

LAND USE COMMISSION

STATE OF HAWAI'I

January 18, 2017

Commencing at 10:12 a.m.

MAUI ARTS & CULTURAL CENTER

ALEXA HIGASHI MEETING ROOM

One Cameron Way

Kahului, Maui, Hawai'i 96766

MEETING AND ACTION

A15-798 Waikapu Properties LLC, et al. (Maui)

To consider the acceptance of Petitioner's Final Environmental Impact Statement relating to the Petition To Amend the Agricultural Land Use District Boundaries into the Rural Land Use District for certain lands situated at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, consisting of 92.394 acres and 57.454 acres, and to Amend the Agricultural Land Use District Boundaries into the Urban Land Use District for certain lands situated at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, consisting of 236.326 acres, 53.775 acres, and 45.054 acres

EXECUTIVE SESSION

To consult with the Commission's attorney regarding the Commission's duties, rights, and responsibilities and obligations with respect to Civil No. 16-1-0 160(1) Ho'omoana Foundation-Findings of Fact, Conclusions of Law, and Decision and Order

BEFORE: Cynthia L. Murphy, RPR, CSR 167

1 APPEARANCES:

2 JONATHAN SCHEUER, Chairperson
3 ARNOLD WONG, Vice Chair

4 COMMISSIONERS:

5 AARON MAHI
6 LINDA ESTES
7 NANCY CABRAL
8 DAWN N.S. CHANG
9 KENT HIRANAGA

10 KYLE CHANG, ESQ.
11 Deputy Attorney General

12 STAFF:

13 DAN ORODENKER, Executive Officer
14 RILEY HAKODA, Chief Officer/Planner
15 SCOTT DERRICKSON, AICP - Planner

16 DAWN TAKEUCHI-APUNA, ESQ.
17 RODNEY FUNAKOSHI, Planner
18 Office of Planning, State of Hawaii

19 PAUL MANCINI, ESQ.
20 MICHAEL ATHERTON, Manager, Waikapu Properties
21 For Applicant Waikapu Country Town

22 MICHAEL HOPPER, ESQ.
23 Department of the Corporation Counsel
24 KURT WOLLENHAUPT, Planner
25 County of Maui, Department of Planning

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1 CHAIRPERSON SCHEUER: Aloha and good morning. I
2 apologize for our lateness this morning. We had a
3 logistical miscommunication with some of our parties. So
4 sorry to keep everybody waiting.

5 Today, this is the January 18, 2017 Land Use
6 Commission meeting.

7 Our first order of business is the adoption of
8 the December 22, 2016 minutes. Commissioners, are there
9 any corrections or comments on the minutes?

10 COMMISSIONER CHANG: I move to approve the
11 minutes.

12 COMMISSIONER ESTES: Second.

13 CHAIRPERSON SCHEUER: Commissioner Chang has
14 approved. Commissioner Estes has seconded.

15 Any further discussion?

16 No further discussion. All in favor say "aye."

17 (The Commissioners responded affirmatively.)

18 CHAIRPERSON SCHEUER: The motion carries.

19 The next agenda item is our tentative meeting
20 schedule. So Mr. Orodénker, would you go over that,
21 please.

22 EXECUTIVE OFFICER ORODENKER: Thank you,
23 Mr. Chair.

24 Our meeting schedule has changed. We were
25 originally going to be on Kaua'i in February for the Lima

1 Ola -- hearing on the Lima Ola project itself. That has
2 been postponed.

3 We were also going to be hearing the declaratory
4 ruling for solar DR16-55, but our understanding is that
5 that is not going to be going forward either. So at this
6 moment, the February agenda is open.

7 March 8th and 9th, we're having a hearing on
8 Kau'ono'ulu Ranch here on Maui.

9 March 22nd and 23rd, hearing on A16-800 Island
10 School and University of Hawaii Community Colleges on
11 Kaua'i.

12 April 12th and 13th, we're looking to discuss
13 the Lanai Remand Consideration of the Hearing Officer's
14 recommendations.

15 April 26th and 27th, we'll be back here on Maui
16 for Kau'ono'ulu Ranch.

17 May, we have scheduled a hearing on Waimanalo
18 Gulch pending the City and County of Honolulu's process.
19 And in June, we will be on the Big Island for a series of
20 motions.

21 CHAIRPERSON SCHEUER: Commissioners, are there
22 any questions? Okay. Thank you.

23 The next agenda item we have is a hearing and
24 action meeting on Docket No. A15-798 to consider the
25 acceptance of the Waikapu Country Town, LLC's Final

1 Environmental Impact Statement.

2 Will the parties please identify themselves for
3 the record?

4 MR. MANCINI: I'll go first. Good morning. My
5 name is Paul Mancini. I'm representing the Applicant
6 here, Waikapu Properties. Mr. Atherton is here. And
7 Mr. Atherton is a manager of the Applicant company.

8 MR. ATHERTON: My name is Mike Atherton.

9 CHAIRPERSON SCHEUER: Please put the microphone
10 right next to your lips. Oh, that's okay. Your counsel
11 has --

12 MR. ATHERTON: Again, I'm Mike Atherton. I'm
13 the manager of Waikapu Properties and manager, also, of
14 the Maui Tropical Plantation. And I'm here today to
15 discuss our EIS.

16 CHAIRPERSON SCHEUER: Thank you.

17 Maui County.

18 MR. HOPPER: Deputy Corporation Counsel Michael
19 Hopper for the Maui County, Department of Planning. With
20 me is Planner Kurt Wollenhaupt.

21 CHAIRPERSON SCHEUER: And OP.

22 MS. TAKEUCHI-APUNA: Good morning. Deputy
23 Attorney General Dawn Apuna on behalf of the Office of
24 Planning. Here with me today is Rodney Funakoshi.

25 CHAIRPERSON SCHEUER: Thank you.

1 Before we go any further, do any of the
2 Commissioners have any disclosures to make?

3 Mr. Mahi?

4 COMMISSIONER MAHI: Yeah, I noticed, I think,
5 when the testimony was gathered, and there are two
6 properties, kuleana land, Mahi is the last name. I just
7 wanted to say that, because we're all one family, Mahi,
8 but there's 12,000 of us. So I don't know if this
9 particular -- I'm trying to figure out this particular
10 line, if it's from the Helelima line of which we are. But
11 I'm Hawaii Mahi, and we're from Napoopoo. I read the
12 background of this ohana, and they're Pearl City side,
13 yeah. Then they came here. I came here just to make
14 the -- ah, hoihoi. Kala mai. So I just wanted to
15 disclose, yeah. I'm not aware -- I don't know the family
16 personally, but we are Mahis. We all one family, you
17 know. I just wanted to let everyone know that.

18 CHAIRPERSON SCHEUER: Thank you, Commissioner.
19 Anything else? Okay.

20 So, first, let me update the record on this
21 docket. On April 16, 2015, the Land Use Commission
22 received with Waikapu Country Town's Petition to Amend the
23 Agricultural Land Use District Boundaries into the Rural
24 Land District for certain lands situate at Waikapu,
25 District of Wailuku, Island and County of Maui, State of

1 Hawaii, consisting of 92.394 acres of land and 57.454
2 acres of land, bearing the Tax Map Key numbers
3 (2)3-6-004:003 (por) and to Amend the Agricultural Land
4 Use District Boundaries into the Urban Land Use District
5 for certain lands situate at Waikapu, District of Wailuku,
6 Island and County of Maui, State of Hawaii, consisting of
7 236.326 acres of land, 53.775 acres of land, and 45.054
8 acres of land, bearing Tax Map Keys Nos. (2)3-6-002:003
9 (por), (2)3-6-004:006 and (2)3-6-005:007 (por), along with
10 Exhibits 1 through 18, a full-size map and a \$5,000 filing
11 fee. Also on the same day, this Petitioner filed a Motion
12 to Designate the Land Use Commission as the accepting
13 agency for its Environmental Impact Statement.

14 On April 29, 2015, and by a written Order dated
15 May 1, 2015, the LUC first agreed to be the accepting
16 authority for the EIS pursuant to Chapter 343, Hawaii
17 Revised Statutes; and we, second, determined that the
18 proposed action may have a significant effect on the
19 environment to warrant the preparation of an Environmental
20 Impact Statement, or EIS.

21 The Office of Environmental Quality Control
22 published the notice of the availability of the EISPN in
23 its May 23, 2015, issue of *The Environmental Notice*. The
24 30-day public comment period for the EISPN ended on
25 June 22, 2015.

1 On January 20, 2016, the Commission received
2 copies of the Draft EIS, or DEIS, and publication forms
3 and provided a copy to the OEQC, the Office of
4 Environmental Quality Control.

5 The OEQC published a notice of the availability
6 of the Draft EIS in its February 8, 2016, issue of *The*
7 *Environmental Notice*. The 45-day public comment period
8 for the DEIS ended on March 28, 2016.

9 The OEQC published notice of the availability of
10 the FEIS, the Final EIS, in its January 8, 2017, issue of
11 *The Environmental Notice*.

12 On January 10 of this year, the Commission
13 mailed the LUC meeting agenda notice to the Parties and
14 statewide mailing lists as well its Maui mailing lists.

15 The next day, on January 11, 2017, the
16 Commission mailed an amended notice of the January 18-19,
17 2017, meeting agenda to the Parties and the statewide,
18 Maui and Kaua'i mailing lists. Kaua'i, because we're
19 meeting on Kaua'i tomorrow.

20 On January 17, 2017, yesterday, the Commission
21 received correspondence from the Office of Planning
22 recommending acceptance of the Draft Final Environmental
23 Impact Statement for Waikapu Country Town.

24 Now, let me briefly describe the procedure that
25 we have for today on the docket. First, I'm going to give

1 the opportunity for the Petitioner to comment on the
2 Commission's policy governing the reimbursement of hearing
3 expenses.

4 I will then call on individuals desiring to give
5 public testimony on this matter. All individuals will be
6 called in turn to the witness box, and I will swear them
7 in prior to their giving public testimony.

8 After the completion of public testimony, I will
9 close that portion of the proceeding. Then the Petitioner
10 will make their presentation.

11 After the Petitioner has made their
12 presentation, we will receive any comments from Maui
13 County, the Planning Department, and the State Office of
14 Planning.

15 After we've received the comments of the
16 Petitioner, Maui County, and the State, we'll deliberate
17 and take a vote on the items.

18 Are there any questions on our procedures for
19 today from the Parties or the Commissioners? Okay. So
20 Mr. Geiger -- well, Mr. Mancini. Sorry.

21 MR. MANCINI: With regard to your first issue, I
22 had spoken to the staff, and I actually said, any invoice
23 with regards to the cost with regard to today, please send
24 to us. And we will basically take care of those costs
25 either by reimbursement or direct payment.

1 CHAIRPERSON SCHEUER: Thank you, Mr. Mancini.

2 Make sure the button is lit when you are
3 speaking into the microphone for the benefit of the court
4 reporter.

5 COMMISSIONER CABRAL: Turn up the volume on
6 the --

7 MR. MANCINI: Is this better?

8 CHAIRPERSON SCHEUER: That is much better.
9 Thank you.

10 Okay. Is there anybody in the audience -- I
11 believe we have a list of people signed in -- to deliver
12 public testimony?

13 First we have Chubby Vicens.

14 Good morning. Make sure the microphone is lit,
15 so you press the button. There we go. May I swear you in
16 first?

17 MR. VICENS: Please.

18 CHAIRPERSON SCHEUER: Do you swear or affirm
19 that the testimony you are about to give is the truth?

20 MR. VICENS: I do.

21 MERCER VICENS,
22 called as a public witness, having been sworn to tell the
23 truth, was examined and testified as follows:

24 DIRECT EXAMINATION

25 CHAIRPERSON SCHEUER: Please state your name and

1 address for the record, and then proceed with your
2 testimony.

3 MR. VICENS: I am Mercer Chubby Vicens. I
4 reside at 2465 Waipua Street in Spreckelsville, Paia,
5 96779.

6 CHAIRPERSON SCHEUER: Please proceed.

7 MR. VICENS: Good morning, Commissioners. I'm
8 here today on behalf of the Applicant. Over a little over
9 ten years ago, while serving as a member of the group that
10 was planning the Maui Island Plan, we came across Mike's
11 project and narrowly lost putting it into the Community
12 Plan, including it in the Community Plan, because one of
13 our members had to go back to Lahaina. So I think it was
14 a 10/11 vote, something to that effect. But for a
15 first-time Applicant, I thought that they did an
16 exceptional job. I think the project is one that is --
17 that takes us from makai to mauka, and it fills the needs
18 of the affordability. I think we have some kupuna housing
19 in there. I believe that you have ranchettes at the top
20 of the thing to preserve our agricultural lifestyle that
21 is known throughout this particular region.

22 And I come from a background of development
23 experience, having been the vice president of development
24 for Alexander and Baldwin here on Maui and been associated
25 with Matson and Alexander & Baldwin for over 33 years,

1 counting. I retired on February 10 when I turned 80 this
2 year, and I thought that it was time to go do something
3 different, not retire, but do something different.

4 And I think -- I cannot tell you how this
5 project meets many, many of the needs. It crosses from
6 the affordability to the farmers, and I think that it's
7 one well worth considering. I've known Mr. Atherton for
8 that period of time or a little over ten years, both he
9 and his partners. They have proven to be great community
10 people. They have taken themselves out into the
11 community, especially Mr. Atherton, and been a -- not an
12 invisible developer, but one that has been into the center
13 of the community. He has gained the respect of the
14 community associations. And I've been to several of the
15 Waikapu Community meetings where there was total --
16 total -- support for this particular project.

17 So when we -- when we talk about meeting the
18 needs across a very wide spectrum of needs -- and there is
19 a wide spectrum of needs here on Maui. Many times
20 projects are approved but not followed through. What I
21 know of the -- Mike Atherton and his partners, they will
22 deliver. They will deliver the kind of product that we
23 expect and we demand here in Maui. It's our
24 responsibility, all of us, statewide, county-wide, to be
25 able to give our people that live on Maui the best product

1 possible at the lowest possible cost. And I think the
2 group that Mike represents has done all of that. And I
3 would like to tell you that this group has my full support
4 moving forward.

5 CHAIRPERSON SCHEUER: Mahalo, Mr. Vicens.

6 Mr. Mancini, any questions?

7 MR. MANCINI: I have none.

8 CHAIRPERSON SCHEUER: Maui County?

9 MR. HOPPER: No.

10 CHAIRPERSON SCHEUER: OP?

11 MS. TAKEUCHI-APUNA: No.

12 CHAIRPERSON SCHEUER: Commissioners?

13 Thank you very much.

14 (The witness was excused.)

15 CHAIRPERSON SCHEUER: Our next witness is
16 Kimokeo Kapahulehua.

17 Aloha. May I swear you in?

18 MR. KAPAHULEHUA: Aloha.

19 CHAIRPERSON SCHEUER: Do you swear or affirm
20 that the testimony you are about to give is the truth?

21 MR. KAPAHULEHUA: Yes, I do.

22 KIMOKEO KAPAHULEHUA,
23 called as a public witness, having been first duly sworn
24 to tell the truth, was examined and testified as follows:

25 DIRECT EXAMINATION

1 CHAIRPERSON SCHEUER: Okay. Mahalo. Please
2 state your name and address for the record, and then
3 proceed with your testimony.

4 MR. KAPAHULEHUA: Kimokeo Kapahulehua, 1011A
5 South Kihei Road, 96753.

6 Thank you, Commissioners. I wanted to speak in
7 behalf of a few things. First, I wanted to tell you that
8 I met Mike Atherton years back, and a general discussion
9 was made in reference to Mike said that I really would
10 like to make sure that the host culture, the Hawaiian
11 culture, was addressed if any impact is made on his
12 property and want to make sure that he covered any points
13 with that. And so he -- his first preference was making
14 sure of that, that he was not going to be able to impact
15 anything on Hawaiian culture, whether it's the land or the
16 flora and fauna around there. And if it did, then he
17 wanted to know how he was going to be able to take care of
18 that.

19 Secondly, he definitely made a point that he
20 want to work with this community and want to be a good
21 neighbor, Waikapu Community, and like the previous
22 speaker, about having a lot of meetings with the community
23 and making sure that he can address their needs if there
24 was anything that his development was going to impact
25 them.

1 Thirdly, that he wanted to make sure that
2 agriculture played a big part in his development and
3 wanted to know about the taro plant. And so we introduced
4 to him the person that was able to do taro and now is part
5 of the development. A large of that is into Hawaiian
6 culture development. So I think that Mike -- the earlier
7 discussion will show in the plans that he's addressed all
8 of this.

9 And lastly is the talk about open space, making
10 sure that there was enough open space in perpetuity and
11 space in the diversification of agriculture, and I think
12 that plan will show that.

13 So I come before you, Commissioners, to support
14 this development in what was spoken before and what will
15 be shown to you today. Thank you very much.

16 CHAIRPERSON SCHEUER: Mahalo. Any questions for
17 the witness?

18 MR. MANCINI: No questions.

19 MR. HOPPER: No questions.

20 MS. TAKEUCHI-APUNA: No questions.

21 CHAIRPERSON SCHEUER: Commissioners?

22 Okay. Thank you very much.

23 And kala mai. Because we started a little late,
24 despite arriving on time at the airport, I didn't
25 introduce myself. My name is Jonathan Scheuer, First Vice

1 Chair of the Land Use Commission. Our Chair, Edmund
2 Aczon, is not available, so me and the Second Vice Chair
3 are splitting duties. I'm chairing in his absence. I'm
4 taking today, and Arnold is taking tomorrow.

5 Because we only have six witnesses signed up
6 right now, I'm not going to institute the three-minute
7 limit, but I am setting my timer just in case people start
8 to go long. You might hear a chime, so...

9 Our next witness is Russell Gushi.

10 Mr. Gushi, do you swear or affirm that the
11 testimony you are about to give is the truth?

12 MR. GUSHI: Yes, I do.

13 RUSSELL GUSHI,
14 called as a public witness, having been first duly sworn
15 to tell the truth, was examined and testified as follows:

16 DIRECT EXAMINATION

17 CHAIRPERSON SCHEUER: Okay. Please state your
18 address for the record and proceed.

19 MR. GUSHI: 185 West Waiko Road, Waikapu, 96793.
20 Okay. My name is Russell Gushi, and I'm a resident of
21 Waikapu and a former Waikapu Community Association board
22 member. I'm here in support -- to give my support to the
23 Applicant and the project.

24 Waikapu, Waikapu streams, Waikapu Valley, is all
25 part of Na Wai 'Eha and is rich in Hawaiian history,

1 culture and lore. Traditionally, the lands around Waikapu
2 has always been in agriculture because of the deep, rich
3 soil and the availability of water, and has been
4 classified as prime ag land. First there was kalo, then
5 sugar cane, and then pineapple.

6 When Wailuku Sugar Company sold their land --
7 went out of business and sold their land, most of the land
8 around Waikapu was purchased by land developers mainly for
9 housing projects. These developers have come to the
10 community, Waikapu Community, to get our input and
11 comments. It's been my observation that a lot of these
12 developers that have come to our community come and pretty
13 much come to us because it's politically correct. We
14 don't really see a good follow-up on our comments. Mostly
15 it's cosmetic.

16 We take pride in our neighborhood. A lot of the
17 families have been there for generations. They've
18 invested time, money, commitment, and have nurtured the
19 community to what it is today. And so when these
20 developers come and then go back and when they -- some of
21 them will come back to us with changes to their plans.
22 The ones that do come back, again, are just cosmetic,
23 we're stuck with the impact. The main concerns that we
24 have as a community is that: How is this -- how are these
25 projects going to impact our lifestyle and our

1 environment?

2 There's been one exception to all these
3 developers, and that has been Mike Atherton, his team, and
4 this project. Now, I'll go down and make a list of the
5 exceptions they've made.

6 Mike -- the Applicant has a business in Waikapu.
7 Mike has lived in Waikapu for a while and has expressed a
8 desire to continue living in Waikapu once this project is
9 completed. They have established an ongoing relationship
10 with the community. He attends the community association
11 meetings regularly. He gets involved with community
12 projects. They've even offered the use of their business
13 property for community events.

14 They've come before the community and made
15 multiple presentations of their project. They've listened
16 to the community. They've tried to satisfy some of our
17 comments; but realizing that they're businessmen, we
18 realize there's always compromises, and we understand
19 that.

20 CHAIRPERSON SCHEUER: So, Mr. Gushi, that's
21 pretty much --

22 MR. GUSHI: Yeah. Okay. Anyway, so we're in
23 support of him, because they're different. They're
24 different from all the other developers.

25 CHAIRPERSON SCHEUER: Mahalo.

1 Are there any questions for the witness?

2 MR. MANCINI: I have none.

3 MR. HOPPER: No.

4 MS. TAKEUCHI-APUNA: No.

5 CHAIRPERSON SCHEUER: Commissioners? Okay.

6 Thank you very much.

7 (The witness was excused.)

8 CHAIRPERSON SCHEUER: Our next witness is Bobby
9 Pahia.

10 Aloha. Do you swear or affirm that the
11 testimony you are about to give is the truth?

12 MR. PAHIA: Yes, I do.

13 ROBERT HALE PAHIA,
14 called as a public witness, having been first duly sworn
15 to tell the truth, was examined and testified as follows:

16 DIRECT EXAMINATION

17 CHAIRPERSON SCHEUER: Please state your name and
18 address for the record, and then proceed with your
19 testimony.

20 MR. PAHIA: Yeah, my name is -- good morning.
21 My name is Robert Hale Pahia. My address is 111 Pueo
22 Drive, Kula, 96790.

23 I come before you today because just to let you
24 know that I'm a Mahi'ai. I'm a farmer. And I've been
25 farming on Maui for close to 30 years. And one of the

1 hardest things that I have to do as a farmer is to find
2 land and water and to secure a long-term lease. That was
3 very difficult over the years, and that's stymied by
4 growth and other farmers that I know, also.

5 When I first met Mike Atherton, which was about
6 six years ago, he allowed me to farm on a little piece of
7 land for about a year. Then he allowed me to farm on
8 another larger piece of land for a period of five years,
9 you know, and with the commitment to me that, eventually,
10 when the time was right, he was going to give me a
11 long-term lease with land and water. And I just want to
12 say I really appreciate that, not only me but other
13 farmers, too, because, you know, he's addressing the needs
14 of, you know, my business, being a farmer and growing
15 food.

16 And you know, I just want to echo what everybody
17 else said. I'm in agreement with that. I couldn't say it
18 any better. And all I know is that, since I've known Mike
19 Atherton and his partner, they've always come through on
20 their word. And I really respect that. And I think that
21 he's addressing the needs of the community. Like the
22 gentleman before me said, he's meeting with the community,
23 he's backing up agriculture, and, you know, considering
24 keeping a thousand acres in ag, you know, that's a
25 possibility that -- that's being looked at, you know,

1 creating a land trust, a land easement, a conservation
2 easement, where we can keep 800 acres or a thousand acres
3 in ag forever. I don't know of any other developers that
4 came and offered this to the community. So I'm in full
5 support. Thank you.

6 CHAIRPERSON SCHEUER: Mahalo.

7 Are there any questions?

8 MR. MANCINI: No questions.

9 MR. HOPPER: No.

10 MS. TAKEUCHI-APUNA: No.

11 CHAIRPERSON SCHEUER: Commissioners? No.

12 Okay. Mahalo.

13 (The witness was excused.)

14 CHAIRPERSON SCHEUER: Our next witness is Mike
15 Takehara. Kala mai if I mispronounced your last name.
16 Followed by Nick Mayor.

17 Aloha. Do you swear or affirm that the
18 testimony you are about to give is the truth?

19 MR. TAKEHARA: Yes.

20 MIKE TAKEHARA,

21 called as a public witness, having been first duly sworn
22 to tell the truth, was examined and testified as follows:

23 DIRECT EXAMINATION

24 CHAIRPERSON SCHEUER: Please state your name and
25 address for the record, and then proceed with your

1 testimony.

2 MR. TAKEHARA: Mike Takehara. 2034 Palua
3 Street, Wailuku.

4 Good morning, everybody. My name is Mike
5 Takehara, and I go back four-generation plantation over
6 here. My family came in the 1860's. My grandpa,
7 everybody, worked in Wailuku Sugar.

8 And like, for me, this is all I know is
9 plantation. And I never ever been to the mainland. And I
10 love the way this project is. It sort of reminds me of
11 the old way, how I grew up in Wailuku and stuff like that,
12 where we had a community. But our community was called a
13 ku. And this project sort of reminds me of that.

14 And since I love agriculture, and my grandfather
15 guys like that, I support this because of 800 acres going
16 to agriculture. There's nobody in the state that would
17 give up 800 acres. And we get people, like Bobby, that
18 supplies the people here on the island with the fresh
19 product, Grant with Kumu Farms. I mean, since everybody
20 knows that agriculture is, like, with sugar cane going, we
21 need somebody like him to step forward that maybe in the
22 future many other developers would do the same for the
23 aina.

24 I mean, this is where I'm going to live and die,
25 and I really support this. And you know, like, for us,

1 the ku was everything, so I think what he's trying to
2 instill to keep Waikapu Waikapu and Maalaea Maalaea, just
3 like where we come from, Wailuku, Stable Camp is Stable
4 Camp. And it's sort of dying, this sense of lifestyle.
5 But what he's projecting, he's sort of like a
6 reincarnation of the old way. I mean, very different for
7 me. And in fact, with the agriculture, that is projected
8 with the 800 acres.

9 Everybody know that tourism is about 90 percent
10 of our income that we need in Hawaii. So with all these
11 taro fields growing past the highway, the tourists will
12 have a sense of old Hawaii. So this is in place of sugar
13 cane. So, for me, I love tourism. And this project
14 supports tourism, too. It's not just houses. It's lush,
15 agricultural land, where the tourists can go back home and
16 say, "You know what, wow, the taro fields here in Maui was
17 beautiful. I actually got to witness and see a taro
18 plant." You know, it's very unique, and stuff like that.

19 And I've known Coach for a while, too, and he's
20 a very giving man. And not too many people understand.
21 Like my uncle -- I have my uncles, my brothers, my
22 aunties, they all live in Waikapu. I mean, multiple of
23 family. And my uncle was, in fact, assistant to the old
24 Masao Sato. Masao Sato was the last of the ku leaders.
25 And my uncle was an assistant, and he was -- they did the

1 Boy Scout.

2 And every year -- I don't know. Not too many
3 people understand. But he allows the Boy Scouts, which is
4 the children, every year they go up to the number-one pono
5 wai, and we call that Ponderosa. But they go up there
6 summertimes, and all the kids go up there, and they do
7 their camp-out, and they get their merit badges. And
8 people understand that the kids are our future. So when
9 we instill this kind of values, so when they grow up,
10 they'll remember this kind of stuff, I mean, it's very,
11 very unique to me.

12 And in closing, I would just like to say that I
13 would love to have this development go because, you know,
14 I lost my house in February. And I would wish that many
15 other people, maybe one of your family, could maybe buy
16 one house up there, and so you could pass -- they could
17 pass their legacy. Like how I grew up riding my bike
18 through Waikapu from the old road. They'll have the same
19 opportunity.

20 And maybe one day, they'll be just like me:
21 "Where you live?" "I live in Waikapu." "Wow, that's a
22 very unique place. No other place on Maui."

23 But God bless you guys. Thank you for listening
24 to my mana'o and stuff like that. I'm just a simple
25 plantation boy, but I represent my family and all the

1 people that come from the plantation camp. God bless.

2 THE HEARINGS OFFICER: Mahalo, Mr. Takehara.

3 Are there any questions?

4 MR. MANCINI: We have none.

5 MR. HOPPER: No.

6 MS. TAKEUCHI-APUNA: No.

7 CHAIRPERSON SCHEUER: Commissioners? No.

8 Mahalo.

9 Mr. Mayer.

10 If there's anybody else intending to testify,
11 you should notify Mr. Hakoda over here.

12 Aloha. Do you swear or affirm that the
13 testimony you are about to give is the truth?

14 MR. MAYER: I do.

15 RICHARD MAYER,

16 called as a public witness, having been first duly sworn
17 to tell the truth, was examined and testified as follows:

18 DIRECT EXAMINATION

19 CHAIRPERSON SCHEUER: Please state your name and
20 address for the record, and proceed.

21 MR. MAYER: My name is Dick Mayer. My legal
22 name, Richard David Mayer. I live at 1111 Lower Kimo
23 Drive, Kula.

24 I'm going to be asking you to take a look at the
25 item that has that map in front of you. But one or two

1 comments before I make that. I was the vice chair of the
2 General Plan Advisory Committee. Mr. Vicens also
3 mentioned that he was a member of that committee. It was
4 a committee that looked at the long-range land uses of
5 Maui and the overall planning for Maui. And we made our
6 recommendations to the Council. It's now incorporated in
7 the Maui Island Plan. One of the things in that plan has
8 this area within the urban growth boundaries. And for
9 that reason, I supported it then, and I support it now.
10 I'll try to give you some of the rationale behind it.

11 I'd like to read from that statement -- you have
12 the map in front of you. I'll read it, and we'll refer to
13 the map at the end. I have often been very critical of
14 Final EIS documents prepared by developers. However, the
15 Waikapu Country Town's Final Environmental Impact
16 Statement is one of the most well done and complete
17 environmental documents that I've seen in many years of
18 reviewing such documents. Especially gratifying was the
19 comprehensive replies to my own Draft EIS comments. I
20 will also add, for about 25 years, I reviewed EIS
21 documents for the University of Hawaii Environmental
22 Center in my capacity as a faculty member here on Maui.

23 Nevertheless, there are two concerns which I
24 would like to share with the State Land Use Commission.
25 Number one, the number of ohana units estimated for the

1 project is 146. I believe that this number is
2 significantly lower than could actually be generated on a
3 project having over 1400 units. In other words, the ohana
4 units represent only an additional 10 percent of the units
5 being proposed for development. If only 146 ohanas are
6 proposed to be built, this could be the result of the
7 project's high density and many small lots, and that's why
8 the developer has indicated only 146 units.

9 However, the significance of a low ohana
10 estimate is that the 146 ohana units are used throughout
11 the Final EIS to calculate numerous infrastructure
12 impacts: Water use, wastewater, traffic, school
13 enrollments, etc. Any and all of the potential impacts
14 for more than 146 units have not been described or
15 mitigated in the Final EIS up for your review.

16 Therefore, I would recommend to the LUC that you
17 stipulate in the condition of acceptance of the Final EIS,
18 if you're allowed to place stipulations on it, that the
19 Applicant place a required limit of 146 ohana units within
20 the development to be enforced by either deed restrictions
21 or other mechanisms. I leave it to the
22 Applicant/Developer to decide how it wishes to determine
23 no requirement by, for example, allowing only certain lots
24 to have the capability of having ohanas or, B, by
25 establishing a list that would allow the first 146

1 applicants for an ohana to get permission to build those
2 units with the understanding that no further ohana units
3 will be allowed in the Waikapu Country Town. The ability
4 to enforce this requirement should rest first with the
5 developer and, secondarily, with the Maui County Planning
6 Department's Zoning and Codes Division.

7 Without the power to limit ohana units,
8 infrastructure resulting from this project will be most
9 seriously compromised, resulting in many problems and
10 impacts. If the Applicant wishes to allow or does allow
11 more than 146 units, then a supplemental EIS should be
12 required.

13 My second concern, it appears that the Applicant
14 has made an effort to account for --

15 CHAIRPERSON SCHEUER: Okay. We're past the
16 three minutes. If you can summarize, you're right at
17 three minutes.

18 MR. MAYER: Okay. There are many other projects
19 in the neighborhood -- I'm not reading now -- four other
20 major projects in the neighborhood, and they are very
21 sizable in number. The cumulative effect of these has not
22 been, I think, properly understood. And the impacts from
23 these, particularly in the area of traffic, is not clear.
24 And so I'm making some suggestions.

25 But I would like you to just turn to the map for

1 a moment. What -- this is a map that I put together from
2 all of the other developments, put them all into one map,
3 and you'll see five total developments here. Upper left
4 is the Waikapu Country Town. Then in the middle upper,
5 Pu'unani, with approximately six to seven hundred units;
6 Kehalani, with approximately 900 to 1,000 more units to be
7 built; in the lower right, Maui Lani, with about another
8 thousand units still to be built; and the big project,
9 Waiale, which is the A & B project, with 2550 units;
10 total, over 6,000 units. I do not think that the traffic
11 at present is even well-handled and, certainly, if these
12 units are built, that they will be handled well.

13 Therefore, I'm making two recommendations: One,
14 that the Waikapu Country Town be required to pay a fair
15 share of a Central Maui Master Plan for transportation;
16 and, secondly, that once that report is done, they be
17 required to put a funding in to build the necessary
18 portion on a fair-share basis with the other developments
19 and with the County and State.

20 CHAIRPERSON SCHEUER: Thank you very much.

21 Are there any questions for this witness?

22 MR. MANCINI: We have no questions.

23 CHAIRPERSON SCHEUER: Mr. Hopper?

24 MR. HOPPER: No questions.

25 CHAIRPERSON SCHEUER: Ms. Apuna?

1 MS. TAKEUCHI-APUNA: No questions.

2 CHAIRPERSON SCHEUER: Commissioners? Okay.

3 Thank you very much.

4 (The witness was excused.)

5 MR. ATHERTON: Our next witness is Lucienne de
6 Naie.

7 Aloha. Do you swear or affirm that the
8 testimony you are about to give is the truth?

9 MS. DE NAIE: I do.

10 LUCIENNE DE NAIE,
11 called as a public witness, having been first duly sworn
12 to tell the truth, was examined and testified as follows:

13 DIRECT EXAMINATION

14 CHAIRPERSON SCHEUER: Please give your name and
15 address, and then proceed.

16 MS. DE NAIE: My name is Lucienne de Naie. I
17 reside at 320 Door of Faith Road in Huelo, Haiku, 96708.
18 I'm here representing the Maui Tomorrow Foundation today
19 as its president. Do you need our address? No. Okay.
20 Maui Tomorrow Foundation --

21 First of all, thank you all for being here and
22 for coming to Maui. It's really great to be able to have
23 Maui people come out to talk about Maui things.

24 Maui Tomorrow Foundation did submit ten pages of
25 comments on the Draft Environmental Impact Statement, and

1 we received responses to our comments, which, for the most
2 part, were very well-addressed. We, too, were impressed
3 by the honesty of the EIS. We review a lot of EIS's, and
4 most of them, I'm sorry to say, are just very evasive.
5 And the comments we did have was about information that
6 needed to be clarified but was not yet included because
7 studies weren't complete, and those things were included
8 in the Final EIS, which was also very gratifying to see.

9 We do support you approving this EIS. I have to
10 say that, personally, I have attended a number of the
11 meetings that the Waikapu Community Association held where
12 this project was discussed. To be honest, there were some
13 people that had some concerns. But I think, over time,
14 those concerns were actually, in a very honest manner,
15 addressed. There was a real attempt, as Mr. Gushi said,
16 to hear from the community and do things in a way that
17 made the community feel that this was a project that was
18 going to be a good fit for a next-door neighbor because it
19 is expanding what is the traditional Waikapu Town.

20 Also, there is a part in the 2002 Wailuku-
21 Kahului Community Plan that sets forth a design objective
22 to keep our traditional towns compact so that there's
23 buffers between one town and the next and we don't have
24 just kind of a California-style sprawl from Waikapu to
25 Maalaea. I think that this project really heard that by

1 setting aside the 800-acre agricultural buffer in the
2 southerly direction. They were the only project -- I,
3 too, served on the General Plan Advisory Committee with
4 Mr. Mayer and Mr. Vicens and 22 other dedicated souls.
5 And it was the only project I heard that really came in
6 that proposed significant buffers to keep a small town a
7 small town.

8 I want to say that there are two things that I
9 think should be clarified during the district boundary
10 amendment process. I know we're not addressing that now,
11 but they are not completely made clear in the EIS. One
12 is: Will the whole 499 acres that is being considered in
13 this EIS for the district boundary amendment actually all
14 be a project district? That should just be clarified.

15 The second is: While we're thrilled that this
16 800 acres of ag land and the additional 277 acres of ag
17 land more mauka will be kept in ag as part of the plan,
18 there should be some sort of an enforceable easement held
19 by a third party put on this ag land. And that could be
20 clarified in the DBA process in order for this to be a
21 real project.

22 And we all know that -- I think the intentions
23 of the current partnership are good, but things happen,
24 sometimes for circumstances outside one's control; the
25 project falls into other hands. And those intentions

1 really need to be memorialized in a way that can be
2 enforceable.

3 Thank you for your time.

4 CHAIRPERSON SCHEUER: Thank you.

5 Any questions for Miss de Naie?

6 MR. MANCINI: We have none.

7 MR. HOPPER: No.

8 MS. TAKEUCHI-APUNA: No.

9 CHAIRPERSON SCHEUER: Commissioners? No.

10 Thank you very much.

11 (The witness was excused.)

12 CHAIRPERSON SCHEUER: The last witness we have
13 listed is Luke Mclean.

14 Aloha.

15 MR. MCLEAN: Aloha.

16 CHAIRPERSON SCHEUER: Do you swear or affirm
17 that the testimony you are about to give is the truth?

18 MR. MCLEAN: Yes, I do.

19 LUKE MCLEAN,
20 called as a public witness, having been first duly sworn
21 to tell the truth, was examined and testified as follows:

22 DIRECT EXAMINATION

23 CHAIRPERSON SCHEUER: Please state your name and
24 address for the record.

25 MR. MCLEAN: My name is Luke Mclean, 350 West

1 Waiko Road, Wailuku, Hawaii, 96793. Waikapu boy, born and
2 raised on Waiko Road. I'm a lineal descendant of Kuamu.
3 Our lands were gifted to us from Kauikeaouli, Kamehameha
4 III, during the Great Mahele.

5 I'm one of the four founding members of Hui
6 Malama O Waikapu. We're leasing a small piece of remnant
7 dryland koaia forest on Mike Atherton's property. The
8 reason that we formed this hui, Hui Malama O Waikapu, was
9 we're all four Waikapu boys who all have ancestral lineage
10 connection to Waikapu. And we saw the development, the
11 changes that were going to happen in our neighborhood, and
12 we all kind of got together with our concerns for access
13 into our valley. That was sort of our estuary growing up.
14 We played; we built dams; we hunted pigs and deer, and
15 what not. And we still wanted to have that connection and
16 that access to our valley.

17 I'm a natural resource manager. I've worked
18 in -- for a watershed partnership for over ten years. My
19 main focus in my career is to malama aina and to take care
20 of our native forest ecosystems. Mike gave us the
21 opportunity to work a small piece of a remnant, very rare
22 dry forest ecosystem. It's probably one of the largest
23 stands of koaia on the whole island. And there's wiliwili
24 present, and then there's also lo'i kalo. It is a kuleana
25 property, where we used to be a kuleana piece owned by

1 Kuamu -- I mean, sorry, kala mai -- kupa alii. And
2 anyways, our hui appreciates Mike in allowing us to access
3 the valley and be able to go up there and do our good
4 work. We've been partnering with Kamehameha Schools,
5 Queen Liliuokalani Community Council and King Kekaulike's
6 Hawaiian Immersion Program, taking young Hawaiian youth,
7 young students up into the valley. And it's nice to have
8 access.

9 And mahalo, Mike, for allowing us to take care
10 of that special piece of land. Hopefully, eventually, one
11 day, we can expand our efforts and continue our good work.

12 CHAIRPERSON SCHEUER: Mahalo.

13 Are there any questions for the witness?

14 MR. MANCINI: No questions.

15 MR. HOPPER: No questions.

16 MS. TAKEUCHI-APUNA: No questions.

17 CHAIRPERSON SCHEUER: Commissioners?

18 Thank you very much.

19 (The witness was excused.)

20 CHAIRPERSON SCHEUER: Is there anybody else
21 wishing to provide public testimony at this time?

22 Okay. So thank you.

23 Let's just take a quick five-minute break, and
24 then we'll go into the presentation.

25 MR. MANCINI: Good idea.

1 (Recess taken from 10:58 a.m. to 11:04 a.m.)

2 CHAIRPERSON SCHEUER: Back on the record.

3 It is now just about 11:00 o'clock. The
4 Petitioner has indicated they need approximately 20
5 minutes for their presentation. So we'll do their
6 presentation and questioning, and then proceed to the
7 County and the State. If this only takes about an hour
8 and a half, we can end the hearing and then go for a
9 lunch. Or if there's lots of questions, we will take a
10 break at around 12:30, 12:00 to 12:30.

11 So please proceed.

12 MR. MANCINI: Once again, my name is Paul
13 Mancini. I represent the Applicant. And good morning and
14 Happy New Year. I believe this is your first meeting of
15 the year. So Happy New Year to you. And thank you for
16 coming to Maui.

17 A couple of witnesses expressed that we
18 appreciate you all being here. Just take a few seconds.
19 What I want to do is I want to give you a frame of
20 reference how we got here, why we're here. And then I'll
21 introduce Mr. Atherton and our group.

22 Mr. Atherton is with me here today. Mr. Summers
23 is here, the project planner. And we've got a series of
24 people who have come with us who have participated in the
25 EIS. So if there's questions for any of the consultants,

1 they're here, also. Mr. Atherton will introduce them.

2 Again, we're here not for a land use amendment,
3 not a boundary amendment. We're here on an Environmental
4 Impact Statement. We came to you in 2015 and asked you to
5 be the accepting authority for an environmental analysis
6 and asked you to waive the Environmental Assessment so we
7 can go directly to Environmental Impact Statement. You
8 were kind enough to grant that request we had. And then
9 we filed the notice, as the Chairman indicated.

10 In May of 2015, we filed and published the
11 notice. We had approximately 20 comments on that notice.
12 And from those comments, we prepared a Draft Environmental
13 Impact Statement in February of 2016. And we have about
14 26 comments on that. We've responded, as some of the
15 witnesses indicated. And from the Draft, we moved on to
16 the Final Environmental Impact Statement, which we
17 published and transmitted in December of 2016. And now
18 we're here today asking you to review it and accept it.
19 We believe we've complied with the requirements of the
20 statute in Hawaii Administrative Rules in preparing it.

21 Mr. Atherton is here. He would like to walk
22 briefly through the project with you and take a look at
23 projected impacts and our projected mitigation of the
24 impacts, that we see. As it was related through much of
25 the testimony, this has been a bit of a journey.

1 Obviously, you can see from our timetable, it's taken us
2 about a year and a half to get to this stage. And it's a
3 long journey to the reclassification stage after that.

4 But Mr. Atherton has been at this journey for
5 about a decade. As you can tell from the witnesses, it's
6 not a journey he's taken on his own. He's taken a good
7 part of the community along with the journey. And as you
8 can tell, there's quite a bit of positive notion in doing
9 it. That way is the right way, is the right way to do it.

10 As Mr. Gushi indicated, Mr. Atherton is a bit
11 different. And we think the project has a lot of
12 difference; I think maybe a different project than you've
13 seen in the past or the recent past here. And those
14 differences have a bit of a distinction to them, and I
15 think Mr. Atherton would like to just present to you
16 briefly why we think it's different, why we think it's
17 distinguished, and why we would like your support in
18 accepting the EIS to get through this stage.

19 Mr. Atherton, it's your stage and your audience
20 right now.

21 CHAIRPERSON SCHEUER: Mr. Atherton, I'm going to
22 swear you in, actually. Do you swear or affirm that the
23 testimony you are about to give is the truth?

24 MR. ATHERTON: I do.

25 MICHAEL ATHERTON,

1 called as a witness by the Petitioner, having been first
2 duly sworn to tell the truth, was examined and testified
3 as follows:

4 DIRECT EXAMINATION

5 CHAIRPERSON SCHEUER: Okay. Please proceed.
6 Since it appears you're going to be standing, we need to
7 get you an access to a microphone. There we go. Thank
8 you.

9 MR. ATHERTON: Good morning, Commissioners and
10 Chairman. My name is Mike Atherton. And I live in
11 Waikapu at 1670 Honoapi'ilani Highway. That's the address
12 of the Maui Tropical Plantation. And I'm here today with
13 my consultants: Mike Summers, my urban planner; Bill
14 Mitchell, who's been with me over ten years on this
15 project. And we're here today to talk to you about why we
16 think we're a little bit different, why we think we're
17 unique.

18 Agriculture: This project promotes agriculture.
19 It has an 800-acre agricultural preserve and 277 acres of
20 additional diversified agriculture.

21 Infrastructure: We think our project is unique
22 because it has very special types of infrastructure.
23 We're very proud of our dual water system. We only use
24 potable water where necessary and ag water where ag water
25 is necessary. We're very proud of our stand-alone

1 wastewater treatment facility that will treat all waste
2 and reuse the water, R-1, for ag.

3 We're very proud of our housing element.
4 Housing is a very necessary thing in Maui these days, and
5 we have given you a plan that has all different types of
6 diversified housing. It has 1,000 single-family units and
7 433 multi-family units. Also, it's a sense of a complete
8 entire community.

9 What makes me feel good about this project is
10 that I have spent ten years working with Maui, Maui
11 Community, Central Maui, but, more importantly, with the
12 Waikapu Community. And we have gone back and forth, and
13 we believe we have a plan here today that everybody has
14 had plenty of input all over the island. And we believe
15 that it's a very good EIS, and I'd like to go over it with
16 you quickly.

17 Waikapu Country Town EIS: It's 710 pages, 20
18 appendices, three volumes. And we have it here in front
19 of you today. I'm very proud of this document, along with
20 Mr. Summers.

21 Location of Waikapu Country Town: This is very
22 important. Waikapu Country Town is located in the dead
23 center of Central Maui with easy access to the employment
24 centers of Kahului, Wailuku, West Maui, and South Maui.

25 Water: Our impact on water is over 600,000

1 gallons a day. We mitigate that impact by having six
2 wells. We have three domestic wells, two agricultural
3 wells, and a monitoring well. We also mitigate that with
4 a dual water system. We also mitigate with treating our
5 wastewater and reusing it as R-1 for ag.

6 This is a brief layout of our water system.
7 Here is the tank, Well 1, Well 2, Well 3, Well 4 and 5,
8 and the monitoring well, the main line, laterals to
9 service the whole entire project.

10 Wastewater: We again have a wastewater impact
11 of about 600-plus thousand gallons. And we mitigate that
12 with a stand-alone wastewater treatment facility,
13 state-of-the-art facility. And our consultants on the
14 facility are here today if you have any additional
15 questions. Here's the location of the wastewater
16 treatment facility. We're calling it a water reclamation
17 facility because we will reclaim that water and use it for
18 agriculture in the immediate area.

19 Again, this is a layout of our wastewater
20 system. It's all gravity flow, picks up every single lot,
21 flows it down to the wastewater treatment plant.

22 Here is a brief layout of our wastewater
23 treatment plant and its reactor zones. And any additional
24 questions, we have Zoltan here today to answer those
25 questions. Here's the layout, the site plan. As you

1 notice, it has a storage tank, a facility to treat, it's
2 operated solar.

3 Housing: This project will approximately be
4 15 percent of the housing stock in Central Maui. And it
5 will comply with the County of Maui's workforce housing
6 ordinance.

7 Agricultural land: Our project will impact
8 important agricultural lands by 500 acres, but we mitigate
9 that by having an 800-acre agricultural preserve -- an
10 open space in perpetuity -- and 277 acres of diversified
11 agriculture.

12 This is a map of the project again. And we
13 have -- this is the 800-acre agricultural region with the
14 red dotted line. And in this area, we have biofuel crops
15 going in here. Before, this was all sugar cane at one
16 time; this was all Wailuku Sugar. And HC&S just left on
17 these fields, so we now have picked up and are planning
18 biofuel here. We have Bobby Pahia here, 300 acres of
19 canoe crops. We have Kumu Farms, who I've been with for
20 many years, farming organic diversified agriculture here
21 and here. And we raise longhorn steers. And we also have
22 Angus beef, and we raise them on pastures which we have
23 here and all of this up here.

24 Archeological: There was no evidence of
25 traditional Hawaiian activities found, with the possible

1 exception of Site 7882. Okay. These are the
2 identification of the historic properties. Site 7882 is
3 over here on the edge by the kuleana parcels. And these
4 are the other sites that were identified: The Waihee
5 Ditch, which runs through the whole entire lands, will
6 receive our surface water, our agricultural water waste.
7 World War II bunker will remain. And the historical
8 issues will be left outside the footprint of the project.
9 And we have several other parcels that were identified
10 kuleana parcels, and we mitigated that by not putting them
11 in the project's footprint.

12 Cultural resources: We will impact several
13 cultural resources in the community of Waikapu. We'll
14 impact the kuleanas, but we've agreed to work with them.
15 As far as their kuleana ditch and how we will mitigate
16 that in the future, I continue to work with Luke
17 and Hokuao and the Hui, Malama O Waikapu, about how to
18 mitigate access. We have proposed to put in a 100-foot
19 access along the Waikapu Stream, and we continue to work
20 with the Water Commission on our groundwater and our
21 surface water.

22 Visual resources: There will be some impacts
23 during construction. We mitigate our visual impacts by
24 having a large amount of open space and view corridors and
25 the 800 acres of agricultural preserve.

1 Coastal water quality: There will be a short
2 impact on coastal water quality during construction, but
3 we have a mitigation plan. We plan to implement that
4 mitigation plan, and we will capture all runoff on site
5 detention basins.

6 Traffic: Traffic is always a big one when you
7 build 1433 units. We have done two traffic studies: One
8 with Waiale Bypass and one without. And they identify
9 several intersections that will be impacted, and we will
10 work with Maui County to do a regional traffic study. We
11 will -- also working with Maui County and the Public Works
12 Department on developing a mitigation plan that has
13 triggers on when we will improve those intersections and
14 what our fair-share cost will be.

15 These are the intersections identified. Most of
16 them were not on site. This is the Waiale Bypass. There
17 will be an interaction here. This is Kuihelani Highway.

18 The traffic mitigation plan: We're working with
19 Maui County Public Works Department, as we speak.

20 Drainage: We're very proud of our drainage
21 plan. We have quite a few grass swales, open space, and
22 we will increase by about 516 CPS. This is a layout of
23 our drainage plan. What we've done is, up in the Waikapu,
24 we have slowly taken the diversions and diversions, so
25 they flow into the swale, which flows into four retention

1 basins here, which are all plumbed into the agricultural
2 system of the Tropical Plantation, which will flow into a
3 large drainage basin here, flow into an underground
4 16-inch main, into another large drainage basin here, has
5 a large grass swale on top for overflow. And then it
6 flows into this basin here. And then we use it for
7 agriculture.

8 Flora and fauna: There will not be an impact on
9 flora and fauna. We did find the Sphinx Moth, and we will
10 do a mitigation plan on the Sphinx Moth during
11 construction with Fish and Game.

12 Air quality: There will be some impacts during
13 construction on dust, and we will mitigate that again by
14 having a mitigation plan and dust-control issues, a dust
15 fence. The water reclamation facility does not have any
16 long-term impact on air quality.

17 Noise quality: Again, it will have a short-term
18 impact on noise quality for the short term during
19 construction. We'll mitigate that again with setbacks,
20 60-foot setbacks from the highway. We have a large amount
21 of buffers, bike lanes. And that's our mitigation.

22 Again, here is a quick overview of our
23 infrastructure, and the public utilities, the recreational
24 resources, the medical facilities, police, fire. Across
25 the street, we've worked with Maui County, and they're

1 building a 300-plus-acre regional park, which will have a
2 hundred-acre base yard, which will have a new police and
3 fire headquarters, create 300-plus jobs, and be a very
4 walkable and bikeable community for this project.

5 Population: We will increase the population of
6 Central Maui at build-out by 3,921 units. And we will
7 provide housing for local people. This is a project for
8 Maui.

9 Waikapu Country Town is a complete community.
10 And being a complete community, I was really proud of --
11 and I want to thank all the people who said all these
12 wonderful things about me today. But I believe what makes
13 us different on this project, Commission, is that we have
14 worked together with these folks for ten years and
15 mitigated almost every impact we had. We feel that we
16 have done a good job on the EIS. Hats off to Mike.

17 I promote agriculture. I'm a farmer. I still
18 farm. I came from a farming family. My dad, granddad,
19 and great-grandfather were all farmers. So this is an
20 opportunity for me; this is my legacy; this is what I want
21 to do. I want to live in Waikapu. I want to build this
22 little town for these wonderful folks.

23 If you have any questions -- I'm here today to
24 ask you to approve the EIS. And we'll be back before you
25 shortly. If you have any questions, I'm here to answer

1 them.

2 CHAIRPERSON SCHEUER: Thank you, Mr. Atherton.

3 Do you have any questions?

4 MR. MANCINI: No, I have none.

5 CHAIRPERSON SCHEUER: Maui County?

6 MR. HOPPER: No questions.

7 MS. TAKEUCHI-APUNA: No.

8 CHAIRPERSON SCHEUER: Commissioners?

9 VICE CHAIR WONG: I just have a couple
10 questions, sir. The first thing is you talked important
11 ag lands on your property. Is it already designated IAL?
12 Or is it you're thinking about IAL?

13 MR. ATHERTON: Do you know if it's designated
14 IAL? No.

15 CHAIRPERSON SCHEUER: Mr. Atherton, when you
16 respond, if you could speak into the microphone.

17 MR. ATHERTON: Oh, I'm sorry.

18 VICE CHAIR WONG: So you're just thinking about
19 IAL for those properties?

20 MR. ATHERTON: I'll let my consultant answer
21 that question.

22 CHAIRPERSON SCHEUER: Let me swear you in -- and
23 it will help if you put something out of your hand. Do
24 you swear or affirm that the testimony you are about to
25 give is the truth?

1 MR. SUMMERS: Yes.

2 MR. ATHERTON: Okay. Please proceed.

3 MR. SUMMERS: Those lands are not IAL, and we
4 are not looking at dedicating those to IAL. We're looking
5 at a different kind of conservation mechanism. Yeah,
6 they're prime agricultural lands, ALISH, LSB, high
7 quality, but they are not IAL lands.

8 VICE CHAIR WONG: Sorry. I just lost the train
9 of thought, because the IAL was important. You may let
10 another Commissioner --

11 CHAIRPERSON SCHEUER: Commissioners?

12 COMMISSIONER ESTES: You talk about assuming
13 your fair share of responsibility for the traffic
14 mitigation.

15 MR. ATHERTON: Yes.

16 COMMISSIONER ESTES: How is that determined,
17 what your fair share is?

18 MR. ATHERTON: Well, we take the traffic
19 studies, and we work with the Public Works Department.
20 Maui County has a history of working out a mitigation plan
21 that has triggers on when you do the improvements, what
22 the improvements are, and how much you'll pay for them.
23 And they've done this in the past. We met with them
24 several days ago, and we're currently working on that
25 program, so we should have an answer for you shortly.

1 COMMISSIONER ESTES: That's fine.

2 CHAIRPERSON SCHEUER: Commissioner Chang.

3 COMMISSIONER CHANG: Good morning, Mr. Atherton.
4 Thank you so very much for the presentation.

5 MR. ATHERTON: Thank you.

6 COMMISSIONER CHANG: We appreciate the fact that
7 you spent ten years working with the community to address
8 their concerns.

9 I have a follow-up question that Mr. -- I think
10 it was Mr. Mayer raised about cumulative impacts. And I'm
11 looking at this plan here. How is that addressed in the
12 EIS?

13 MR. ATHERTON: Well, the EIS, the cumulative
14 impacts, primarily the EIS addresses what our impacts are
15 in the community. And after what Mr. Mayer said, we would
16 agree to do a traffic study that would involve all the
17 projects in Central Maui.

18 COMMISSIONER CHANG: What is the status of these
19 other projects? Are they currently -- have they been
20 developed? Are they pending?

21 MR. ATHERTON: No. Pu'unani is pending. It has
22 done an EIS. Waiale is approved. It's an A&B project
23 that's been there for quite a long time. And Waikapu
24 Country Town is before you today. Those are primarily the
25 three projects that are in Central Maui, that are

1 currently in the Maui Island Plan.

2 COMMISSIONER CHANG: And Waiale has been
3 approved. Are they currently -- what's the status of
4 their development?

5 MR. ATHERTON: Waiale has been approved.
6 They've done all the environmental documentation. The
7 project is shovel-ready. We're ready to fund it. We've
8 been cleaning up the last of the two easement issues. And
9 it is a federal, state and county project, 80 percent by
10 the fed, 20 percent by the County and the State. We have
11 now a MPO, metropolitan planning organization, here on
12 Maui, and we're currently number four on the list.

13 COMMISSIONER CHANG: So the cumulative impact --
14 we're looking at the impact of these other projects. You
15 said you are going to be doing some additional studies?

16 MR. ATHERTON: No, I would agree, after
17 Mr. Mayer's comment, I would agree to pay our fair share
18 of that particular traffic study.

19 COMMISSIONER CHANG: Mr. Summers, did you want
20 to discuss that?

21 MR. SUMMERS: Yes, I just want to note that
22 cumulative impacts, you have to address them at the EIS.
23 We've done that. And all of these projects, whether it be
24 Waikapu Country Town or the Waiale project or Pu'unani,
25 they all do traffic studies, and they're all required to

1 look at all of the projects that are proposed around them,
2 whether in the project area, as well as regional growth
3 projections. So all of these studies do, in a sense,
4 address cumulative impacts, including our traffic study,
5 just to make that clear.

6 COMMISSIONER HIRANAGA: Mr. Chair, may I just
7 interject for a second?

8 CHAIRPERSON SCHEUER: Yes. Please proceed.

9 COMMISSIONER HIRANAGA: I believe the Applicant
10 mentioned that Waiale is shovel-ready, but the Waiale
11 residential project just recently received its district
12 boundary amendment. So there may be some confusion
13 between the Waiale project and the proposed Waiale
14 Roadway. I just wanted, for the record, to make that
15 clarification. Because the Waiale project is an A&B
16 project -- they received their district boundary
17 amendments about two years ago -- versus the Waiale Bypass
18 Road.

19 CHAIRPERSON SCHEUER: Thank you, Mr. Hiranaga.
20 Were you going to continue, Miss Chang?

21 COMMISSIONER CHANG: I think I'm okay for now.

22 CHAIRPERSON SCHEUER: Are you ready again, Vice
23 Chair Wong?

24 VICE CHAIR WONG: Yes, I am. I remember now.
25 One thing on the -- on your slide preparation was about

1 photovoltaic. So are you planning to put it on the
2 houses, or are you planning to put it as a photovoltaic
3 farm to feed the houses?

4 MR. ATHERTON: No, our plan on the photovoltaic
5 is a total plan. And what we've been doing is we've kind
6 of waited until the end and kind of see where we are as
7 far as where we're going to go as alternative energy. We
8 have a wonderful opportunity to produce solar, wind and
9 hydro recharge generation of power. We have an
10 opportunity in Waikapu on this project to possibly build
11 one of the first sustainable communities on the Western
12 Hemisphere. We pump our own water. We treat our own
13 water. We irrigate with the treatment. And we're looking
14 into someday providing a large amount of energy that would
15 be used by our homeowners and community. We have not
16 really focused on anything yet because the technology is
17 changing rapidly. But I plan and we plan to use our solar
18 panels to operate all our wells. We plan to use solar to
19 incorporate into the community. We plan to use hydro
20 recharge and wind. And we will build the homes -- we're
21 general contractors. We do the construction, and we build
22 the homes to be able to have PV, photovoltaic, in every
23 single unit. It's the future.

24 VICE CHAIR WONG: Thank you. One other thing.
25 In terms of the fire, police, and ambulance issue, I know

1 that you are planning to have a fire station in the
2 Waikapu Town Center. So I just was wondering: Are you
3 also planning to have an ambulance station at that fire
4 station? Or is it just going -- where is the ambulance
5 going to come from? Because of the response time.

6 MR. ATHERTON: I have to -- I don't know where
7 the ambulance would come from. Now, the County plans to
8 do a major base yard. We'll go to the project plot map,
9 give you kind of an idea. This is the plot map. This is
10 the Maui County Regional Park right here. In the hundred
11 acres here, they have proposed a new fire station
12 headquarters to replace the one on Dairy Road, and they
13 have proposed also a new police headquarters, because the
14 police headquarters is at capacity. So that's part of
15 Mayor Arakawa's base yard proposal going before the Budget
16 this year. We hope to get Waiale Road put in in the next
17 year or two. And then after that, then the County will go
18 forward on the park.

19 VICE CHAIR WONG: Just I was interested in that
20 because I do sit on the Honolulu Fire Commission.

21 MR. ATHERTON: Right.

22 VICE CHAIR WONG: So we are looking at different
23 alternatives to speed of response time for the public. I
24 just wanted -- being just concerned about assisting the
25 public --

1 MR. ATHERTON: Geographic location makes it easy
2 because we do have Honoapi'ilani Highway. We do have an
3 extension of Waiko Road, and we do have the Kuhelani
4 Highway.

5 VICE CHAIR WONG: Thank you.

6 MR. ATHERTON: You're welcome. Thank you. Good
7 question.

8 CHAIRPERSON SCHEUER: Mr. Mahi?

9 COMMISSIONER MAHI: I have a question that's
10 relative to historically what took place in the designated
11 ahupua'a of Central Maui. And when the -- I think the
12 statement is that there was no identifiable archaeological
13 sites other than that 7882. And I think there was a
14 reference to a wall. Do you know more information about
15 that wall?

16 MR. ATHERTON: On the two parcels, the two Mahi
17 parcels? That's how we refer to them.

18 COMMISSIONER MAHI: Right.

19 MR. ATHERTON: I'll give you a little history on
20 what I know. When we did our cultural study, we
21 discovered that there were two kuleana parcels that were
22 embedded in our property that belonged to the Mahi family.
23 My cultural consultant, Hokuao, met with the Mahis, and
24 they expressed interest in being left alone. And we
25 adjusted our map to leave in to an open space,

1 agricultural pasture area, and agreed to them, if they
2 ever want to have access or they ever want to have
3 anything else on that parcel, we'll be glad to work with
4 them.

5 We've also worked with several other kuleanas in
6 the neighborhood, and we've been able to clean up the
7 quiet title and allowed them to be able to put homes on
8 their parcels.

9 COMMISSIONER MAHI: Thank you. Mahalo for that
10 information. But I just wanted to get a little more
11 information on the wall. You were referring to an
12 L-shaped wall.

13 MR. ATHERTON: Okay. There was an L-shaped wall
14 that was discovered --

15 COMMISSIONER MAHI: Right. And it was an
16 ancient wall? Or is it something that was within the --

17 MR. ATHERTON: Well, it was identified in the
18 study, so we didn't disturb it. We left it alone. And we
19 again put that into the -- to what we call an open space
20 outside of the footprint of the project. So it won't be
21 disturbed; it won't be touched. Pretty much all the
22 kuleana areas are outside.

23 COMMISSIONER MAHI: Okay. And then one more
24 question relative to history. I remember you talking
25 about the fact that a lot of these lands are pre -- used

1 as sugar lands. And I mean, the battles between my Mahi
2 side of my family on Hawaii Island and then the Kahekili
3 side of the Mahi side of the family over here on Maui --
4 and there are many, many, many battles and
5 well-documented. I always wondered maybe -- and I'm not
6 sure if, in your research, were there any remains of the
7 thousands -- thousands -- of warriors that were left in
8 Central Maui after the battles, going back to --

9 MR. ATHERTON: Well, we did quite an extensive
10 archeological study. And what happens is, primarily, the
11 Central Maui part you're talking about is down here.

12 COMMISSIONER MAHI: Right.

13 MR. ATHERTON: This tended to be forests and old
14 traditional Hawaii. The land is quite a bit higher than
15 the stream here. That's why you concentrate the kuleanas
16 down in this area. So we did quite an extensive
17 archeological study, and we found no evidence.

18 COMMISSIONER MAHI: Yeah. Because it might have
19 been also approached from the -- during the period of the
20 time of the plantations. Maybe.

21 MR. ATHERTON: That could be. But we will do a
22 monitoring mitigation program during construction, and we
23 will abide by anything that comes out of that mitigation.

24 COMMISSIONER MAHI: Mahalo.

25 CHAIRPERSON SCHEUER: Mr. Atherton, is your

1 archeological consultant present?

2 MR. ATHERTON: Yes, she is.

3 CHAIRPERSON SCHEUER: Commissioner Mahi, did you
4 have any direct questions for the archeological
5 consultant?

6 COMMISSIONER MAHI: Let's see.

7 CHAIRPERSON SCHEUER: Maybe if you could --

8 COMMISSIONER MAHI: Yeah. Kala mai.

9 CHAIRPERSON SCHEUER: -- proceed to sit next to
10 Mr. Mancini, and I'll swear you in.

11 MR. MANCINI: I'd like to introduce Lisa. She's
12 the archeology.

13 CHAIRPERSON SCHEUER: Do you swear or affirm the
14 testimony you are about to give is the truth?

15 MS. ROTUNNO-HAZUKA: Yes.

16 LISA ROTUNNO-HAZUKA,
17 called as a witness, having been first duly sworn to tell
18 the truth, was examined and testified as follows:

19 DIRECT EXAMINATION

20 CHAIRPERSON SCHEUER: Okay. Please proceed,
21 Commissioner Mahi.

22 COMMISSIONER MAHI: I think, in your research,
23 how far back did you go historically? And tell us about
24 your study, what historically took place in the days of
25 Na Wai 'Eha, you know.

1 MS. ROTUNNO-HAZUKA: Yeah, we went back --

2 CHAIRPERSON SCHEUER: I'm sorry. Please press
3 the button on your microphone.

4 MS. ROTUNNO-HAZUKA: We -- traditionally, we go
5 back to pre-contacts. We go back to legends, and we look
6 at the LCA's, the history, the land use. And so the wall
7 that you were talking about was just like a little short
8 L-shaped retaining wall. And so we did not find any
9 evidence of traditional pre-contact Hawaiian use of the
10 land, but that's not to say that it's not there. You
11 know, with all the ag, the cultivation zone of -- for
12 agriculture is about two-feet, two-and-a-half-feet, thick.
13 So sometimes that evidence gets churned up, destroyed.

14 But that's why we will do monitoring during
15 construction, during any ground altering. Because there
16 has to be some -- some sites up there, I would think, or
17 at least remnant sites.

18 COMMISSIONER MAHI: I think my question is
19 really also related to the potential remains of iwi kupuna
20 that could be there.

21 MS. ROTUNNO-HAZUKA: Sure.

22 COMMISSIONER MAHI: And you'll be having a
23 relationship with the Oahu Burial Council?

24 MS. ROTUNNO-HAZUKA: And Maui.

25 COMMISSIONER MAHI: And Maui, of course.

1 MS. ROTUNNO-HAZUKA: Yes.

2 COMMISSIONER MAHI: Mahalo.

3 CHAIRPERSON SCHEUER: Thank you.

4 Commissioners, are there other questions?

5 Commissioner Chang.

6 MICHAEL ATHERTON,
7 called as a witness by the Petitioner, having been
8 previously duly sworn, was examined and testified as
9 follows:

10 DIRECT EXAMINATION (Resumed)

11 COMMISSIONER CHANG: One final question,
12 Mr. Atherton. What's the time period of the schedule of
13 your development?

14 MR. ATHERTON: That's a good question. Ten
15 years. I've made it ten years. Not a lot happened in the
16 last ten years anywhere in America but -- my schedule is
17 that we have two, I believe, hearings before you: the one
18 today and then the zone change. And then we're back to
19 the Maui County Planning Commission, Maui County Planning
20 Committee, and then the final Maui County Council. I hope
21 to be there within 18 months. That's my hope.

22 This is a housing project. It has a lot of
23 local support. And I believe we come up -- because of the
24 local support, there's obviously not a lot of opposition,
25 we get a lot of support from the Planning Department of

1 Maui County, I think we can take this one through pretty
2 quick. It's the results of working with these folks is
3 basically what it really is. There's a right way to do
4 projects on Maui. And I learned that you got to get along
5 with everybody. It's the only way. We've always done
6 this. Athertons have been pretty good about working with
7 the community.

8 COMMISSIONER CHANG: And I'm sure the community
9 really appreciates that, given the people that are here.

10 But I just -- and I guess my concern is,
11 sometimes it takes a little longer to do -- your EIS is
12 based upon the current conditions. There's a lot of other
13 developments in this area. The best-case scenario, you
14 will complete your project in ten years, and you will
15 complete all this work. But given all these other
16 projects that are also occurring in Waikapu, I guess my
17 concern is, in relationship to -- the information and the
18 studies are based upon, again, the current conditions.
19 But as these other projects come on line -- and I'm
20 assuming they, too, will have to contemplate -- consider
21 your project as well. But if your project takes longer
22 than ten years, some of these studies may not be --
23 whether they're traffic or others -- may be somewhat
24 stale. So I guess I'm just wanting to be very sure that,
25 if the project takes longer than ten years, given the

1 volume of other developments that's occurring in Waikapu,
2 that you're going to go back and look at and potentially
3 reassess those studies at that time.

4 MR. ATHERTON: I would do that. I have no
5 problem with that.

6 CHAIRPERSON SCHEUER: Mr. Mancini?

7 MR. MANCINI: I was just going to say, I think
8 we'll address this with great specificity when we get to
9 the land use boundary issue because -- and the studies get
10 updated. It's a long journey. It's a long journey with
11 the Land Use Commission, and it's a significant long
12 journey with the County of Maui. We have to meet with the
13 Planning Commission. We have to go to the County Council.
14 And each of these agencies have their own timelines. And
15 each time we're there, we have to revisit what's before
16 us, what has happened in the past, what we think will
17 happen in the future.

18 So it's a funny mosaic that you have to do. And
19 your point is well-taken, and you have to take a look at
20 what's there at the point in time. And life is changing
21 quickly, as we know. We're going to have a new president
22 next -- quite soon. And you have administrations changing
23 during the period of time. But we think we can meet it
24 because we've got tremendous support, and we think it's a
25 good project. We think everything makes sense put

1 together. And we'll keep you informed, as you may wish.
2 I'd say give us an opportunity to come before you with our
3 consultants in the boundary change, and we'll deal with
4 these issues, Mr. Mayer's issues and Lucienne's issues,
5 and the specifics at that point in time.

6 COMMISSIONER CHANG: I appreciate that. And
7 you, Mike, you have demonstrated your willingness to do
8 that in the ten years. You've made appropriate
9 adjustments to the EIS in response to those comments. So,
10 in my view, you have demonstrated your willingness to do
11 that. But I just wanted to be very -- I didn't see --
12 didn't realize there was all this other activity going on.
13 So I appreciated that. Thank you.

14 MR. ATHERTON: Thank you.

15 CHAIRPERSON SCHEUER: Commissioner Cabral.

16 COMMISSIONER CABRAL: In regards to your housing
17 plans, I don't see on the ledger here for this map that's
18 on the screen now -- you have a certain percentage in the
19 large number of affordable housing units that you're going
20 to be building. Can you give me some more details about
21 if they're going to be located in one area? Or are they
22 spread out among it? And are they going to be affordable
23 units for sale? Are you going to look towards somebody
24 keeping it as rental properties? Are you looking to
25 partner with the government to do a HUD-type project? I

1 mean, what are your plans in terms of "affordable"?

2 MR. ATHERTON: Okay. Primarily, the affordable
3 housing will be located on the makai side of the project.
4 Currently, the orange is the townhome condominium,
5 multi-family. And there's 433 units of multi-family. We
6 had a 201H here for a while. And then -- this is, again,
7 condominiums and multi-family. And then this is a main
8 street concept with the town center.

9 But to answer your question, primarily, the
10 affordable housing will be in this neighborhood and in
11 this neighborhood. Now, it will be condominiums for sale,
12 condominiums for rent. We build them. Atherton Homes, we
13 have a company called Atherton Homes, and I'm currently
14 back into work again. So we will build the condominiums.
15 We will rent half, and we will sell half. And then we
16 will build single-family homes, and, again, we'll rent
17 some, and we will sell some. That's how we mitigate that.
18 We'll abide by the Maui County Affordable Housing
19 Ordinance, which I believe is 200 and --

20 COMMISSIONER CABRAL: 200 what?

21 MR. SUMMERS: Well, it's --

22 CHAIRPERSON SCHEUER: I'm sorry. Can you,
23 please, if you're responding, can you please speak into
24 the microphone.

25 MR. SUMMERS: Yeah, the workforce housing

1 ordinance requires either 20 percent or 25 percent of the
2 total number of units be affordable pursuant to the
3 requirements.

4 COMMISSIONER CABRAL: Thank you very much.

5 MR. ATHERTON: Thank you.

6 CHAIRPERSON SCHEUER: Commissioners, other
7 questions?

8 I have a few, if I'm not stepping out of order
9 from any of the Commissioners.

10 So I have four questions. First one is: In
11 some of the response letters that were written to comment
12 letters on the Draft EIS, the consultant referred to the
13 Waikapu aquifer as either a special water management area
14 or as a designated water management area. So, for
15 instance, in the December 12, 2016 response to Albert
16 Perez on page 12. But, right now -- and that was given as
17 a response to, "Well, the Water Commission is managing
18 withdrawals from this area." But, currently, only
19 groundwater is designated in the Iao aquifer. Could
20 either you or your consultants sort of expand on your
21 relationship between properly managing groundwater
22 withdrawals and the Water Commission's involvement?

23 MR. ATHERTON: Okay. We have a designated
24 yield. We're not a designated aquifer yet. But we do
25 have a designated yield of three million gallons per day.

1 So our six wells are in the Waikapu aquifer currently. We
2 cannot exceed the three million a day. The project only
3 requires up to 600,000 gallons a day at build-out. But
4 with the dual water system, I can reduce that potable
5 demand by about 33 percent to 40 percent. So it's a very
6 innovative way to do your water.

7 To work with the Water Commission, I have worked
8 closely with my community and the fellows of the
9 Na Wai 'Eha, and we have reached an agreement with them to
10 make a proposal to the Water Commission for our surface
11 water usage, which is conveyed to us through the Waihe'e
12 Water Ditch. And then we agreed to work with Water
13 Commission, have been communicating with them, about our
14 six wells and how we're going to be able to designate
15 that.

16 CHAIRPERSON SCHEUER: So are the six wells --
17 they currently have -- you possess the well
18 construction/pump installation permits for those wells?

19 MR. ATHERTON: Three. We have pump permits for
20 all wells, but we've installed permanently the three
21 domestic wells. I have my water consultant here today,
22 Dan Lum, and we did the 10-day pump and have plenty
23 quality and good quantity.

24 CHAIRPERSON SCHEUER: Okay. Also related to
25 water availability, there was a fairly detailed discussion

1 of potential impacts to lo'i kalo farmers along Waikapu
2 Stream -- did your consultants do -- and various proposed
3 mitigation measures, to ensure that the taro farmers would
4 get the quality and quantity of water that they desired,
5 including people who are currently farming, as well as
6 people who did desire to farm. Was a quantification
7 calculated as for how much water would be needed in total
8 for those practices?

9 MR. ATHERTON: I don't think a study was done.
10 That's a good question. But I've communicated with all
11 the kuleanas that use the water. The kuleana ditch passes
12 through our ranch. And I've worked with them, I've worked
13 with the hui, to come up with an idea in the future to
14 bury the ditch and opae. So we're wasting quite a bit of
15 water there. We estimate that the kuleanas use about
16 300,000 gallons a day. But then, again, that amount can
17 be corrected by having a better delivery system, and I've
18 talked with him about it, I've talked with others about
19 it, and that's, you know, a long-term mitigation we will
20 propose in working together with them.

21 And then there's some other ideas that we've
22 come up with and discussed with the kuleanas about how we
23 can take the system and make it better. Now, what we've
24 done is pretty much left the kuleanas, which are right
25 here, and we buffered that and left it outside the project

1 so we didn't disturb them. But I will work with them on
2 the ditch. I've got some good ideas on how we can do
3 hydro recharge on the fact that that water drops one mile
4 down the side of that hill.

5 CHAIRPERSON SCHEUER: Okay. I was also
6 interested in, you know, Mr. Mayer, in his testimony
7 today, asked whether or not the developer would be putting
8 some kind of deed restrictions or other covenants in place
9 to limit the ohana unit count to 148 units, which is
10 the -- I believe that was the number, 146, right around
11 there -- that the EIS bases its analyses on. Can you
12 respond to that request?

13 MR. ATHERTON: Yes, I would make the statement
14 that we will not build more than 148 ohanas, and we would
15 do whatever is necessary to make sure that the approval
16 process documents that. Mr. Summers has a word.

17 MR. SUMMERS: Yes, it's 146 ohana units. And
18 just for clarification, our project district ordinance
19 would address that issue.

20 CHAIRPERSON SCHEUER: Okay. So it's via the
21 project -- this came up slightly over a year ago as a
22 major concern when we were exactly at this stage with a
23 different development on this island, at the EIS
24 acceptance stage. And so I just want to make sure we're
25 asking the same kinds of questions.

1 MR. ATHERTON: All right. That's a fair
2 question.

3 COMMISSIONER HIRANAGA: Mr. Chair, may I have a
4 follow-up question to your question?

5 CHAIRPERSON SCHEUER: Yes. Okay. Please, go
6 ahead.

7 COMMISSIONER HIRANAGA: If the district boundary
8 amendment is granted in the future, doesn't the County put
9 a limit on total number of units when it approves -- if it
10 approves the project district? So that mix may change
11 depending on the density that the County wants to
12 authorize for the project. So to place the limit of 146
13 at this time is pretty premature because the County may
14 disagree with that. I would prefer to have the County
15 come to them at the Planning Commission and the County
16 Council for them to start placing limits on number of
17 units versus asking for some representations from the
18 Petitioner at this time before the Commission. And maybe
19 you might pursue that perhaps at the district boundary
20 hearing. It might be more appropriate than at this time,
21 my opinion.

22 CHAIRPERSON SCHEUER: Anything further from
23 other Commissioners?

24 Then I'll just re-ask a question that the Office
25 of Planning asked at our last EIS acceptance hearing: You

1 are committing -- your firm is committing to implement the
2 various mitigation measures and other things -- measures
3 that you've represented?

4 MR. ATHERTON: Yes.

5 CHAIRPERSON SCHEUER: Okay. Thank you. I have
6 nothing further.

7 Anything more from other Commissioners? Okay.

8 Any final before we go to Maui County or OP,
9 Mr. Mancini?

10 MR. MANCINI: We have nothing to add. Thank
11 you.

12 CHAIRPERSON SCHEUER: Okay. Thank you. Thank
13 you, Mr. Atherton. I think we can probably plow through.
14 So rather than taking a break right now.

15 Our court reporter still okay? Okay.

16 Maui County.

17 MR. HOPPER: Thank you, Mr. Chair and members of
18 the Land Use Commission. The County of Maui takes the
19 position that the EIS meets the basic requirements of HRS
20 343 and the administrative rules promulgated thereunder.
21 In particular, Rule 11-223, on acceptability of an EIS
22 states as follows: Acceptability of a statement shall be
23 evaluated on the basis of whether the statement in its
24 completed form represents an informational instrument
25 which fulfills the definition of an EIS and adequately

1 discloses and describes all identifiable impacts and
2 satisfactorily responds to review comments. It's
3 obviously ultimately up to the Land Use Commission as to
4 whether or not the comments were responded to in a
5 satisfactory matter or the document ends up disclosing all
6 environmental impacts for the project.

7 The County did provide, through various
8 agencies, including Public Works, Planning, fire, police,
9 water and wastewater, comments on the Draft EIS, and did
10 receive responses to those comments, which the County does
11 believe are adequate responses. Keep in mind, obviously,
12 there's going to be an ongoing process here. We're going
13 to have a district boundary amendment potentially as well
14 as a change in zoning and community plan amendment
15 proceeding which would go before both the Maui Planning
16 Commission and the Maui County Council.

17 So the County will be developing its position
18 along with the Office of Planning as we move down the
19 process. Then we'll have witnesses and proposed
20 mitigation measures as we move forward. But at this time,
21 again, the County believes that the EIS meets the basic
22 requirements of state law and the administrative rules
23 adopted thereunder.

24 We would also want to note, just as a matter of
25 record, Maui Planning Commission actually was asked to

1 comment on the -- and review the Draft EIS and did so in,
2 I believe, May of this year, 2016, and sent a letter
3 that's dated early June last year.

4 CHAIRPERSON SCHEUER: Last year.

5 MR. HOPPER: 2016, last year. Sorry. Not this
6 year. 2016. And that letter basically stated that the
7 Planning Commission believed that the document was
8 adequate as an EIS. So with that, the County would
9 recommend that you accept the Draft EIS, and we are
10 available for questions if you have any.

11 CHAIRPERSON SCHEUER: Thank you.

12 Mr. Mancini, questions for the County?

13 MR. MANCINI: We have none.

14 CHAIRPERSON SCHEUER: OP?

15 MS. TAKEUCHI-APUNA: No questions.

16 CHAIRPERSON SCHEUER: Commissioners, do you have
17 any questions for Maui County? Okay. Thank you very
18 much.

19 Ms. Apuna, please proceed.

20 MS. TAKEUCHI-APUNA: Thank you, Chair. The
21 purpose of this hearing is for the Commission to determine
22 acceptance of the Draft Final EIS as part of the Waikapu
23 Country Town application filing for a district boundary
24 amendment. An LUC-accepted Final EIS is a required
25 component of a proper DBA petition filing pursuant to

1 Hawaii Administrative Rules Section 15-15-50(C)(11). The
2 contents of a proper EIS filing are provided under Hawaii
3 Revised Statute Section 343-5 and Hawaii Administrative
4 Rules Chapter 11-200.

5 In a letter dated March 28, 2016, OP provided
6 its comments and concerns on the Draft EIS to the
7 Petitioner. The Petitioner subsequently addressed OP's
8 comments and concerns in the Draft Final EIS that is
9 before this Commission today. Among OP's comments and
10 concerns that were addressed by Petitioner are, one,
11 specifically identifying the lands proposed for
12 reclassification; two, project compliance with the
13 County's workforce housing ordinance and greater detail on
14 the project's proposed residential product types; three,
15 water resources for the project; four, management and
16 implementation of the proposed agricultural conservation
17 easement; five, types, plans, and management of a
18 wastewater system; six, status of an educational
19 contribution agreement; and seven, timetable for the
20 Waiale Bypass Road; eight, specific analysis on
21 sustainability and climate change adaptation as per the
22 Hawaii State Planning Act Priority Guidelines; and Coastal
23 Zone Management consistency.

24 The Petitioner's amendments and additions to the
25 Draft EIS satisfactorily addressed OP's specific comments

1 and concerns. Accordingly, OP recommends that the
2 Commission accept the Petitioner's Final EIS. Thank you.

3 CHAIRPERSON SCHEUER: Thank you.

4 MR. MANCINI: We have no questions.

5 CHAIRPERSON SCHEUER: No questions.

6 Commissioners, any questions for OP?

7 VICE CHAIR WONG: Just a statement to OP. Just
8 wanted to say that, as the Office of Planning, the Land
9 Use Commission takes your recommendations and letters to
10 us very seriously. I was very concerned that we received
11 your recommendation on this EIS late because, you know, we
12 want to look at your recommendations and also review the
13 EIS. So, hopefully, you can do it a little earlier next
14 time, please.

15 MS. TAKEUCHI-APUNA: Thank you, Commissioner.
16 With all due respect, I think that we weren't aware of any
17 deadlines. We were within the seven days. But I don't
18 think that there's any deadlines in the rules for this
19 type of response. But we understand that the Commission
20 would like to review our responses as soon as possible in
21 a timely manner.

22 VICE CHAIR WONG: Thank you. It's just that
23 this is a very voluminous and important project.

24 MS. TAKEUCHI-APUNA: Right.

25 VICE CHAIR WONG: And so we wanted a little more

1 time. Thank you.

2 MS. TAKEUCHI-APUNA: Sure. Yes.

3 CHAIRPERSON SCHEUER: Any other further
4 questions for the Office of Planning from the
5 Commissioners? No. Okay.

6 Mr. Mancini, do you have any final statement
7 you'd like to make?

8 MR. MANCINI: No. We would only, again, thank
9 you for your time that you've given to us, and thank you
10 for your questions. And we would only ask you to consider
11 and grant the acceptance of the EIS so that we can be
12 before you in an expedited manner with the boundary
13 amendment.

14 CHAIRPERSON SCHEUER: Mr. Hopper?

15 MR. HOPPER: No.

16 CHAIRPERSON SCHEUER: No.

17 Miss Apuna?

18 MS. TAKEUCHI-APUNA: No.

19 CHAIRPERSON SCHEUER: No. Okay.

20 So thank you. We can now move towards a motion,
21 any further deliberation, and a vote.

22 Commissioners, the Chair will entertain a motion
23 that the LUC either accepts or does not accept the EIS and
24 further authorizes the LUC's Executive Officer to notify
25 the Office of Environmental Quality Control and the

1 Parties that the LUC has accepted or not accepted the EIS.
2 The motion should state the reasons for acceptance or
3 non-acceptance.

4 COMMISSIONER HIRANAGA: Mr. Chair, I apologize,
5 but I have one question more for the Petitioner before we
6 go to a motion.

7 CHAIRPERSON SCHEUER: I'll allow that, of
8 course. Please. If it's fine with the Petitioner.

9 MR. MANCINI: We have no objection.

10 CHAIRPERSON SCHEUER: Okay. In Chapter 3, page
11 62, Odor and Noise Control, the fourth line, you state
12 that the elementary school will be located downwind of the
13 wastewater treatment facility. But I believe, if you look
14 at the map, if the map is correct, it's actually located
15 upwind of the treatment facility. So maybe you can just,
16 for clarification, state because -- do you do the little
17 tweaks on the EIS? Or once it's adopted, that's it? So
18 should we make that correction? Because I believe that it
19 is upwind of the treatment facility.

20 MR. SUMMERS: Mr. Commissioner, I appreciate
21 that comment and picking that up. That was a typo. And,
22 unfortunately, when we became aware of that, the document
23 had gone to print and even uploaded to various websites.
24 So I think, for the record, we would confirm that fact.

25 COMMISSIONER HIRANAGA: I guess you could just

1 state for the record so it's emulated. Which you just
2 did, I guess.

3 MR. SUMMERS: Yes.

4 CHAIRPERSON SCHEUER: Upwind.

5 Anything further, Commissioners? Okay. I'll
6 now entertain a motion.

7 COMMISSIONER HIRANAGA: Mr. Chair?

8 CHAIRPERSON SCHEUER: Yes, please proceed,
9 Mr. Hiranaga. Being the Commissioner from the Island of
10 Maui, I'd like to move to find that the Petitioner's Final
11 Environmental Impact Statement complies with the content
12 requirements for the FEIS and is accepted pursuant to
13 Chapter 343 Hawaii Revised Statutes and Chapter 11-200
14 Hawaii Administrative Rules specifically. The Applicant
15 has signed, indicating the Final EIS was prepared under
16 their direction. The Final EIS was formatted to easily
17 distinguish changes made. The Final EIS contains a list
18 of persons, organizations and public agencies commenting
19 on the Draft EIS. The Final EIS was reproduced -- has
20 reproduced all letters received containing substantive
21 comments and summary of any scoping meetings.

22 The Applicant has revised its Draft EIS to
23 incorporate substantive comments received during the
24 consultation and review process. And the Applicant has
25 responded to each substantive comment with point-by-point

1 discussion of the validity, significance and relevance of
2 comments. Discussion as to how each comment was evaluated
3 and considered in planning the proposed action, verbatim
4 changes that have been made to the Draft EIS, and reasons
5 why specific comments were not accepted, and factors
6 overriding importance warranting an override. Further,
7 that the Commission authorizes the Executive Officer to
8 notify and submit a record of this acceptance to the
9 Applicant and the Office of Environmental Quality Control
10 by the January 24, 2017 deadline for a Commission action.

11 CHAIRPERSON SCHEUER: Is there a second?

12 COMMISSIONER CABRAL: Thank you. I would like
13 to go ahead and second that, and I'd like to make a
14 comment.

15 CHAIRPERSON SCHEUER: Okay. We can, with the
16 second, proceed to any discussion. Please go ahead.

17 COMMISSIONER CABRAL: I'd like to recognize the
18 community and the strong support that's shown up today,
19 and to let you know how nice it is to review something or
20 to be able to make a decision on something that clearly
21 appears to have considered the entire community and taken
22 the time to answer the questions and address all that it
23 takes to be a community.

24 I am from the Big Island, from the Hilo side,
25 and I do manage subdivisions and properties. And I can

1 assure you that ill-thought-out subdivisions do not better
2 your community and costs money in the long run for
3 everyone and, particularly, those people that are living
4 in those communities that were not thought out. So I want
5 to commend the developer and the people present for
6 supporting. Because, obviously, we need to have growth.
7 It's going to continue. We might as well face it and try
8 and put it together in the best way possible. So I'd like
9 to thank everybody. Thank you.

10 CHAIRPERSON SCHEUER: Thank you.

11 Are there any other comments or discussion from
12 the Commissioners on the motion, which is acceptance of
13 the EIS? Okay.

14 Hearing none, Mr. Orodenger, will you please
15 poll the Commissioners.

16 EXECUTIVE OFFICER ORODENKER: Thank you,
17 Mr. Chair.

18 The motion is for acceptance of the EIS and
19 authorizing the Executive Officer to submit the record of
20 acceptance to the Office of Environmental Quality Control.

21 Commissioner Hiranaga?

22 COMMISSIONER HIRANAGA: Aye.

23 EXECUTIVE OFFICER ORODENKER: Commissioner
24 Cabral?

25 COMMISSIONER CABRAL: Aye.

1 EXECUTIVE OFFICER ORODENKER: Commissioners
2 Okuda and Aczon are absent.

3 Vice Chair Wong?

4 VICE CHAIR WONG: Aye.

5 EXECUTIVE OFFICER ORODENKER: Commissioner Mahi?

6 COMMISSIONER MAHI: Aye.

7 EXECUTIVE OFFICER ORODENKER: Commissioner
8 Estes?

9 COMMISSIONER ESTES: Aye.

10 EXECUTIVE OFFICER ORODENKER: Commissioner
11 Chang?

12 COMMISSIONER CHANG: Yes.

13 EXECUTIVE OFFICER ORODENKER: Vice Chair
14 Scheuer?

15 CHAIRPERSON SCHEUER: Aye.

16 EXECUTIVE OFFICER ORODENKER: Thank you,
17 Mr. Chair. The motion passes unanimously.

18 CHAIRPERSON SCHEUER: Thank you. And
19 congratulations to the Applicant.

20 MR. MANCINI: Thank you very much.

21 CHAIRPERSON SCHEUER: Certainly a lot easier
22 than our last consideration of EIS acceptance.

23 At this time, I'll just ask people to just
24 remain, because I need a motion to go into executive
25 session to consult with the Commission's attorney

1 regarding the Commission's duties, rights,
2 responsibilities and obligations with respect to Civil
3 Case No. 16-1-0160(1) Ho'omoana Foundation, Findings of
4 Fact, Conclusions of Law, and Decision and Order. If we
5 get such a motion, then everybody will be free to leave.

6 VICE CHAIR WONG: Moved.

7 COMMISSIONER CABRAL: Second.

8 CHAIRPERSON SCHEUER: Moved by Commissioner
9 Wong. Seconded by Commissioner Cabral. So we're going to
10 go into executive session.

11 Thank you all for attending.

12 (Recess taken from 12:07 p.m. to 12:27 p.m.)

13 CHAIRPERSON SCHEUER: So we're back in public
14 session, having left to executive session to discuss the
15 motion that the Commission's duties, rights,
16 responsibilities and obligations with respect to Civil
17 No. 16-1-0 160(1), Ho'omoana.

18 Do any of the Commissioners care to make a
19 motion?

20 Commissioner Chang?

21 COMMISSIONER CHANG: I move that the Commission
22 authorize that the Executive Director, in consultation
23 with the Deputy Attorney General, to appeal the adverse
24 ruling from the Circuit Court on this case.

25 COMMISSIONER ESTES: Second.

1 CHAIRPERSON SCHEUER: Motion made by
2 Commissioner Chang and seconded by Commissioner Estes.

3 Is there any further discussion, Commissioners?
4 No.

5 We can do a voice vote. All in favor?
6 (The Commissioners responded affirmatively).

7 CHAIRPERSON SCHEUER: Any opposed?

8 The motion carries.

9 Thank you very much. With that, we're going to
10 go into recess until we meet tomorrow on Kaua'i.

11 (The proceedings concluded at 12:28 p.m.)

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C E R T I F I C A T E

STATE OF HAWAII)
) SS:
CITY AND COUNTY OF HONOLULU)

I, CYNTHIA L. MURPHY, a Hawaii Certified
Shorthand Reporter, do hereby certify.

That on Wednesday, January 18, 2017, at
10:12 a.m., the foregoing proceedings, Docket No.
A15-798 and Civil No. 16-1-0 160(1), was taken down by
me in computerized machine shorthand and was thereafter
reduced to print under my supervision;

That the foregoing represents, to the best of
my ability, a true and correct transcript of the
proceedings had in the foregoing matter.

I further certify that I am not an attorney for
any of the parties hereto, nor in any way concerned with
the cause.

Dated this 5th day of February, 2017, in
Honolulu, Hawaii.

Cynthia L. Murphy, RPR, CSR No. 167
Certified Shorthand Reporter
State of Hawaii