

LAND USE COMMISSION
MEETING MINUTES

August 23, 2012

**The Royal Lahaina Resort Maui Ball Room
2780 Keka`a Drive
Lahaina, Maui, Hawai`i, 96761**

COMMISSIONERS PRESENT: Chad McDonald
Ernest Matsumura
Lance Inouye
Nicholas Teves, Jr.
Ronald Heller
Sheldon Biga

COMMISSIONERS EXCUSED: Napua Makua
Kyle Chock
Thomas Contrades

STAFF PRESENT: Daniel Orodenker, Executive Officer
Bert Saruwatari, Staff Planner
Scott Derrickson, Staff Planner
Sarah Hirakami, Deputy Attorney General
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Walter Mensching

CALL TO ORDER

Vice Chair Heller called the meeting to order at 10:38 a.m.

APPROVAL OF MINUTES

Vice Chair Heller asked if there were any corrections or additions to the August 2, 2012 minutes. Commissioner Teves moved to approve the minutes. Commissioner

Biga seconded the motion. The minutes were unanimously approved by a voice vote (6-0).

TENTATIVE MEETING SCHEDULE

Executive Officer Orodenker provided the following:

- The regular tentative meeting schedule for the calendar year 2012 was distributed in the handout material for the Commissioners.
- The September 6-7, 2012 meeting is tentatively set to be held on Maui for Docket No. A12-795 and other Maui matters.
- The Commission also is planning to attend the HCPO Conference in Honolulu on September 12-14, 2012 and will be having a meeting on September 14, 2012 to address Docket No. A99-728 DHHL and SP09-403 Dept. of Environmental Services-Waimanalo Gulch Sanitary Landfill.
- The first meeting in October will be on October 4-5, 2012, location to be determined.
- Any questions or concerns- please contact LUC staff.

CONTINUED HEARING

A12-795 WEST MAUI LAND COMPANY, INC- KAHOMA RESIDENTIAL LLC (Maui)

Vice Chair Heller announced that this was a continued hearing on Docket No. A12-795 West Maui Land Company, Inc., Kahoma Residential LLC, to consider the reclassification of approximately 16.7 acres of land from the Agricultural District to the Urban District at Lahaina, Maui, Hawai'i for a residential subdivision to provide 68 single-family affordable housing units to families earning less than 160% of the median family income of families in Maui County, Hawaii, TMK Nos. (2) 4-5-10:005

APPEARANCES

James Geiger, Esq., represented West Maui Land Inc.

Heidi Bigelow, West Maui Land Inc.

James Giroux, Esq., Deputy Corporation Counsel, represented County of Maui Planning Department (County)

Bryan Yee, Esq., represented State Office of Planning (OP)

Rodney Funakoshi, OP

Michele Lincoln, Intervenor

Routh Bolomet, Intervenor

Michael Lee, assisting Routh Bolomet.

Vice Chair Heller updated the record and explained the procedures to be followed for the proceedings. There were no comments, questions or objections to the procedures. Mr. Geiger stated that he had no questions but was concerned that Petitioner had not received copies of some of the items that were submitted to the Commission. Vice Chair Heller replied that those matters would be addressed when exhibits were offered to the Commission. Mr. Geiger acknowledged Vice Chair Heller's comment. There were no further questions and Vice Chair Heller called for Public Witnesses.

PUBLIC WITNESSES

1. Clare Apana

Ms. Apana submitted written testimony, described her relationship and knowledge about Intervenor Bolomet and summarized the burial rights, cultural impacts, water rights, agriculture and other concerns that she had regarding the Petition Area for the Commission. Ms. Apana also shared experiences that she had while visiting the Petition Area and requested that the Commission consider her testimony during decision-making on the docket.

Mr. Geiger had no questions.

Mr. Yee requested clarification on what cultural and archaeological impact issues Ms. Apana was testifying to and what issues Michael Lee would address. Discussion ensued to determine what Ms. Apana's public testimony specifically addressed and what Mr. Lee's testimony would be. Mr. Yee stated that he was seeking clarification to determine who he should address his questions to regarding archaeological and cultural matters. Ms. Apana stated that she did not know what Mr. Lee would be addressing and described what her testimony consisted of and deferred to Mr. Lee to respond to detailed questions on cultural and archaeological issues regarding the Petition Area. Mr. Yee had no further questions.

Ms. Lincoln had no questions.

Ms. Bolomet requested clarification on what events she and Ms. Apana had experienced together during their site visit to the Petition

Area. Ms. Apana provided her recollection of the events that occurred during an earlier visit to the Petition Area and described the activities and experiences that she, Mr. Lee and Ms. Bolomet had while on site.

Discussion occurred and Vice-Chair Heller requested that Ms. Bolomet focus her questioning on the specific issues of the docket. Ms. Bolomet acknowledged Vice Chair Heller's comment and requested clarification on the areas bordering the Petition Area and how various area names applied to different sections. Ms. Apana shared her understanding of what names applied to what areas. There were no further questions for Ms. Apana.

There were no further public witnesses.

PRESENTATION OF EXHIBITS

Petitioner

Mr. Geiger offered Petitioner Rebuttal Exhibits 37 and 38 for the record. There were no objections by the Parties or the Commissioners to Petitioner's exhibits and they were admitted to the record.

County

Mr. Giroux stated that he had no exhibits at the current time and reserved the opportunity to submit exhibits when his witnesses were called.

OP

Mr. Yee offered no exhibits.

Intervenor Lincoln

Ms. Lincoln offered no exhibits.

Intervenor Bolomet

Ms. Bolomet described the difficulties she had in receiving material from Petitioner and stated that she submitted rebuttal testimony to Petitioner's rebuttal of Mr. Lee's submitted testimony. Discussion ensued to clarify what exhibit numbers had been assigned to the material Ms. Bolomet had submitted, and whether or not the exhibits abided by the Commission order requiring exhibit submittals by August 1, 2012. Petitioner and County objected to allowing further submittals by Intervenor Bolomet and OP stated that they were not sure what Intervenor Bolomet had submitted. Further discussion ensued to identify what Intervenor Bolomet had submitted, how it was identified, and whether or not it had been

submitted by the imposed deadline. Vice Chair Heller deferred admitting any submittals by Intervenor Bolomet until they had been properly identified and the Parties assured that they had the proper copies of what had been submitted.

Ms. Bolomet stated that she had requested the Parties supply her with emailed copies of their submittals due to poor mail service in her area and described the efforts she had made to submit her exhibits; and asserted that she had submitted Exhibits 11 and 17 on August 1, 2012. Discussion ensued to determine what exhibits had been submitted and Exhibit 17 was admitted to the record based on the initial examination of the Commission's records.

There was continued discussion on what would be admissible and Vice Chair Heller determined that the proceedings should continue and that exhibit identification problems be resolved and re-addressed later; and requested that Petitioner begin its presentation.

PRESENTATIONS

Petitioner Witnesses

1. Keith Niiya- Traffic Expert

Mr. Niiya updated and corrected/updated his submitted written testimony. Mr. Niiya summarized his report and stated that the proposed project would not have a significant impact on the area and that the proposed traffic improvements were appropriate for the Petition Area and that a TIAR was not required.

Questions for Mr. Niiya

County

Mr. Giroux inquired if any mitigation needs were uncovered by Mr. Niiya's study. Mr. Niiya responded that the proposed project did not create any need for mitigation and described how he had performed this aspect of his study.

OP

Mr. Yee requested clarification of a section of page 4 of Mr. Niiya's report. Mr. Niiya provided additional details to satisfy Mr. Yee's questions.

Intervenor Lincoln

Ms. Lincoln requested clarification on various details of Mr. Niiya's report. Mr. Niiya clarified his findings about area pedestrian/traffic patterns and how community streets evolved or were evolving to locally accommodate area growth and how the proposed project would affect the situation.

Intervenor Bolomet

Ms. Bolomet requested clarification on what considerations were made to determine the scope of the traffic study that had been performed. Mr. Niiya described the criteria, methodology and considerations that had been made to conduct and analyze his study and how its findings applied to the proposed project. Discussion ensued to have Ms. Bolomet refrain from interjecting extraneous comments and arguing her case during her questioning.

Petitioner Rebuttal

Mr. Geiger asked if the ultimate decision regarding the proposed project was that it would have no impact on existing traffic. Mr. Niiya confirmed that his findings indicated no impact to existing traffic.

The Parties had no further questions for Mr. Niiya.

Commissioner Questions

Commissioner Biga requested clarification on whether a portion of the Petition Area would be exposed to future traffic from the Lahaina bypass road. Mr. Niiya described how he envisioned traffic in the area would flow and stated that he did not anticipate significant traffic from the future bypass road.

Commissioner McDonald requested clarification on how the traffic generation figures compared between Mr. Niiya's study and a TIAR performed by the Wilson Okamoto firm. Mr. Niiya stated that both he and the Wilson Okamoto study estimated less than a 100 trips being generated by the proposed project, and that it had been submitted as Petitioner's Exhibit 7.

There were no further questions.

The Commission went into recess at 11:45 a.m. and reconvened at 11:58 a.m.

Vice-Chair Heller stated that he had reviewed Intervenor Bolomet's submittals during the recess and that they did appear to contain Exhibit 11. Mr. Geiger responded that he would need to re-check his documents and records to confirm receipt of Intervenor Bolomet's exhibit. Vice-Chair Heller suggested that Ms. Bolomet could file a Motion to have Exhibit 11 admitted at the next meeting. The Parties concurred that Vice-Chair Heller's proposal was acceptable.

2. Michael Dega- Archaeologist

Mr. Dega stated that he had no corrections to his submitted written testimony and described how his study had been conducted, and what sampling methods he had used to collect his data; and stated that there had been no findings of adverse impact and no significant archaeological findings in the Petition Area.

Mr. Dega also described how and why he filed his report as an Archaeological Assessment instead a survey due to State Historic Preservation Division (SHPD) requirements at the time it was conducted since he had negative archaeological findings in the Petition Area; and confirmed that SHPD had acknowledged and accepted his findings report.

Questions for Mr. Dega

County-

Mr. Giroux requested clarification on what other additional outside resources had been used for the archaeological study. Mr. Dega described the types of resources that he found to be more helpful and reliable in his work, and expressed why he relied more on SHPD records than others; and how no archaeological information regarding the Petition Area had been discovered.

OP

Mr. Yee requested further clarification on how the Petition Area had been studied and whether or not any evidence of burial sites (heiau) or other archaeological findings had been made. Mr. Dega described how he and his team had performed their study and acknowledged that no heiau or archaeological findings had been noticed in the Petition Area.

Mr. Yee asked if Mr. Dega had any comments on Ms. Apana's testimony, both written and oral. Mr. Dega shared his perspective of Ms. Apana's testimony and how his findings contradicted portions of it.

Mr. Yee also asked if Mr. Dega had any comments on Mr. Lee's testimony. Mr. Dega recognized Mr. Lee's work and credentials and commented on how his findings differed from what Mr. Lee claimed to have discovered about the Petition Area.

Intervenor Lincoln

Intervenor Lincoln had no questions.

Intervenor Bolomet

Ms. Bolomet requested clarification on how the references listed in Mr. Dega's report had been used; and posed questions regarding various features that she believed to have archaeological value on the Petition Area. Discussion ensued to clarify how Ms. Bolomet should identify exhibits and references for the record; and focus on questions for the witness. Ms. Bolomet acknowledged Vice-Chair Heller's comments. Mr. Dega requested that Ms. Bolomet identify the location of the heiau that she claimed to exist on a map of the Petition Area. Ms. Bolomet indicated where she believed a heiau existed. Mr. Dega stated that he believed the area where Ms. Bolomet was identifying existed outside the Petition Area and described his findings for various rock formations that he had studied. Further discussion ensued to have Ms. Bolomet focus on asking questions rather than making arguments on the testimony. Ms. Bolomet acknowledged Vice-Chair Heller's comment.

Ms. Bolomet requested clarification on a portion of the Petition Area that she believed to have archaeological value. Mr. Dega described his findings and how the Petition Area had changed over time and how observations of material having archaeological value had been documented by him and his staff. Discussion ensued as Ms. Bolomet contested Mr. Dega's findings. Vice-Chair Heller again reminded Ms. Bolomet not to be argumentative and to ask questions. Ms. Bolomet referred to additional features and questioned why certain features were not reported in the descriptions of the area. Mr. Dega described why the features did not have archaeological value. Ms. Bolomet continued to contest the findings that Mr. Dega had and was again reminded to restrict her comments. Mr. Dega re-stated how he had

documented his findings and how archaeological determinations and criteria applied to his work.

Ms. Bolomet referred to her Exhibit 17 and asked Mr. Dega whether karsts existed in the area she was referring to on the map. Discussion ensued to establish a question and answer format within the proceedings for the record to accurately reflect what was occurring. Vice Chair Heller again requested Ms. Bolomet to follow proceeding protocol and she responded by asking how Mr. Dega's interpretation of the map could supersede the findings of a state hydrologist. Mr. Dega responded that the 1942 map Ms. Bolomet was using had since been updated using better technology and that more recent information had been used to formulate his opinions about the Petition Area.

Ms. Bolomet requested clarification on Exhibit 2- Public Works Maps that Clare Apana had submitted. Discussion ensued to clarify what exhibit Ms. Bolomet was referring to. Mr. Geiger stated that he had not received such an exhibit. Mr. Dega responded that he had not seen the map she was referring to and Vice Chair Heller again requested that Ms. Bolomet use questions to extract information from the witness. Mr. Geiger objected to the additional comments that Ms. Bolomet made regarding Mr. Dega's familiarity with his submitted material and Vice Chair Heller again requested that Ms. Bolomet use appropriate questioning with the witness. Ms. Bolomet responded that she had no further questions.

Rebuttal

Mr. Geiger requested clarification on the difference between igneous and limestone rocks. Mr. Dega described the differences and stated that he had not found evidence of limestone in the Petition Area, only igneous basalt rock.

Mr. Geiger requested clarification on a Phase I-Archaeological Survey Kahoma Flood Control Project Area, Lahaina, Maui dated October 11, 1974 from the Kahonoi Study. Mr. Dega acknowledged that he had seen the document and described his findings for a terraced area in Figure 1, page 2 and stated that it was located upland from the Petition Area.

Mr. Geiger also asked how the area had been used in more recent times. Mr. Dega replied that it had been involved in sugar cane cultivation and described how that

activity had affected his archaeological research efforts and how his excavation samplings in the Petition Area did not uncover any archaeological findings.

County, OP and Ms. Lincoln had no further questions.

Ms. Bolomet requested clarification of page 5, Figure 2 of the Connelly Report. Mr. Dega provided his understanding of what the arrow designations on the illustration meant. Discussion ensued again regarding Ms. Bolomet's questioning of the witness. Vice Chair Heller stated that the Commission would go into recess and advised Ms. Bolomet to utilize the time to better frame her questions for the witness.

The Commission went into recess at 12:53 p.m. and reconvened at 1:32 p.m.

Ms. Bolomet requested clarification of whether Mr. Dega ever had to modify an AIS. Mr. Dega shared his recollection of how many times he had modified an AIS and stated the conditions that would prompt him to take that action. Discussion ensued and Vice Chair Heller again cautioned Ms. Bolomet to refrain from making arguments and comments during the questioning of the witness.

Ms. Bolomet requested clarification on where sedimentary rock could be found in the Petutuib Area. Mr. Dega described where he thought sedimentary rock would be located; and how the terrain had been altered by construction in the area; and how his study's excavations had made adjustments and accommodations for any "fill" land in the search for archaeological material.

Ms. Bolomet requested clarification on how findings were documented and reported by Mr. Dega. Mr. Dega described how various situations required different types of investigation and specialties and how they were documented and reported. Ms. Bolomet asked if Mr. Dega would alter his report if he was shown archaeological findings in the Petition Area. Mr. Dega responded that he would and agreed to meeting with Ms. Bolomet and being shown archaeological features in the Petition Area.

Mr. Geiger commented that Mr. Dega had been asked to identify a terraced site on the 1884 map Exhibit before the break and requested clarification on the matter for the Commission. Mr. Dega identified the terraced area as being above the proposed project area.

Commissioner Questions

Commissioner Biga asked what other projects Mr. Dega had done. Mr. Dega provided his recollection of projects that he had been involved in and the nature of work that he had performed.

There were no further questions for Mr. Dega.

Mr. Geiger stated that he would submit the referenced Connelly report during testimony as Petitioner's Exhibit 39. Vice-Chair Heller acknowledged Mr. Geiger's offer.

3. Charles Biegel- Soil Engineer Expert

Mr. Biegel had no corrections or changes to his written submitted testimony and Mr. Geiger commented that Mr. Biegel's testimony was Petitioner's Exhibit 7 and there were no objections to Mr. Geiger's testimony or appearance as a witness.

Mr. Biegel summarized his finding for the Petition Area and stated that he did not encounter any limestone, lava tubes, groundwater, or underground caverns on the proposed project site and described how he had conducted his soils engineering study.

Questions for Mr. Biegel

County and OP had no questions.

Intervenor Lincoln

Ms. Lincoln requested clarification on different aspects of the terrain and soil coverings of the Petition Area. Mr. Biegel provided his understanding of how the terrain had changed over the years and what the impact of the various soil coverings and their coverage depth were on his study's findings as they related to vertical construction of structures.

Ms. Lincoln asked if an archeologist was present when the soil study excavations occurred in the Petition Area. Mr. Biegel replied that he did not recall. Discussion ensued to encourage Ms. Lincoln to question the witness and not interject comments or argument. Ms. Lincoln acknowledged Vice Chair Heller's request and concluded her questioning.

Intervenor Bolomet

Ms. Bolomet asked if Mr. Biegel was familiar with kiawe trees and whether there was evidence of water in the Petition Area. Mr. Biegel responded that he was a soils engineer and not an expert on kiawe trees and that he would be surprised by a finding of water in the Petition Area; and provided the various details of his findings regarding the soils and their moisture content. Discussion ensued to have Ms. Bolomet pose questions to the witness and she asked a question about having a cultural monitor on site when excavations were performed. Mr. Biegel voiced his understanding of how arrangements were made for him when his services were needed on a project and how arrangements for cultural monitoring had been made by the party hiring him.

Rebuttal

Mr. Geiger requested clarification on what was included in Mr. Biegel's report when "fill" land was involved; and what sand and water discoveries on the proposed project site would involve. Mr. Biegel described how he would report his findings in the circumstances where "fill" land was discovered; how sand was categorized in soil studies; and why he had not discovered water during his excavations.

County, OP, and Ms. Lincoln had no further questions.

Intervenor Bolomet

Ms. Bolomet requested clarification on whether or not maps of underground infrastructure had been provided to him prior to excavation occurring. Discussion ensued on whether the question was appropriate and Vice Chair Heller advised Ms. Bolomet that he would allow her question but that she was expected at this time to confine her questioning to testimony that had been already been provided by the witness on redirect. Mr. Biegel described the preparations that he had to make prior to performing any excavations. and stated that he did not know of any subterranean piping infrastructure.

Commissioner Questions

Commissioner McDonald asked how deep the borings were. Mr. Biegel responded that the borings had a depth of between 6 and 8 feet below grade, and 13.75

feet -17.75 feet below grade. Mr. Geiger commented that Petitioner's Exhibit 7 contained further details about the borings.

There were no further questions for Mr. Biegel.

4. Robert Hobdy- Environmental Expert on Flora/Fauna

There were no objections by the Parties to Mr. Hobdy's submitted testimony and appearance as a witness; and he described his findings of plants, animals and insects in the Petition Area during his survey.

Questions for Mr. Hobdy

County-

Mr. Giroux requested clarification of native plants found in the Petition Area. Mr. Hobdy provided additional information on the native plants that he had found in the proposed project area.

OP-

Mr. Yee requested clarification of what Mr. Hobdy thought about the downshielding of lights in the Petition Area. Mr. Hobdy replied that he concurred with the downshielding recommendation and explained why he thought it was an important feature.

Intervenor Lincoln

Ms. Lincoln requested clarification on factors that might contribute to helping preserve the Blackburn sphinx moth. Mr. Hobdy shared his opinion of what might help the moth and other endangered species survive and prosper; and how the Petition Area could be used as an educational or educational "green tour" feature.

Intervenor Bolomet-

Ms. Bolomet asked whether Mr. Biegel was aware of how Hawaiians traded plants with Westerners. Mr. Hobdy shared his understanding of how various food plants which were non-native to Hawaii were traded and used; and how they seasonally populated the Petition Area. Discussion ensued and

Vice Chair Heller again cautioned Ms. Bolomet to ask questions and avoid being argumentative with the witness. Ms. Bolomet concluded her questioning by asking whether Mr. Hobdy had discovered any algae or seaweed evidence in the Petition Area and he responded that he had not.

Rebuttal

Mr. Geiger requested clarification on the habitats of the Blackburn sphinx moth, the local owl population and 3 plant species. Mr. Hobdy indicated where the moth and owl were known to exist and where 3 species of plants could be found.

Vice Chair Heller stated that the Commission would take a recess and Vice Chair McDonald would preside in his place. The Commission went into recess at 2:38 p.m. and reconvened at 2:53 p.m. (5 Commissioners in attendance- Vice Chair McDonald presiding)

Vice Chair McDonald asked Mr. Geiger how many more witnesses Petitioner had. Mr. Geiger responded that he had Mr. Singleton-Agronomy Expert, Mr. Tanaka- Civil Engineering Expert, and Ms. Bigelow- Developer's Representative remaining; and that the Parties had agreed to allow the written testimony of Leonard Neko Jr., and Anthony Rikki-Gonzalez without cross-examination; and that he would be withdrawing archaeological witness, Mr. Perzinski, since his testimony would be cumulative to Mr. Dega's. There were no comments or objections to Mr. Geiger's comments.

Mr. Giroux requested permission to release his witness, Joanne Ridaou, since it did not appear that there was sufficient time for her to appear. Vice Chair McDonald granted this request.

Vice Chair McDonald advised the Parties that unlike Vice Chair Heller, he would only allow a single round of questioning of the witness. There were no comments, questions or objections to Vice Chair McDonalds change of proceedings format.

5. Paul Singleton- Agronomy Expert

Mr. Singleton made several corrections to his submitted written testimony. There were no objections to Mr. Singleton's corrections of his written testimony; or to his appearance as an expert witness.

Mr. Singleton summarized his testimony and described the methodology, objectives, and findings of his study of the Petition Area to determine if it was an economically viable agricultural site; and drew comparisons of the Petition Area to his farming operation.

Questions for Mr. Singleton

County

Mr. Giroux had no questions.

OP

Mr. Yee had no questions.

Intervenor Lincoln

Ms. Lincoln-requested clarification of Mr. Singleton's role in the proceedings and how his findings were determined. Mr. Singleton stated that he had been asked to appear before the Commission to address questions regarding the agricultural economic potential of the Petition Area; and clarified different portions of his testimony for Ms. Lincoln. Discussion ensued and Vice Chair McDonald requested that Ms. Lincoln follow a question and answer format and avoid speaking over the witnesses' reply. Ms. Lincoln acknowledged the request and was satisfied with Mr. Singleton's responses to her questions and concluded her questioning.

Intervenor Bolomet

Ms. Bolomet requested clarification on how Hawaiians might have cultivated the local area. Mr. Singleton provided his understanding of how the Lahaina area had been cultivated by Hawaiians during the pre-contact period, and by the sugar plantation; and stated that he was not aware of any water source in the Petition Area. Mr. Singleton also provided his understanding of various issues that Ms. Bolomet had questions about regarding farming and farming methods and noted the difficulties that would confront profitable farming operations on the Petition Area.

Rebuttal

Mr. Geiger requested clarification on the term “rock land” and whether the Petition Area could be economically viable if used for agriculture. Mr. Singleton shared his perception of the source of the term and how it was used to describe soils, and stated that, in his opinion, the land was not likely to be used for agriculture in current times.

The Commission went into recess at 3:50 p.m. and reconvened at 4:03 p.m.

6. Kirk Tanaka- Civil Engineer

Mr. Tanaka had no changes or updates to his testimony and the Parties had no objections to his appearance as an expert witness.

Mr. Tanaka described the proposed drainage, waste water, and water retention infrastructure planned for the Petition Area and provided details about the design criteria, county requirements, stormwater treatment, and fire and water department considerations that were involved in his study.

County-

Mr. Giroux had no questions.

OP-

Mr. Yee requested clarification on the quality of water, stormwater mitigation, and how the proposed project would deal with County water standards. Mr. Tanaka replied that there were no finalized plans currently in place since the County was still working on rules/standards for the proposed project; but that his plan was to have the Petition Area comply with all the final rules that would be in place when the construction of the proposed project neared completion and the new rules implemented. Mr. Tanaka stated that “best management practices” would be in place during the construction period and that the draft rules had been taken into consideration and that the timetable for completion of the proposed project was still incomplete although progress was expected soon. Mr. Tanaka also described the design criteria used for planning the future infrastructure and determining its specifications.

Mr. Yee also requested clarification of offsite roadway improvements, the type of mitigation measures that would be in place and on potable water availability for the Petition Area. Mr. Tanaka replied that he was not yet aware of what the final rules would be for mitigation measures, and was waiting for a County grading permit; but was aware that new 201 H rules would apply to the proposed project; but did not know of any 201H exemptions that would be allowed for drainage.

Mr. Yee inquired about what mitigation measures would be in place and whether a potable water review or analysis had been done to determine potable water availability for the project. Mr. Tanaka described his understanding of how proposed drainage basins would be maintained and what mitigation measures would be used and replied that he had been in contact with the County water supply department and had been advised that there was sufficient potable water and a water source to allow meters and provide County water for the proposed subdivision. Mr. Tanaka also provided other various specifics of how water supply for the proposed project had been determined and what his conversations with the Department of Water Supply were like.

Intervenor Lincoln-

Ms. Lincoln requested clarification on the retention basin design and how it would be constructed. Mr. Tanaka described his understanding of how the basin would be constructed and how the water, wastewater and sewage needs of the proposed project would be met.

Ms. Lincoln requested clarification on how stormwater runoff would be handled. Mr. Tanaka shared his understanding of how stormwater was currently occurring and how the drainage infrastructure design would function when completed. Ms. Lincoln also requested clarification on an exhibit and discussion occurred to identify what specific exhibit it was. Mr. Geiger stated that he believed it was Petitioner's Exhibit 30, page 35. Ms. Lincoln questioned why it had been included as a Petitioner's Exhibit. Mr. Geiger explained why it had been submitted to support Ms. Bigelow's testimony to come.

Ms. Lincoln asked if land development changed runoff patterns and increased flood risk. Mr. Tanaka replied that the infrastructure design included various features to prevent flooding from occurring and described how the infrastructure would function during storms and would need to be maintained. Ms. Lincoln requested clarification on how the Kahoma dam would withstand a natural disaster. Discussion ensued to determine what dam Ms. Lincoln was referring to and Mr. Geiger stated that he was not aware of a dam being part of the Petition Area. Vice Chair McDonald asked what exhibit contained a photo of the facility. Ms. Lincoln replied that it was on page 64 of her submitted materials. Mr. Tanaka examined the photo and replied that he was not able to identify the structure and was not qualified to answer her question. Discussion continued on how Ms. Lincoln's question was relative. Vice Chair McDonald stated that since the structure abutted the Petition Area and could pose a flood hazard, he felt it was a valid question. Ms. Lincoln replied that she would direct the question to the County instead.

Ms. Lincoln had several questions regarding flood diversion and Mr. Tanaka shared his understanding of how water could be diverted till Ms. Lincoln exhausted her prepared questions.

Intervenor Bolomet

Ms. Bolomet requested clarification Mr. Tanaka's awareness of legal decisions regarding retention basins and on the location of the planned retention basins in the Petition Area. Mr. Tanaka responded that he was not aware of the judicial cases that Ms. Bolomet cited and described where the proposed retention basins would be located and how they were expected to function. Mr. Tanaka also stated that he did not know what the long term effects the retention basins would have on Mr. Lee's "limu" gathering practice and that he was not aware of any law or court ruling regarding the control of heavy metal deposit resulting from runoff. Discussion ensued to have Ms. Bolomet focus her question and Mr. Tanaka confirmed that he did not know of any such requirement.

Ms. Bolomet requested clarification of the considerations made for wastewater and stormwater collection and disposal, and sewage treatment for the proposed project. Mr. Tanaka described the design considerations that were made to develop the systems for these functions and the communication that he

had with various agencies to ensure conformity to Federal, County and State standards. Discussion ensued regarding the capacity of the Lahaina Wastewater Facility and how the County made its capacity determination. Mr. Giroux stated that Ms. Bolomet was making statements about matters which had not been entered into evidence. Ms. Bolomet responded that she was making reference to Robin Knox's submitted written testimony. Vice Chair McDonald requested that Ms. Bolomet to repeat her question and stated that the witness could then respond to whether or not he could answer the question. Mr. Tanaka responded that he was not aware of the "Clean Water Act" citations that Ms. Bolomet was referring to.

Ms. Bolomet stated that she had no more questions.

Rebuttal

Mr. Geiger requested clarification on Mr. Tanaka's response to the capacity of the West Maui domestic water system and referred to Petitioner's Exhibit 11 to have Mr. Tanaka verify various capacities that the County had represented to him. Mr. Yee commented that it was Petitioner's Exhibit 13 and Mr. Geiger acknowledged the correction.

Commissioner Questions

Commissioner Biga requested clarification on whether the Association would have to maintain the basin; and the sewer line approval by the Army Corp of Engineers. Mr. Tanaka provided his understanding of why the Association would assume the responsibility of maintaining the basin and described how the proposed project affected the Army Corp of Engineers structure.

There were no further questions.

Mr. Geiger stated that he still had Ms. Bigelow and Mr. Frampton as his remaining witnesses. Vice Chair McDonald noted that they would be heard at the next meeting.

The Commission went into recess at 5:07 p.m.

next procedural step for a hearing to decide whether or not the Conditions of the Decision and Order were being complied with.

There was no further discussion.

The Commission voted as follows:

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

Nays: None

The Motion passed 6-0 with 3 excused.

Vice Chair Heller asked if there were any questions or comments for the Commission before it adjourned. Mr. Steiner requested that the Commission move expeditiously on this matter. Vice Chair Heller advised him to contact staff regarding scheduling and assured him that it was the Commission's intention to address and resolve this matter as soon as possible.

There being no further business, the Commission adjourned at 1:45 p.m.