

LAND USE COMMISSION
MINUTES OF MEETING

January 22, 2009

Haleakala Room
Maui Prince Hotel
Makena Resort & Golf Courses
5400 Makena Alanui
Makena, Maui, Hawaii

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

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

Chair Kanuha called the meeting to order at 10:50 a.m.

ADOPTION OF MINUTES

Commissioner Judge noted the following corrections that should be made to the minutes of January 8, 2009 (additions underscored; deletions stricken):

Page 4, fourth paragraph:

Commissioner Judge asked Dr. Dudley if he had permission from the Board of Directors of the Friends of Makakilo Neighborhood Board to pursue this intervention. Dr. Dudley responded in the affirmative ~~and stated that he only represents the Friends of Makakilo, without an attorney present.~~ Commissioner Judge ~~further~~ asked if ~~it would be okay to limit issues to traffic, education, open space, and agricultural lands~~ 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.

Page 7, seventh paragraph:

Commissioner Contrades seconded motion. Commissioner Judge ~~reminded Petitioner that the Sierra Club comments be included in the EIS~~ asked that the Petitioner be given a copy of the Sierra Club letter that was received by the Commission.

Page 14, sixth paragraph:

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 for regional improvement and this should get credited 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.

Commissioner Teves moved to adopt the minutes of January 8 and 9, 2009, as amended. Vice Chair Piltz seconded the motion. The minutes, as amended, were unanimously approved by voice votes.

TENTATIVE MEETING SCHEDULE

Executive Officer Davidson noted that the tentative meeting schedule was filled through the March meetings. The February 5-6, 2009 meeting is scheduled for Oahu; the second meeting in February is tentatively scheduled to be on Maui, and both March meetings are planned to be on Oahu.

ACTION

A07-772 A&B PROPERTIES, INC. (MAUI)

Chair Kanuha announced that this was an action meeting to consider the reclassification of approximately 94.352 acres of land currently in the Agricultural District to the Urban District at Waiakoa, Maui, for single and multi-family residential units and commercial services, identified as TMK: 3-8-04: por. 2, por. 22, and por. 30.

APPEARANCES

Benjamin M. Matsubara, Esq., represented Petitioner
Curtis Tabata, Esq., represented Petitioner
Grant Chun, Petitioner's representative
Dan Yasui, Petitioner's representative
Michael Hopper, Esq., represented the County of Maui Department of Planning
Jeffrey Hunt, Director, County of Maui Department of Planning
Ann Cua, County of Maui Department of Planning
Bryan Yee, Esq., represented State Office of Planning
Abe Mitsuda, State Office of Planning

PUBLIC WITNESSES

There were no public witnesses on this matter.

Chair Kanuha noted the following events following the close of the evidentiary hearing in this matter on October 16, 2008:

- 1) Stipulation for Rescheduling the Filing of Proposed Findings of Fact, Conclusions of Law and Decision and Order, Objections and Responses to Objections filed by the parties on November 20, 2008.
- 2) Stipulation for Rescheduling the Filing of Proposed Findings of Fact, Conclusions of Law and Decision and Order, Objections and Responses to Objections approved and filed by the Executive Officer of the Commission on November 21, 2008.
- 3) Declaration of Curtis T. Tabata and Certificate of Service filed by Petitioner on November 25, 2008.
- 4) Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment and Certificate of Service filed on December 12, 2008.
- 5) Partial Stipulated Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment and Certificate of Service filed by the parties on December 12, 2008.
- 6) Office of Planning, State of Hawaii's Proposed Amendments to the Partial Stipulated Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment and Certificate of Service filed on December 12, 2008.
- 7) Memorandum of the County of Maui, Department of Planning, Setting Forth County's Proposed Findings of Fact, Conclusions of Law, and Decision and Order and Certificate of Service filed on December 15, 2008.
- 8) Office of Planning's Statement of No Objections to the County of Maui's Proposed Findings of Fact, Conclusions of Law, and Decision and Order and Certificate of Service filed on December 19, 2008.
- 9) Office of Planning's Exceptions to Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment and Certificate of Service filed on December 19, 2008.
- 10) Petitioner's Objections to the Office of Planning, State of Hawaii's Proposed Amendments to the Partial Stipulated Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment, Filed December 12, 2008 and Certificate of Service filed on December 22, 2008.

- 11) Petitioner's Objections to the Memorandum of the County of Maui, Department of Planning, Setting Forth County's Proposed Findings of Fact, Conclusions of Law, and Decision and Order, Filed December 12, 2008 and Certificate of Service filed on December 22, 2008.
- 12) Petitioner's Response to the Office of Planning's Exceptions to Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment, Filed December 22, 2008 and Certificate of Service filed on December 29, 2008.
- 13) Office of Planning's Responses to Petitioner's Objections to Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment and Certificate of Service filed on December 29, 2008.
- 14) County of Maui's Response to Petitioner's December 22, 2008 Objections to the Memorandum of the County of Maui, Department of Planning, Setting Forth County's Proposed Findings of Fact, Conclusions of Law, and Decision and Order Filed December 12, 2008 and Certificate of Service filed on December 30, 2008 and January 2, 2009.

Chair Kanuha then announced that pursuant to section 15-15-81, Hawaii Administrative Rules (HAR), each party would be given an opportunity to provide oral argument in support of its proposed Findings of Fact, Conclusions of Law, and Decision and Order and/or its exceptions to those proposed by the other parties.

PETITIONER

Mr. Matsubara argued in support of Petitioner's proposed energy conservation condition, which mirrored the conditions previously imposed by the Commission in Docket Nos. A07-773/Emmanuel Lutheran Church of Maui and A06-767/Waikoloa Mauka. The condition required that the respective petitioners implement energy conservation and sustainable design measures that are feasible and practicable into the design and construction of their developments and the structures within the Petition Area.

COUNTY OF MAUI DEPARTMENT OF PLANNING

Mr. Hopper argued in support of the County of Maui Department of Planning's proposed condition to require that in the event any portion of the Petition Area did not fall within the urban growth boundaries of the adopted Maui Island Plan, the Commission shall issue and serve upon the Petitioner an Order to Show Cause. Such Order to Show Cause would require Petitioner to appear before the Commission and explain why the Petition Area or portion thereof outside of the urban growth boundaries should not revert to its previous agricultural classification or be changed to a more appropriate classification.

STATE OFFICE OF PLANNING

Mr. Yee argued in support of the Office of Planning's proposed condition to require that in the event Petitioner failed to complete the proposed backbone infrastructure within 10 years from the date of the decision and order, the Commission shall issue and serve upon Petitioner an

Order to Show Cause why the Petition Area should not revert to its previous agricultural classification. Mr. Yee also argued in support of the Office of Planning's proposed energy conservation condition. This condition would require that for market rate homes, Petitioner must offer to prospective homeowners as an option at least one model home that is built to meet, at a minimum, the U. S. Green Building Council's LEED for Homes – Silver level or higher. The condition would also require that for the affordable housing component of the development, the model home be built to meet, at a minimum, the U. S. Green Building Council's LEED for Homes –certified or higher.

Following the oral arguments of the parties, Chair Kanuha reminded the Commission that they were in the formal deliberation portion of the hearing. Pursuant to section 15-15-56(4), HAR, Chair Kanuha noted that the Commission may approve the proposed Decision and Order by amending or adopting the same. Upon Chair Kanuha's request, each commissioner affirmed that he/she received the record and/or received and, if appropriate, reviewed copies of the transcripts of the proceedings in this docket and are prepared to deliberate on the matter.

The Commission went into recess at 11:30 a.m. The Commission reconvened at 11:41 a.m.

Executive Officer Davidson discussed staff's proposed Decision and Order, which he noted was based on the Partial Stipulated Findings of Fact, Conclusions of Law, and Decision and Order filed by the parties. Upon the suggestion of Commissioner Wong, Mr. Davidson started with the 28 conditions of the proposed Decision and Order and read said conditions into the record. Following Mr. Davidson's report of the proposed conditions, Commissioner Wong noted that the word "revision" contained in Condition No. 21 should instead be "reversion." Mr. Davidson acknowledged Commissioner Wong's comment and affirmed that he was correct.

Vice Chair Piltz pointed out that he did not have any questions regarding staff's proposed Decision and Order. He expressed concern about the County of Maui Department of Planning's proposed condition relating to the Order to Show Cause provision. He preferred the Order to Show Cause condition in staff's proposed Decision and Order. He added that the requirement for 40 percent affordable housing was more than what was expected in any other county other than the County of Maui.

Commissioner Lezy expressed concern about the energy conservation condition and the supporting findings of fact in staff's proposed Decision and Order. He noted that while he supported energy conservation measures, he believed that it would be a mistake to make those types of measures a mandatory requirement as part of a Decision and Order issued by the Commission. He pointed out that such requirements would be difficult to enforce. He added that if there was a desire on the part of the State, whether it was the Executive or Legislative Branch, or the counties, to make these measures mandatory, it was incumbent upon them to take the steps necessary to make them an obligation. He did not think it was appropriate for the Commission to be the body that makes these types of decisions.

Commissioner Lezy moved that Condition No. 20 of the proposed Decision and Order be amended to read:

20. Energy Conservation Measures. Petitioner shall implement to the extent feasible and practicable measures to promote energy conservation, sustainable design, and

environmental stewardship, such as the use of solar energy and solar heating, consistent with the standards and guidelines promulgated by the Building Industry Association of Hawai`i, the USGBC, the Hawai`i Commercial Building Guidelines for Energy Star, and Green Communities into the design and construction of the Project and the structures within the Petition Area. Petitioner shall also provide information to home purchasers regarding energy conservation measures that may be undertaken by the individual homeowner.

Vice Chair Piltz seconded the motion.

Commissioner Wong noted that proposed Condition No. 20 before Commissioner Lezy's proposed amendment actually backed away from mandatory LEED. He pointed out that the condition required Petitioner to build according to building industry standards, and that if these standards were acceptable to the building industry, Petitioner should not do anything less. He believed that proposed Condition No. 20, as currently worded, was already a watered-down provision. He added that the use of the phrase "to the extent feasible and practicable" only invited litigation as there would be the question of who would decide what was feasible and practicable.

Commissioner Lezy offered an amendment to his motion to amend FOF 118 as follows (additions underscored):

118. Energy conservation measures will be incorporated to the extent feasible and practicable as part of the Project design phase of development and further coordination with MECO will occur at that time.

Commissioner Judge noted that the Commission continued to struggle over the issue of mandatory vs. voluntary energy conservation measures. She questioned why the Commission should make the decision because she believed that it was a decision that should be made by a legislative body rather than the Land Use Commission. She did not think that the way to get people to implement energy conservation measures was to force them to do it as it was market driven to a degree.

Vice Chair Piltz commented that being in the construction industry himself, he found that the imposition of the LEED standards, which were unclear at this time, was not fair especially in light of the County's 40 percent affordable housing requirement. He added that until there was a definition of what constituted LEED and how it can be imposed to ensure energy savings without additional costs to the homeowner, it was not practical at this time.

Commissioner Wong pointed out that while he agreed with Commissioner Piltz, he noted that the LEED requirement was deleted in Condition No. 20 of the staff's Decision and Order. He also remarked that the Commission has already adopted the proposed language before.

In response to Commissioner Wong's comments, Commissioner Judge noted that Condition No. 20 referenced the USGBC, which promulgated LEED. She added that the findings of fact also contained references about LEED, so in her mind LEED has not been totally eliminated.

Based on Commissioner Judge's comments, Commissioner Wong questioned whether the reference to the USGBC in Condition No. 20 should be deleted to make clear that the LEED requirements would not be applicable, and thus negate the need for the additional phrase "to the extent feasible and practicable" as proposed by Commissioner Lezy.

Chair Kanuha explained to Commissioner Wong that there was a motion on the floor. He asked Vice Chair Piltz whether he seconded the amendment proposed by Commissioner Lezy to amend FOF 118. Vice Chair Piltz responded that he did.

Chair Kanuha noted that he was comfortable with the language as proposed by staff as it showed that the Commission recognized that the LEED standard existed.

On the motion to amend Condition No. 20 and FOF 118 in the staff's proposed Decision and Order, the Commission was polled as follows:

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

The motion passed with 7 ayes and 2 nays.

Chair Kanuha asked for any other discussion on staff's proposed Decision and Order. Vice Chair Devens suggested that FOF 43 be amended as follows (additions underscored and deletions stricken):

43. It is ~~anticipated~~ has been represented that the affordable units will consist of a mix of both multi-family and single-family units, and that the affordable units will be developed concurrently with the market units.

Vice Chair Devens then questioned whether some of the proposed conclusions of law would be more properly located in the findings of fact section or decision and order section of the document. Specifically, he suggested that paragraphs 5, 7, 8, and 17 may be more appropriate in the decision and order section. In addition, he suggested that paragraphs 11, 15, 16, and 18 may be more appropriate in the findings of fact section.

Commissioner Judge suggested that in the future, there should be consideration of including language in the Commission's energy conservation measures condition a requirement that Petitioner shall implement measures to promote energy conservation, sustainable design, and environmental stewardship, such as the use of solar energy and solar heating, consistent with applicable State and County laws.

The Commission went into recess at 12:30 p.m. The Commission reconvened at 1:51 p.m.

Chair Kanuha asked Mr. Davidson whether he had an opportunity to review Vice Chair Devens' comments regarding the proposed findings of fact and conclusions of law. Mr. Davidson responded that staff reviewed the matter and had the following recommended amendments for the Commission's consideration (additions underscored and deletions stricken):

Finding of Fact 43

43. It is ~~anticipated~~ has been represented that the affordable units will consist of a mix of both multi-family and single-family units, and that the affordable units will be developed concurrently with the market units.

Conclusion of Law 5

5. ~~In the event any previously unidentified archaeological sites are found, Petitioner will comply with all applicable statutes and rules of the DLNR, SHPD.~~

Mr. Davidson noted that a portion of the conclusion of law is recommended to be inserted into proposed Condition No. 15.

Conclusion of Law 7

7. There are no floral or faunal species that are threatened, endangered, or of concern under State or Federal law in the Petition Area. However, there are threatened and endangered seabirds whose flight corridor includes the Petition Area. ~~As such, Petitioner will implement BMPs as recommended by the USFWS.~~

Mr. Davidson noted that the sentence recommended to be deleted is captured in proposed Condition No. 19.

Conclusion of Law 8

8. Air quality of the Petition Area will be impacted in the short term by fugitive dust and exhaust emissions from stationary and mobile equipment during construction of the Project. ~~Petitioner will comply with and implement all required and applicable statutes, ordinances, rules, and regulations to mitigate the effects of fugitive dust and exhaust emissions.~~

Mr. Davidson noted that the sentence recommended to be deleted is recommended to be inserted into proposed Condition No. 10.

Conclusion of Law 11

11. ~~Petitioner has provided replacement lands to Monsanto Company for seed corn cultivation to offset any loss of lands resulting from the development of the Project.~~

Mr. Davidson noted that this matter is adequately covered in proposed FOF 48.

Conclusion of Law 15

15. ~~If properly designated and constructed, the proposed drainage system will not increase offsite runoff, nor cause an adverse impact to adjacent and downstream properties.~~

Mr. Davidson noted that this matter is adequately covered in proposed FOF 107.

Conclusion of Law 16

~~16. The location and design of the Project will minimize adverse visual impacts of the Project.~~

Mr. Davidson noted that this matter is adequately covered in proposed FOF 74.

Conclusion of Law 17

~~17. Petitioner will enter into an agreement with the DOT which will satisfy the Petitioner's fair share contribution obligation regarding mitigation of the traffic impacts of the Project.~~

Mr. Davidson noted that this matter is adequately covered in proposed Condition No. 12.

Conclusion of Law 18

~~18. A TDM plan will help to mitigate traffic impacts on major highways.~~

Mr. Davidson noted that this matter is adequately covered in proposed FOF 84.

Condition No. 10

10. **Air Quality Monitoring.** Petitioner will comply with and implement all required and applicable statutes, ordinances, rules, and regulations to mitigate the effects of fugitive dust and exhaust emissions. In addition, Petitioner shall participate in an air quality monitoring program if required by the DOH.

Condition No. 15

15. **Previously Unidentified Burials and Archaeological/Historic Sites.** In the event that historic resources, including human skeletal remains, lava tubes, and lava blisters/bubbles are identified during the construction activities, all work shall cease in the immediate vicinity of the find, the find needs to be protected from additional disturbance, and the DLNR, SHPD, shall be contacted immediately. Without any limitation to any other condition found herein, if any burials or archaeological or historic sites, such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, pavings, and walls not previously identified in studies referred to herein, are discovered during the course of construction of the Project, ~~then~~ Petitioner shall comply with all applicable statutes and rules of the DLNR, SHPD. In addition, all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the DLNR, SHPD, that mitigative measures have been implemented to its satisfaction.

Vice Chair Piltz moved to adopt the proposed Decision and Order, with amendments proposed by staff and as further amended by the Commission. Commissioner Judge seconded the motion. The Commission was polled as follows:

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

The motion passed with 8 ayes and 1 nay.

The Commission went into recess at 2:00 p.m. The Commission reconvened at 2:12 p.m.

HEARING

A05-760 PUKALANI ASSOCIATES, LLC (MAUI)

Chair Kanuha announced that this was 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

PUBLIC WITNESSES

1. Darlene Valencia

Ms. Valencia stated that she opposed the project. She was concerned about traffic and water issues that would arise if the development was allowed to occur.

There were no questions for Ms. Valencia from the Petitioner, County of Maui or State Office of Planning ("OP").

Commissioner Judge asked Ms. Valencia if she lived near the Petition Area. She responded that she lived right in front of the project site.

2. James Sato

Mr. Sato read his written testimony and stated that he opposed the project. He stated that he and his family were long-time residents of the area and that his concerns stem from water shortages they have experienced during drought periods. Mr. Sato stated that this was a recurring and unresolved problem. He also requested that the Commission hold the hearing on this docket in Pukalani to allow more local resident participation.

There were no questions for Mr. Sato. He submitted his written testimony upon completing his presentation.

3. David Valencia

Mr. Valencia stated that he opposed the project. He felt that the existing infrastructure was already strained. His concerns were the loss of views, increases in population, and the deterioration of the lifestyle he currently enjoys. Other concerns that he had were that there is no safe access to the subdivision. He cited traffic, speeding, and social problems that might affect Pukalani if the project is permitted. He felt that the EIS did not address eroding lifestyles.

There were no questions for Mr. Valencia.

STAFF REPORT

Riley Hakoda, staff planner, provided a staff report and map orientation on the petition area location.

There were no questions for Mr. Hakoda.

EXHIBITS

Mr. Yuen stated that Petitioner submitted 37 exhibits.

County of Maui stated that they submitted 3 exhibits.

Mr. Yee, State Office of Planning, stated that OP's Exhibit 8 was not ready. He also stated that Exhibits 1 through 7 and 9 have been submitted to date.

All exhibits described above, with the exception of OP's Exhibit 8, were entered into the record.

PETITIONER'S WITNESSES

1. Sharon Wright

Ms. Wright provided the Commission with project information using a powerpoint presentation (Petitioner's Exhibit 15). She stated that parcel 64 is to be a dedicated park. It will take two to three years to obtain all entitlements. The Project is planned to be one

continuous development that is scheduled to be completed within two years of receipt of entitlements. The project has a 40% affordable housing component that will be met either by off-site development of affordable housing units, paying in-lieu fees, or partnering with another entity.

Ms. Wright spoke on water supply, wastewater disposal, electrical and communication systems, and the economic development issues.

Commissioner Chock excused himself from the proceedings at 2:35 p.m.

Mr. Yuen asked to have Petitioner's Exhibit 35, written testimony of Mr. Joseph Daneshgar, accepted before ending his presentation.

Mr. Hopper asked Ms. Wright to indicate on Petitioner's Exhibit 13, figure 4, where Ikea Place was located. He then inquired about how many units would make up the 40% housing requirement. Ms. Wright responded that 68-70 additional units, either on or off-site would be committed to make the affordable housing requirement.

Mr. Hopper asked Ms. Wright to confirm that parcel 64 would be a passive park. Ms. Wright answered affirmatively. He continued by asking if there was agreement on Maui County's proposed Condition #12. She responded that there will be no construction on the parcel.

Mr. Hopper asked Ms. Wright if she was familiar with the well providing the water supply and the water supply agreement. Ms. Wright confirmed that she was and stated her understanding of the water supply agreement.

Commissioner Chock entered the proceedings at 2:42 p.m.

Mr. Hopper asked Ms. Wright about the well capacity. Ms. Wright responded that the well was approximately 50% constructed and the allocation base numbers had not yet been established. The initial indications were that there was sufficient capacity to provide water for the Project. Ms. Wright concluded that Petitioner was working toward a mutual agreement with the County.

There were no further questions by the County.

Mr. Yee asked Ms. Wright if the mitigation measures called for in the FEIS implemented. She responded that all conditions will be met. Mr. Yee asked about obtaining financing after the entitlements for construction. Ms. Wright responded that it was too soon in the process. Mr. Yee then asked if Pukalani Associates had other land holdings. Ms. Wright responded in the affirmative.

Mr. Yee further asked if construction costs were known. Ms. Wright responded that they anticipate about \$37.6 million in construction and soft costs depending on the affordable housing alternatives. Mr. Yee inquired if it was the intent of the Petitioner to proceed with construction after the entitlements are received and not to sell the property. Ms. Wright responded it was Petitioner's intent. Mr. Yee asked if the Petitioner planned to

build the infrastructure and sell the lots with accompanying CC&R's. Ms. Wright answered in the affirmative.

Further, Mr. Yee asked if the park will be open to the community. Ms. Wright answered in the affirmative. Mr. Yee concluded by asking where the affordable housing will be located. Ms. Wright responded that Petitioner is currently in negotiations, so she was not at liberty to disclose the information.

The Commission went into recess at 2:52 p.m. The Commission reconvened at 3:10 p.m.

Mr. Yuen asked Ms. Wright to explain how water from the well was to be allocated. Ms. Wright indicated that MLP and Petitioner have an agreement that should provide 350,000 gallons per day to the Project.

Commissioner Judge asked Ms. Wright if MLP and Petitioner have an agreement in place. Ms. Wright answered affirmatively. Commissioner Judge asked what would happen if the well did not produce enough water. Ms. Wright indicated that tests on the well minimums (the low end) show sufficient levels of water. The source's capacity was still being studied. MLP dug the well and Petitioner was the beneficiary. The current data showed yields high enough to provide at least 161,000 gallons per day for the Project. This is the minimum amount needed for this development project.

Ms. Wright summarized by indicating that MLP and the County are working on the well, and that it will take about two years to complete and were currently evaluating the pump test data. She also indicated that she would provide updated information when it becomes available.

Commissioner Lezy had questions regarding the well agreement. He asked if there were any contingencies to the agreement, and if the agreement to provide the water was binding. Ms. Wright responded no to contingencies, and yes that the agreement on the water is binding.

2. Bruce Plasch, Ph.D., Decision Analysts Hawaii, Inc.

Mr. Yuen referenced Petitioner's Exhibit 31, and requested that Dr. Plasch be admitted as an expert witness on agricultural economics. Dr. Plasch's resume and presentation were Petitioner's Exhibits 17 and 18, respectively. There were no objections to Dr. Plasch as an expert witness. Dr. Plasch stood on his written testimony.

Mr. Yuen indicated that this witness will attest to the productivity of the property and its effect on the economy with the conversion of this land.

The County had no questions. Mr. Yee asked 1) What types of crops grow in the Pukalani area; and 2) If any of these crops are unique to the area. Dr. Plasch stated that numerous crops grow in the Pukalani area and indicated that he believed these crops were not unique to the area.

Chair Kanuha asked questions about the Petition Area and important agricultural land ("IAL") criteria in Act 183. Dr. Plasch stated that most of the Petition Area was not high quality agricultural land since it lacked agricultural water.

Vice Chair Piltz inquired about a ditch near the Petition Area and its location relative to the Petition Area. Dr. Plasch indicated that it was the Hamakua Ditch which runs below the Petition Area and believed that it belonged to HC&S. Vice Chair Piltz then asked if MLP had a water agreement with HC&S. Dr. Plasch indicated that that information would be provided to the Commission.

3. Terence Arashiro, Austin Tsutsumi & Associates

Mr. Yuen requested that Mr. Arashiro be admitted as an expert witness in civil engineering, and referred to Petitioner's Exhibits 19 and 20. There were no objections to Mr. Arashiro being an expert witness.

Mr. Yuen asked Mr. Arashiro questions regarding the engineering aspects of the Petition Area.

Mr. Arashiro stated that there was sufficient water yield to supply 161,000 gallons per day to the Project, and that there were plans for a water system, drainage, and traffic improvements. Mr. Yuen referred to Petitioner's Exhibit 24, fig. 15 to explain the revised traffic study. Mr. Yuen also mentioned that he has submitted written testimony from Ivan Nakatsuka, identified as Petitioner's Exhibit 32, regarding wastewater.

Mr. Hopper inquired about the basis for the Maui County Department of Water Supply source reservations credits. Mr. Arashiro believed that it was the result of MLP and DWS water supply agreement (Exhibit 16). Mr. Hopper asked if Mr. Arashiro was familiar with the agreement. Mr. Arashiro responded that he was and that there was a reference to source reservation, on page 7 and 8, item #9 of the agreement, and that mention is made on pg. 3 regarding well capacity. Mr. Hopper asked Mr. Arashiro if he can state with certainty, the amount MLP will designate from the well. Mr. Arashiro referred to the well pump test results to provide the estimates. Mr. Hopper then asked Mr. Arashiro if it was a fair statement to say that to date, no source credits have been awarded. Mr. Arashiro concurred.

Mr. Hopper referred to Exhibit 13, fig. 4 and asked Mr. Arashiro if there would be a physical barrier preventing the connection of A'elo Road to Old Haleakala Highway and if he could also describe the accompanying project landscaping. Mr. Arashiro stated that the County has a portion of the road and that the plans were only conceptual with final determinations yet to be made. Mr. Hopper then asked about the park parcel and the highway safety concerns involved with it. Mr. Arashiro stated that the plans are conceptual but that mitigation measures that are being considered are: 1) right turns in/out, 2) crosswalks for pedestrian access with proper signage, and 3) widening the street to accommodate a refuge (mid-way point) area.

Mr. Hopper inquired if there were problems with Maui County's proposed condition #6. Mr. Yuen stated that this question should have been addressed to Ms. Wright. Mr.

Hopper finally asked if there were other requirements for intersections. Mr. Arashiro responded that the proper signage was important.

Mr. Yee clarified some civil engineering issues with Mr. Arashiro regarding 1) the TIAR; and 2) the wastewater from the community. Mr. Arashiro stated he was part of a team that works on resolving the traffic problems and was not sure about the wastewater disposal agreements.

Commissioner Judge inquired if Mr. Arashiro could give a date when it would be known what the daily amount of the well water would be. Mr. Arashiro responded he was hopeful that information could be provided by the DWS.

4. Tom Holiday, Hallstrom Group

Mr. Yuen referred to Petitioner's Exhibits 26, 33, and 34. Mr. Holiday was accepted as an expert witness in real estate appraisal. Mr. Yuen stated that Mr. Holiday would address the need for the project, what the public benefits were and what the public costs might be.

Commissioner Chock excused himself from the proceedings at 3:55 p.m.

Mr. Yuen asked Mr. Holiday about anticipated sales in 2011 and what the effects the current recession might have on sales. Mr. Holiday responded that despite the recession, there was a cyclical nature to sales, and that he anticipated a 5-year absorption of the housing product ending in 2015 or 2016 in keeping with the recovery of the market.

The County and State had no questions.

Commissioner Judge asked 1) After looking at the demand for housing in the original testimony, since the report had been done a couple of months ago, would there be a change in his testimony- are the price points still accurate?, 2) Is it still true today that there is no open Pukalani inventory, and 3) Were the lot sizes of the project the same size as surrounding neighborhoods in Pukalani? Mr. Holiday responded that he might modify his report slightly since the market had gone down in price by about 10-15% and that his figures were based on anticipated long-term trending. He added that there currently was no large supply of inventory, and that the lot sizes varied- the project would have moderate to larger size lots similar to those that make up the area.

Commissioner Chock entered the proceedings at 3:58 p.m.

5. Philip Rowell, PE

Mr. Yuen referred to Petitioner's Exhibits 23, 24, and 25, and Mr. Rowell was accepted as an expert witness in traffic engineering.

Mr. Yuen asked Mr. Rowell about the methodology used in his work. Mr. Rowell stated that he followed the Institute of Traffic Engineering (ITE) guidelines to prepare his report. He also based his calculations with consideration to the Maui Long Range Transportation Plan that projects traffic until 2015. He estimated the project trip

generation until 2015 considering what traffic might be with and without the project and studied the incremental differences to determine the impact of the project using Level of Service measurements. From these results, he indicated he determined mitigation measures.

Mr. Yuen referred to Petitioner's Exhibit 24, fig. 3, Exhibit J, and Petitioner's Exhibit 13 and asked Mr. Rowell to explain the intersection improvements. Mr. Rowell stated that in September 2008, the widened Haleakala Highway was activated, and modified traffic operations began.

Mr. Yuen asked what assumption was used in developing the traffic report. Mr. Rowell responded that the report was based on a single access point to the project. Mr. Yuen asked what the conclusions of the traffic report were. Mr. Rowell responded that there was not enough traffic to cause a significant change in service level. He reported that the level of service in the area went from a B to a C rating. Mr. Yuen then asked Mr. Rowell to describe the critical intersection. Mr. Rowell identified the intersection at Pukalani Street and the Old Haleakala Highway.

Mr. Yuen asked Mr. Rowell to discuss the TIAR recommendations. Mr. Powell referred to his powerpoint exhibit which listed the following:

- Traffic mitigation measures for the intersection of Pukalani Street and Iolani Street;
- A separate left turn lane for westbound Old Haleakala Highway traffic to A'eola Road and a separate right turn lane for eastbound traffic to A'eola Road;
- Crosswalks for pedestrians at the intersection of A'eola Road and Old Haleakala Highway since traffic signal warrant analysis did not warrant signalization;
- Signalization at the intersection of Haleakala Highway and Old Haleakala Highway; and
- That Kauhale Lani's pro rata share for traffic signals based on estimated 2015 peak hour traffic is 1% to 2 %.

Mr. Hopper asked Mr. Rowell if the study evaluated safety concerns and the park component. Mr. Rowell indicated that an assessment had been done and based on pedestrian volumes, crosswalks were recommended with accompanying traffic calming measures.

Mr. Yee asked Mr. Rowell about changes of Level of Service with and without the project. Mr. Rowell referred to his report and stated that there was no anticipated significant impact on Level of Service. Mr. Yee then inquired if there would be degradation in Level of Service and Mr. Rowell answered affirmatively. Mr. Yee then asked if some cars included in the study estimates came from the project. Mr. Rowell acknowledged some did. Mr. Yee asked if the revised TIAR contained a safety analysis and Mr. Rowell said no.

Mr. Yee referred to Petitioner's Exhibit 24, pg. 13 and asked if the E and F categories in the TIAR required signalization. Mr. Rowell explained that a calculation process was involved to make this determination. He stated that the measurements are based on

Volume/Capacity (VC ratio) and control delay, that signal timing causes variability in this process, and that synchronization of lights adds into the calculation. Mr. Yee asked for clarification on VC ratio and control delay, whether or not there were the same thing. Mr. Rowell indicated that the same methodology was used to study both, but that the ITE uses control delay measurements, not VC ratios.

Mr. Yee referred to Table 5-Level of Service (LOS) and Table 6-Existing Conditions and asked Mr. Rowell to explain the data, since there was an LOS discrepancy which is unexplained and not in the TIAR.

Commissioner Lezy excused himself from the proceedings at 4:30 p.m.

Mr. Yee identified other apparent LOS discrepancies on:

- pg. 34, Table 10 vs. Table 4 regarding control delays, (Mr. Rowell had no answer)
- pg. 36, Table 12 regarding E or F ratings not needing mitigation (Mr. Rowell stated that this could be a result of the FHWA software program. Table 4 may be incorrect.)
- pg. 37, Table 14 (Mr. Rowell attributed the discrepancy to the software. In the revised TIAR, no analysis was done based on control delay.)

Commissioner Lezy entered the proceedings at 4:33 p.m.

Commissioner Judge excused herself from the proceedings at 4:34 p.m.

Mr. Yee asked Mr. Rowell if he was aware that the DOT based its analyses on his study. Mr. Rowell acknowledged his awareness and stated the correct information would be provided.

Commissioner Teves excused himself from the proceedings at 4:35 p.m.

Mr. Yee referred to pg. 38, Table 6, and asked about the prior written discussion on Old Haleakala Highway. Mr. Rowell stated that no mitigation was recommended in the discussion.

Commissioner Judge entered the proceedings at 4:36 p.m.

Mr. Yee asked for the reason why the justification for mitigation shifted from VC ratios to control delays. Mr. Rowell indicated that he uses control delay but does consider VC ratios in his determination.

Commissioner Teves entered the proceedings at 4:38 p.m.

Mr. Yee questioned the consistency in the application of the computer program. Mr. Rowell stated that it was a method used in Hawaii. Mr. Yee referred to pg. 43, the Old Haleakala Highway and Pukalani Street connection, and asked about how traffic was calculated. Mr. Rowell stated that the project traffic was estimated after considering conditions with or without the connection.

Mr. Yee questioned the use of Fridays for the traffic counts on pg. 10, since they were not typical of a weekday. Mr. Rowell stated that the DOT identified that Fridays have higher traffic counts and that was part of the reason he used them to consider traffic volumes. The higher Friday counts help to establish minimums in the study. Mr. Yee referred to pg.19, and asked if Mr. Rowell submitted a list of other projects and their traffic improvements. Mr. Rowell responded that he has never been asked for such a list.

Mr. Rowell was asked by Mr. Yee if consideration of improvements were part of the study. He answered that they were and referred to the ITE guidelines that assume if a project was built, the accompanying improvements were built too. Mr. Yee asked what the information on pg. 27, fig. 10, inset B was based on. Mr. Rowell responded that it was based on observations of peak hour traffic at similar intersections. Mr. Yee asked if demographics were included in the TIAR. Mr. Rowell answered that including demographics was another way to do a TIAR and calculate traffic distribution. Mr. Yee asked if this analysis was included in the revised TIAR, pg. 28 figures. Mr. Rowell said it was not.

Mr. Yee asked if DOT asked Mr. Rowell to document or justify the road alignments. Mr. Rowell indicated that the DOT only asked that one intersection be studied. Mr. Yee asked if there were supporting analyses. Mr. Rowell stated that he would provide what he can in response to requests.

Mr. Yuen asked Mr. Rowell to describe the eight warrants for traffic lights. Mr. Rowell provided the information and added that judgment was required in the evaluation process when 2, 3 or more warrants are triggered. Mr. Yuen asked when the latest DOT letter was received. Mr. Yee objected to the form of the question. Mr. Rowell answered that the latest letter was received at 11:30 a.m.

Chair Kanuha stated that the meeting would reconvene at 9:00 a.m. on January 23, 2009.

The meeting was adjourned at 5:05 p.m.

(For more details on this matter, see LUC Transcript of January 22, 2009.)