.

Mr. Yee had no further questions.

Commissioner Lezy excused himself from the proceedings at 10:20 a.m.

The Commission went into recess at 10:20 a.m. The Commission reconvened at 10:30 a.m., at which time, Commissioner Lezy returned to the proceedings.

COUNTY'S WITNESSES

1. Jeffrey Hunt

The County of Maui called Mr. Hunt as an expert witness in Land Use Planning. There were no objections by the Commission or the parties.

Mr. Hopper asked Mr. Hunt if he was familiar with development proposals and this particular project. Mr. Hunt affirmed that he was and summarized the written testimony of the Planning Department identified as County Exhibit 1. The County of Maui recommended approval of the project for several reasons.

- 1) It was located adjacent to Pukalani in an urbanized area and met the HRS criteria for urbanizing land;
- 2) It met the land use guidelines on urban district boundaries;
- 3) It followed Smart Growth principles, as well as complying with community and county growth plans;
- 4) It did not need a community plan amendment;
- 5) It addressed natural and cultural resources;
- 6) The project would still need zoning and permitting to "fine-tune" the details; and
- 7) County of Maui had a favorable past experience with this developer.

Mr. Hunt then described the Maui Island Plan and the drafting process.

Mr. Hopper asked if this project was within the draft urban growth boundaries of the draft Maui Island Plan. Mr. Hunt affirmed that it was.

Mr. Hopper asked Mr. Hunt if the single family residential designation and the project's location within the urban growth boundary made it a critical part of the long range plans for the area. Mr. Hunt concurred.

Mr. Hopper asked Mr. Hunt about the open space of parcel 64. Mr. Hunt stated that the Parks Department looked at open space more as ball-fields versus just open space. The planning office was considering putting a restriction upon it through the Maui Island Plan Update. This would allow the County to take advantage of getting the space while preventing structures from being built upon it until other measures could be taken to be consistent with the Maui Island Plan.

The County had no further questions of the witness.

Mr. Yuen asked Mr. Hunt about County of Maui's proposed Condition 13 and how compliance with the urban growth boundary proposal could be achieved since no official, adopted urban growth boundary existed. Mr. Hunt answered that the proposal's intent was future oriented to prevent urbanized development from occurring outside the urban growth boundaries.

Mr. Yuen had no further questions for the witness.

Mr. Yee asked Mr. Hunt about County of Maui's proposed Condition 12 and if the term "open space" had a definition in county zoning law. Mr. Hunt was not sure if it was under 19.04, which was the section on definitions, but stated they had a zone with delineated uses which was designated for an open spaced zone. Mr. Yee asked Mr. Hunt if this zone would essentially be the same thing. Mr. Hunt indicated that was how they would probably interpret it.

Mr. Yee asked Mr. Hunt about County of Maui's proposed Condition #13 and asked for a definition of the Maui Island Plan. Mr. Hunt answered that the purpose of the land use plan was to address issues that were pertinent only to the island of Maui. Mr. Yee asked if a timetable for affordable housing or an agreement for affordable housing existed. Mr. Hunt stated that he was not aware of a timetable or agreement. He indicated that at this stage, there was not a concern about it

There were no further questions from the State.

Commissioner Wong asked Mr. Hunt that in his report, concerns about traffic, water, cultural resources, recreational and open space were addressed, but why was there nothing about alternative energy or saving energy. Mr. Hunt indicated that the County Planning Department placed conditions on projects for energy conservation at the zoning level. Commissioner Wong wanted to know why energy conservation was not part of the County's proposed conditions and open space was. Mr. Hunt admitted there were inconsistencies with handling matters at different levels of government. Commissioner Wong asked Mr. Hunt what type of energy conservation measures would be imposed if the project was approved. Mr. Hunt stated that the Planning Department had a template for standard conditions that required different specifications for construction. There were project specific and standard conditions developed by the Planning Department in consultation with their decision makers. Mr. Hunt was not aware of any ordinances that required energy conservation measures.

Commissioner Lezy commended a point Mr. Hunt made about energy measures being best handled at the County level and asked about water sources for the project. Mr. Hunt stated that he understood that there was a water source for the project.

Commissioner Wong asked that the Commissioners be furnished with the Maui standard conditions for energy savings. Mr. Hunt indicated he would provide the information.

There were no more questions for Mr. Hunt.

Vice-Chair Piltz then allowed the State to call a witness from Oahu out of order.

STATE'S WITNESSES

1. Mr. Howard Wiig, DBEDT Strategic Industries Division

Mr. Yee then submitted and referred to OP's Exhibit 10-Mr. Wiig's written testimony. There were no objections to accepting Mr. Wiig as an expert witness in Energy Efficiency and Design and to accepting Exhibit 10.

Mr. Yee asked Mr. Wiig to summarize his testimony. Mr. Wiig used his submitted written testimony in his presentation regarding LEED building standards. He covered how using LEED standards, practices and materials could benefit the environment and offer a healthy, energy-efficient lifestyle. Other benefits that he mentioned were using "green" as a marketing tool to add value to homes and lower utility bills. He stated that LEED was a performance based and not a prescriptive based code.

Mr. Yuen asked Mr. Wiig if he lived in a LEED house. Mr. Wiig replied that he did not but tried to be as energy efficient as possible. Mr. Yuen asked how many LEED certified homes existed in Hawaii. Mr. Wiig answered that there were six or seven since LEED certifications had only recently started. Mr. Yuen asked Mr. Wiig if the cost projections in his testimony were based on actual experiences with building a home in Hawaii. Mr. Wiig replied that they were based on conversations with people who had experience in the field. Mr. Yuen asked if he knew if it was feasible to build LEED homes in this project. Mr. Wiig did not know. Mr. Yuen asked if Mr. Wiig was familiar with the site in Pukalani and if he thought energy conservation was possible. Mr. Wiig answered that he was familiar with the maps of the site and thought that energy saving features might be attractive to home owners.

Mr. Yuen then asked Mr. Wiig if water conservation measures were possible at the project site. Mr. Wiig acknowledged that using rainfall water to help water the lawns was a possibility. Mr. Yuen asked if Mr. Wiig knew what the annual rainfall was in the area. Mr. Wiig guessed about 25 inches a year but he didn't know for sure. Mr. Yuen and Mr. Wiig then discussed the cost/benefit factors involved with harvesting rainwater. Mr. Yuen then asked what the reasoning was for recommending silver LEED standard versus a certified rating. Mr. Wiig explained that certified was the lowest ranking. Mr. Yuen asked if Mr. Wiig was aware that the LEED system had a point ranking system with point rewards for design and construction costs. Mr. Wiig answered that a point system does exist but that he did not know how it operated.

Mr. Yuen asked Mr. Wiig if he was familiar with the Hawaii "Built Green" initiatives. Mr. Wiig replied that he was somewhat familiar with it. Mr. Wiig stated that he was aware that the "Built Green" initiative considered Hawaii's physical conditions and that he helped a mainland expert adapt his research to the local climate.

Mr. Yuen asked if there were LEED raters in Hawaii. Mr. Wiig answered that there were at least two certified LEED raters. Mr. Yuen then wanted to know if Mr. Wiig had any reason to not suggest "Built Green" instead of LEED. Mr. Wiig did not know. Mr. Yuen had no further questions for this witness.

Commissioner Lezy asked Mr. Wiig who was proposing the LEED initiative? Mr. Wiig answered that from their office it was Gail Suzuki-Jones and didn't know the other parties. Commissioner Lezy then asked how LEED conditions in a CC&R would be enforced. Mr. Wiig deferred the answer to this question to Mr. Yee.

Mr. Yee clarified that the OP's position was that it would like to see the CC&R's enforced by the Homeowners' Association or the homeowners themselves. He stated that from the County's enforcement perspective, the question to ask was if this condition was required in the CC&R's. Mr. Yee stated that was what OP wished the LUC condition would say.

Commissioner Lezy asked if Mr. Wiig or his department had proposed any legislation to make energy conservation measures mandatory. Mr. Wiig answered that within the last two years, the State of Hawaii passed a law saying that all new state construction shall be LEED Silver or equal and the C&C of Honolulu passed a similar ordinance. He indicated that there were no provisions for private residential construction yet. Commissioner Lezy asked if there were any efforts by Mr. Wiig's division to propose such legislation for private residential housing. Mr. Wiig answered that he was not aware of any, but that did not mean that it didn't exist.

Commissioner Lezy asked if Mr. Wiig was aware of any circumstance where CC&R's were included as part of a development requirement. Mr. Wiig responded that he was involved in the passage of a law several years ago affecting Horizontal Condominium Association CC&R's. Mr. Wiig indicated that it generally stated that no law would be imposed which would restrict attempts to use solar water heaters or other solar devices. Commissioner Lezy asked Mr. Wiig if his division had been involved in imposing the type of conditions that the LUC was being asked to impose. Mr. Wiig says he was not aware of any.

Commissioner Lezy then asked Mr. Wiig if he was aware that County of Maui had its own energy code and if he knew how effective it had been. Mr. Wiig stated that he wrote the code and consciously kept the code enforceable at a minimal level since it was felt that there would be a lot of initial resistance to it from developers. Mr. Wiig tried to keep costs down so that it could be enforced for as little as \$500 by limiting the requirement to the use of R19 for roofing and then providing five alternative pathways to meet energy saving requirements. Mr. Wiig assessed it as a "good beginning."

Commissioner Lezy had no further questions for Mr. Wiig.

The Commission went into recess at 11:50 p.m. The Commission reconvened at 12:08 p.m.

STATE'S WITNESSES (continued)

Commissioner Wong asked Mr. Wiig if he was supporting the construction of homes at the LEED-Silver level. Mr. Wiig concurs. Commissioner Wong asked if there were mandates in the Hawaii Revised Statute for energy conservation matters. Mr. Wiig replied that none existed for residential homes. Commissioner Wong wanted to know if Mr. Wiig had advocated the position before the Legislature, or had DBEDT. Mr. Wiig

answered “not to my knowledge”. Commissioner Wong asked if there was any reason why DBEDT would be reluctant to advocate this position before the State Legislature. Mr. Wiig answered again “not to my knowledge”. Commissioner Wong asked Mr. Wiig if he was aware that with new residential construction, solar water heating compliance was required after a certain year-2010. Mr. Wiig concurred that he was aware.

Commissioner Wong continued by asking if Mr. Wiig was suggesting that the costs to certify a home to LEED standard would fall into the \$10,000 range. Mr. Wiig answered that he was not. Commissioner Wong asked Mr. Wiig if he was familiar with the guidelines of the Building Association of Hawaii in respect to construction. Mr. Wiig indicated that there was an NAHB standard, and in Hawaii, there was a “Built Green” standard. Commissioner Wong asked how Hawaii’s “Built Green” standard compared to the LEED standards. Mr. Wiig answered that it was a star rating method. “Built Green” standards would be equivalent to certain LEED standards but they do not match exactly-a side by side comparison would need to be made.

Commissioner Wong had no further questions.

Mr. Yee asked Mr. Wiig if he had been asked if he was aware of any CC&Rs that contained a requirement for a LEED home. Mr. Wiig indicated he had been asked. Mr. Yee asked when LEED for homes was introduced. Mr. Wiig answered that it was in November 2008. Mr. Yee asked that in order for LEED to be incorporated into a CC&R, it would have to have been after November, 2008. Mr. Wiig agreed. Mr. Yee asked Mr. Wiig if the Hawaii “Built Green” standard was a prescriptive standard. Mr. Wiig acknowledged it was and that it measured the energy efficiency of a building. Mr. Yee asked Mr. Wiig if LEED was a prescriptive standard. Mr. Wiig answered that LEED was a performance standard that measured energy and also considered other natural resources and methods in which they could be protected.

Mr. Yee had no further questions; Mr. Yuen asked if he could re-cross examine the witness.

Mr. Yuen asked Mr. Wiig if the Hawaii “Built Green” standard covered floor materials, water conservation and design choices. Mr. Wiig answered that the question was beyond his level of expertise and he did not know.

Mr. Yuen asked Mr. Wiig if he recalled legislation on an energy conservation bill concerning clothesline use to dry clothes which Governor Lingle vetoed to keep clothesline use from being included in CC&R’s. Mr. Wiig answered that he believed that was what happened.

There were no further questions for Mr. Wiig.

COUNTY’S WITNESSES (continued)

2. Jeff Ing

County of Maui called Jeff Ing, Director of the County of Maui Department of Water Supply, to serve as an expert witness in water matters. There were no objections to Mr. Ing's serving as an expert witness.

Mr. Hopper asked Mr. Ing a pump capacity question from the 2006 well agreement. Mr. Ing stated that the pump capacity was determined by using a formula to derive the net pump capacity. Seventy-five percent of the water went to MLP and twenty-five percent went to County of Maui. Mr. Hopper asked Mr. Ing how the total pump capacity was derived. Mr. Ing answered that a pump test was used. Mr. Hopper asked if the project usage of 161,000 gallons/day was accurate. Mr. Ing acknowledged that it was.

Mr. Hopper asked what the current status of the agreement was, and if the County had accepted dedication of the well yet. Mr. Ing stated that the dedication had not yet occurred. Mr. Hopper continued to ask Mr. Hopper how source reservation credits were determined and if any had been given to MLP. Mr. Ing replied that none had been given to MLP. In order to grant credits, more pump tests needed to be conducted to determine pump capacity—once pump capacity could be determined, source resource credits could be calculated. Mr. Hopper summarized by asking Mr. Ing if there were any county requirements that might be a reason to deny this petition. Mr. Ing answered that there were none.

There were no further questions from the County.

Mr. Yuen asked Mr. Ing if preliminary pump tests were completed. Mr. Ing answered that they were. The results indicated that there was sufficient water to generate source reservation credits. However, the pump test results were not conclusive, so more tests were required. Mr. Yuen asked Mr. Ing if there was a mechanism to handle disputes if a disagreement arose regarding total pump capacity. Mr. Ing referred to pg. 8 of the agreement (Petitioner's Exhibit 16) to describe the resolution process.

Mr. Yuen had no further questions of the witness.

Mr. Yee asked Mr. Ing what the difference was between pump capacity and well capacity. Mr. Ing indicated that they were essentially the same. Mr. Yee asked how changes in the water amount would be dealt with. Mr. Ing says that is why they rely on adequate pump tests. Mr. Yee asked what if things don't work out. Mr. Ing stated that the parties would go back and renegotiate. Mr. Yee asked if there was a contingency in the agreement. Mr. Ing indicated that if the problem happened after the County received dedication, the County would deal with the water problem. MLP would still get its allocation, but the County would get less.

Mr. Yee referred to pg.3- Contingencies, and asked Mr. Ing how it would be decided whose problem it was when something happened. Mr. Ing stated that if the problem occurred before dedication, it was not the County's problem, only if it happened after the dedication.

Mr. Yee had no further questions.

Vice Chair Piltz asked Mr. Ing if there were remedies for mitigation of contamination for water treatment. Mr. Ing stated that there were funds set aside for mitigation of water treatment from a settlement. Vice Chair Piltz asked if there was a time restriction for these remedies. Mr. Ing could not recall if there was.

Mr. Hopper referenced the pg. 8 paragraph which Mr. Yuen had cited in re-direct. He asked Mr. Ing if there was a chance for source recalculation for a 5-year period after the dedication. Mr. Ing answered that was why there is so much testing that went into the dedication process.

There were no further questions for Mr. Ing.

3. Mike Miyamoto

The County called Mike Miyamoto, Deputy Director of Public Works, County of Maui to serve as an expert witness in Civil Engineering. There were no objections to Mr. Miyamoto serving as an expert witness.

Mr. Yuen asked Mr. Miyamoto background questions about community resident concerns, areas of traffic impacted by the project, and mitigation measures taken to deal with the anticipated increase in traffic.

Commissioner Wong asked if there was any County energy code for energy conservation. Mr. Miyamoto referred to Title 16.6 of the County Code and answered that this section covered a large number of concerns to address conservation and that the Code was available to provide to the community.

There were no further questions from the Petitioner or the Commissioners.

Mr. Yee questioned Mr. Miyamoto about traffic conditions and the County review of the TIAR, Mr. Miyamoto was asked to talk about access points, specific intersections and what the timetable for the TIAR would be. Mr. Miyamoto stated that he had not had time to review a recent DOT letter.

There were no further questions for Mr. Miyamoto.

The County stated that it had no more witnesses. Mr. Yee then continued with the State's case.

STATE'S WITNESSES (continued)

2. Charlene Shibuya

The Office of Planning called Charlene Shibuya, State DOT-Maui District, as an expert witness in Traffic Engineering. Mr. Yee apologized that he was unable to submit an exhibit of her resume in time for the meeting, and provided her background to qualify her as an expert witness. There were no objections to Ms. Shibuya serving as an expert witness.

Mr. Yee asked Ms. Shibuya questions about the revised TIAR report, fair-share mitigation agreements and the traffic mitigation process. Ms. Shibuya stated that in December, 2008 the applicant submitted the revised TIAR and received a response letter of concerns and comments in January, 2009. She indicated that once corrections or improvements were made on the points stated in the letter that satisfied the issues that the DOT has raised, the project could move on.

Mr. Yee had no further questions.

Mr. Yuen referred to the January, 2009 letter and asked Ms. Shibuya if the Petitioner made the desired corrections on the revised TIAR, and was willing to cooperate on the stated conditions, then would the DOT recommend that this land use application be granted. Ms. Shibuya concurred.

There were no further questions for Ms. Shibuya

3. Abe Mitsuda

Abe Mitsuda was called as a witness for the State Office of Planning. He asked that Mr. Mitsuda summarize OP's position. Mr. Mitsuda stated that OP was in favor of this project. However, there were certain proposed conditions to the approval that needed to be met such as the connections and signalization to the State highway system must be approved by the State DOT; consideration be given to residents' safety, traffic and new development concerns; backbone infrastructure to be completed within 10 years after the issuance of the D&O; that there be an affordable housing component; no impact to cultural/historical resources; a consideration to county needs in regard to use of open space (i.e. ball fields), ample water supply, proper wastewater disposal, proper drainage and detention basins, satisfying concerns about traffic and transportation fair-share issues, correcting TIAR shortcomings; satisfying the DOT requirements, and respecting the existing urban growth boundaries and island/community plans.

Mr. Mitsuda stated that OP recommended that the CC&R's of all homes built on market lots in the project require that they be designed to meet at a minimum, the U.S. Green Building Council LEED-silver standard or higher and that the Petitioner offer prospective lot purchasers LEED for homes information, guidelines, and a list of LEED benefits over the life of the project.

Mr. Mitsuda stated that approval was subject to 20 proposed conditions that were provided to the Petitioner and that an automatic OSC would be issued if the backbone infrastructure were not completed within 10 years after the D&O was issued.

Mr. Yee added a question about why the LUC should be the agency to look at energy conservation measures. Mr. Mitsuda responded that he felt the LUC was at the forefront of State policy and was in position to "make a call". In terms of the Legislature, Mr. Mitsuda felt that there would be opposition to LEED standards, but that the acceptance of LEED practices was a matter of time.

Mr. Yuen asked Mr. Mitsuda if he lived in a LEED rated home. Mr. Mitsuda responded that he had not had it rated. Mr. Yuen then asked if Mr. Mitsuda would consider purchasing or building a LEED-silver rated home. Mr. Mitsuda indicated he would.

Mr. Yuen asked if Mr. Mitsuda, in considering his recommendation, consider the difficulty of enforcement of the CC&R requirements when building an LEED-silver standard home. Mr. Mitsuda stated it would be not be easy since homeowners were involved and realized there would be a cost to enforce LEED.

Mr. Hopper asked Mr. Mitsuda about LEED provisions as they applied to CC&R's at the county level. Mr. Hopper asked if the LUC CC&R's condition was adopted, the County could comply with its duty to enforce that condition by reviewing and ensuring that the CC&R's did contain the provisions for LEED standards but not be responsible for any home inspections. Mr. Mitsuda recognized that county level of compliance for enforcement but noted that County inspections would be appreciated. Mr. Hopper asked Mr. Mitsuda if OP had any objections to the County's recommended 13 proposed conditions. Mr. Mitsuda stated that OP had no objections.

Commissioner Wong asked Mr. Mitsuda if OP had advocated that State buildings be built under the LEED-Silver standard. Mr. Mitsuda indicated they had. Commissioner Wong asked if the advocating efforts at the Legislature had been successful. Mr. Mitsuda answered that they had been. Mr. Mitsuda added that there was the language "if practicable" included. Commissioner Wong asked if this language was to accommodate irregular cases. Mr. Mitsuda acknowledged that was the case. Commissioner Wong asked if OP had advocated issues of LEED for private residential homes at the Legislature. Mr. Mitsuda indicated that OP had not, however, DBEDT-Division of Energy, would like to see something like that done. OP would support DBEDT efforts although OP had not been involved in writing or drafting LEED legislation. Commissioner Wong asked if OP had been involved in advocating LEED for residential homes. Mr. Mitsuda indicated that they had not but should be.

Commissioner Wong asked about the cost for LEED-Silver standard units. Mr. Mitsuda stated that they had seen testimony which advised that an additional 1-6% more in construction costs could be anticipated. OP is examining the costs on a long term basis to identify the savings. Mr. Mitsuda added that as LEED gained in popularity, it was expected that costs would decrease but did not know what the exact costs might be for LEED-Silver compliance.

Commissioner Lezy asked Mr. Mitsuda about the use of the legislative process versus invoking mandatory LEED requirements. Commissioner Lezy asked what concrete steps had been taken at the Legislature to require LEED legislation for residential homes Mr. Mitsuda indicated that OP was in discussions with the Governor and DBEDT to form a united front to push hard for this requirement. Commissioner Lezy asked if there was any activity planned for this current Legislative Session. Mr. Mitsuda answered there wasn't anything that was ready to be introduced.

Commissioner Chock referenced the use of the statute language "where practical and feasible" in the law, and questioned the need for more consistency in developing standards. Mr. Mitsuda stated that the language should be flexible enough to take into

consideration different scenarios. Commissioner Chock also asked about LEED incentives and how would the LUC as the regulatory agency be in position to implement incentives to make LEED sensible to developers. Mr. Mitsuda indicated that incentives have not yet been discussed. Energy costs savings, easier permitting processes and other possibilities were suggested to be included when considering incentive offerings. Commissioner Chock stated that national models should be considered as well.

There were no more questions from the Commissioners.

There were no further questions for Mr. Mitsuda.

Mr. Hopper advised the Commission that he would provide the County energy code information. He also asked the Commission if it were possible to file material electronically. This request was taken under advisement.

The meeting was adjourned at 1:25 p.m.

(For more details on this matter, see LUC transcript of January 23, 2009.)