

LAND USE COMMISSION
MEETING MINUTES

September 6, 2012

Maui Arts and Cultural Center, Alexa Higashi Room,
One Cameron Way,
Kahului, Maui, Hawai'i, 96732

COMMISSIONERS PRESENT: Chad McDonald
Lance Inouye
Sheldon Biga
Ronald Heller
Ernest Matsumura
Thomas Contrades
Napua Makua (arrived at 10:04 a.m. and departed at
2:00 p.m.)

COMMISSIONERS EXCUSED: Kyle Chock
Nicholas Teves, Jr.

STAFF PRESENT: Daniel Orodener, Executive Officer
Scott Derrickson, Staff Planner
Bert Saruwatari, Staff Planner
Sarah Hiramami, 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 10:00 a.m.

APPROVAL OF MINUTES

Vice Chair Heller asked if there were any corrections or additions to the August 23-24, 2012 minutes. Commissioner McDonald moved to approve the minutes.

Commissioner Biga seconded the motion. The minutes were unanimously approved by a voice vote (6-0). (Commissioner Makua arrives at 10:04- Seven Commissioners present)

TENTATIVE MEETING SCHEDULE

Executive Officer Orodenker provided the following:

- The tentative meeting schedule for the calendar year 2012 was distributed in the handout material for the Commissioners.
- The Commission 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 HCDH and SP09-403 Dept. of Environmental Services-Waimanalo Gulch Sanitary Landfill.
- The first meeting in October will be on October 4-5, 2012- still open, and on October 18-19, 2012, the Commission will be back on Maui.
- 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. Ms. Lincoln requested clarification on how to present her exhibits in a manner acceptable to the Commission. Discussion ensued to determine what exhibits Ms. Lincoln would be referring to and what formats would be acceptable. Mr. Yee provided his understanding that Ms. Lincoln was attempting to withdraw an existing accepted exhibit (Elle Cochran's testimony) and resubmit a revised exhibit in a format which was acceptable to Mr. Giroux and Maui County. Ms. Lincoln stated that she would also be referring to a DVD that she had submitted as an exhibit and that this exhibit had been accepted previously. Mr. Geiger expressed his concerns about not having seen the newly revised Cochran testimony and restated his objections to the musical background of the DVD that had been previously been submitted. Discussion ensued to determine how Ms. Lincoln should provide all Parties with the revised testimony of Ms. Cochran and Vice Chair Heller determined that the DVD had been previously allowed as an exhibit and that it could be presented to the Commission with the musical background intact. There were no further questions and Vice Chair Heller called for Public Witnesses.

PUBLIC WITNESSES

1. Clare Apana

Ms. Apana submitted written testimony, and stated her concerns about what was happening to the Hawaiian people's culture and agriculture, and attempted to clarify her previous testimony on August 23, 2012. Discussion ensued on whether or not her testimony was cumulative or not. Mr. Geiger stated that the exhibit photos that she was referring to in her testimony were not of the Petition Area. Vice Chair Heller allowed Ms. Apana to continue and reminded her that her testimony should not be repetitive or cumulative to her prior testimony.

Ms. Apana also expressed her concerns about piping infrastructure that was alleged to exist on the Petition Area, and water rights, and how the archaeological study performed on the proposed project site was inadequate. Mr. Geiger requested that Ms. Apana confirm the exhibit number that she had been referring to during her testimony and it was agreed that it was Figure 7 on page 3 of the M231 report. Mr. Geiger also stated that the full report did not include the Petition Area and provided Ms. Apana with the report map to refer to during his questioning to confirm her understanding of

the location of the areas she was referring to during her testimony. Ms. Apana was unable to identify the areas and map features that Mr. Geiger asked about.

Questions for Ms. Apana

County, OP, and Intervenor Lincoln had no questions.

Ms. Bolomet requested clarification on Ms. Apana's testimony. Discussion ensued to have Ms. Bolomet use questions with the witness and avoid commentary. Ms. Bolomet referred to Ms. Apana's Exhibit 1. Further discussion ensued to determine whether the Parties had received copies of the exhibit. It was discovered that the Parties had not received copies of Ms. Apana's exhibits and LUC staff shared the copies that had been submitted with the Parties. Ms. Bolomet continued on a line of questioning that led to further discussion on whether it was cumulative or not. Vice Chair Heller determined that he would allow questions relevant to the testimony that Ms. Apana had provided to the Commission and requested that Ms. Bolomet avoid attempting to read material into the record.

Ms. Bolomet asked Ms. Apana to identify a heiau on the map (identified as number 16) that she had submitted as an exhibit and questioned how the photos were oriented in relation to the heiau, and on various features of the Petition Area in the Public Works maps that she had also submitted. Ms. Apana provided her perspective of the Petition Area features and how they related to her submitted exhibits. Discussion ensued on whether or not new information was being introduced during Ms. Bolomet's questioning. Vice Chair Heller requested that Ms. Bolomet better focus her questioning.

Ms. Bolomet asked about Ms. Apana's perception on whether she felt water rights were being violated. Vice Chair Heller advised Ms. Bolomet that her questions were repetitive of questions that had been previously asked and requested her to move on.

Ms. Bolomet had no further questions.

Commissioner Inouye requested clarification on what area Ms. Apana was referring to and referred to page 2 of Exhibit 39's map area features (Figure 1 and Figure 2 on Map MAD5-7) that Ms. Apana had referred to during her testimony. Ms. Apana approached the Commission and was shown the map areas by Commissioner Inouye. Ms. Apana responded that she was not sure of how to transfer the map figures and had difficulty answering Commission Inouye's questions with certainty.

Mr. Geiger stated that he would like the record to reflect that he had used a map which he would be submitting as Petitioner's Exhibit 40 to question Ms. Apana. Mr. Yee requested a representation of what the document was and Mr. Geiger described the document and how it illustrated different portions of the Petition Area and surrounding locales. Ms. Bolomet inquired what the purpose of the document was and Mr. Geiger replied that it had been previously shown to Ms. Apana and that it was being identified for the record. There were no further questions or objections from the Parties regarding the use of this exhibit after they had the opportunity to review it.

Mr. Geiger stated that he would ensure that copies of the exhibit would be provided to the Commission and the Parties at the start of the September 7, 2012 meeting.

There were no further questions for Ms. Apana.

There were no further public witnesses. Ms. Bolomet stated that she had some farmers who were going to testify on Friday. Vice Chair Heller determined that their testimony would be addressed at that time and asked if the Parties had any exhibits to offer. Discussion ensued to determine what exhibits Petitioner had recently offered to the Commission.

PRESENTATION OF EXHIBITS

Petitioner

Mr. Geiger offered Petitioner's Rebuttal Exhibit List and Exhibit 39 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 had no exhibits.

Mr. Geiger provided confirmation that he had received Intervenor Bolomet's Exhibit 11 and argued that it was irrelevant to the proceedings. Vice Chair Heller requested that Petitioner proceed with its presentation.

PRESENTATIONS

Petitioner Witnesses

1. Heidi Bigelow

Ms. Bigelow updated and corrected her previously submitted written testimony and described the various development specifics regarding the proposed project. There were no objections or comments regarding her submitted testimony corrections.

Ms. Bigelow described the development history of the Petition Area and provided the details on the features that would be included in the proposed project's structures and the reasoning and considerations involved during the design and planning phases to make certain determinations for the Petition Area infrastructure.

Questions for Ms. Bigelow

County

Mr. Giroux requested clarification on the modifications and resolutions that had been made to accommodate the 201H requirements for the proposed project. Ms. Bigelow stated how the developer would cooperate with payments and performance to abide by its agreements and described the efforts and achievements that the developer had made to qualify the proposed project before the Maui County and State agencies.

OP

Mr. Yee requested clarification on mitigation measures recommended by the EIS and whether the conditions proposed by OP were acceptable to Petitioner. Ms. Bigelow provided additional details to satisfy Mr. Yee's questions on mitigation, and responded that the OP conditions were acceptable. Ms. Bigelow also mentioned how consideration for environmental/sustainability measures and flexibility to accommodate a wide range of housing needs had been made; and how the Petitioner expected to comply with all State and County deadlines, approvals and permitting requirements for infrastructure within 10 years of final subdivision approval.

Intervenor Lincoln

Ms. Lincoln requested clarification on how sustainability and infrastructure requirements would be handled; and how Petitioner would react if certain approvals/permits were not able to be obtained. Ms. Bigelow described how the Petition Area would be developed, what design features were engineered for it; and how the current landowner had obtained the Petition Area property and its preliminary County approvals.

Ms. Lincoln requested clarification on what had occurred at various community meetings and how the proposed project had been received; and on other development related activities had been performed. Ms. Bigelow shared her understanding of what occurred during the development approval process for the proposed project and how land area for the proposed project and park on site had been acquired and determined. Ms. Bigelow also expressed what land development activities the Petitioner had been involved with after its acquisition of the land area and how the ownership groups were organized; and how proposed project prices were fixed by its agreement with the County.

Ms. Lincoln requested clarification on the funding for the proposed project, and whether Habitat for Humanity had the ability to obtain funding and financial resources to complete the building on schedule.. Ms. Bigelow described the funding and estimated construction costs for the proposed project and how tax assessments were computed and how an attempt to sell the Petition Area to the County had fared.

Ms. Lincoln requested clarification on what would happen if the land remained designated agriculture. Ms. Bigelow replied that Petitioner would reassess the situation and attempt to continue its efforts to develop the Petition Area

Commissioner Matsumura excused himself at 11:50 a.m. and returned at 11:53 a.m.

Intervenor Bolomet

Ms. Bolomet requested clarification on Ms. Bigelow's role as Project Manager and the ownership structure for the properties in the area. Mr. Bigelow described the criteria, methodology and considerations that had been made to conduct and analyze and acquire the Petition Area and surrounding properties. Discussion ensued to have Ms. Bolomet refrain from interjecting extraneous comments and arguing her ownership title questioning.

Ms. Bolomet asked who Peter Martin was and what the scope of the environmental assessment for the Petition Area was. Ms. Bigelow explained that Mr. Martin was a Vice President of West Maui Land Company and one of the managing members of Kahoma Land Company and described how the environmental and cultural assessments had been performed and how it was project specific.

Commissioner McDonald excused himself at 11:56 a.m. and returned at 11:58 a.m.

Ms. Bolomet requested clarification on how Article 12, Section 7 of the cultural assessment concerns would be addressed. Ms. Bigelow shared her understanding of how possible impacts resulting from the project were considered and mitigated. Discussion ensued over questions regarding water and land use commission governance and Ms. Bigelow voiced how Petitioner was aware of the Army Corp of Engineer's involvement with stream diversion issues but had not been involved with any.

Ms. Bolomet requested clarification on how a heiau which she believed was in

the Petition Area had been dealt with. Discussion ensued over the presumption that a heiau existed on the site and the assuming method of questioning that Ms. Bolomet was using. Vice Chair Heller allowed the question and Ms. Bigelow replied that no evidence of a heiau on the Petition Area site had been discovered but that another area up further from the Petition Area contained evidence of a heiau. Ms. Bigelow added that the project archaeologist had been attempting to work with Ms. Bolomet, Mr. Lee and Ms. Apana to locate a heiau on the Petition Area.

Ms. Bolomet asked if permits for the use of the Lahaina Wastewater Facility were obtained. Ms. Bigelow described how permits could be obtained and what their estimated costs. Discussion ensued over facts not entered into evidence and relevance to the case. Mr. Giroux and Mr. Geiger shared their opinion that Ms. Bolomet's questioning was presumptive. Vice Chair Heller advised Ms. Bolomet that her method of asking questions which assumed facts that were not demonstrated or shown in evidence was not permissible and was the cause for the repeated objections that were being voiced and urged her to avoid that practice and consider how to better frame her questions during the upcoming recess.

The Commission went into recess at 12:07p.m. and reconvened at 1:17 p.m.

Ms. Bolomet requested clarification on how the proposed project met the criteria for amending urban boundaries. Discussion ensued to have Ms. Bolomet separate and then ask her questions to the witness. Ms. Bolomet responded by asking more specific questions. Ms. Bigelow described how the project had been planned to conform to the urban boundary amendment requirements; and had been vetted through various entities to assure that any concerns about the proposed project could be identified and addressed.

Ms. Bolomet requested clarification on various permits obtained for the project and what their specifics were. Ms. Bigelow could not locate the engineering report and explained how responsible agencies for the permits would have the information and why they did not need to be included in the EIS.

Ms. Bolomet requested clarification on the use of injection wells. Discussion

ensued over Ms. Bolomet's continued misuse of her questioning technique that triggered objections. Vice Chair Heller again advised Ms. Bolomet to frame her questions in the form of questions. Ms. Bolomet requested confirmation on other permits that needed to be included during the processing of a proposed project's EIS.

Ms. Bolomet requested clarification on the responsibility for maintenance of the proposed project's park. Ms. Bigelow replied that it was expected that the Homeowners Association would be responsible for the various costs associated with maintaining and upkeeping the park. Discussion ensued over the questioning method used by Ms. Bolomet in requesting clarification on the insurance coverage that needed to be maintained. Ms. Bigelow provided her understanding of how payments for insurance would be handled.

Mr. Geiger requested clarification on whether the County had demonstrated interest in using the Petition Area as a park. Ms. Bigelow replied that the County had been approached but how there had only been interest in using the Petition Area as a residential project.

Mr. Geiger also requested clarification on how the off-site impacts from the project would be addressed. Ms. Bigelow described how mitigation efforts for the proposed project were expected to reduce or eliminate concerns about off-site issues.

Commissioner Questions

Commissioner Biga requested clarification on what other projects West Maui had; who had ownership of the Old Mill area and the dedication timing plans for the Mill Road. Ms. Bigelow described other activities that West Maui Land was involved in and who owned the Old Mill Area; and stated that the Mill Road would probably be dedicated to the County upon its completion.

Commissioner Biga also asked what might happen if the Petition Area were sold; and how vacant land would be offered for dwelling construction. Ms. Bigelow stated that if a sale were to occur, all the Conditions would still be required of the buyer; and described how the proposed project units would be overseen by the County to ensure compliance with Conditions.

Commissioner McDonald requested clarification on who would maintain the detention basin. Ms. Bigelow responded that it was expected to be the Homeowners Association and described the various CC&Rs, BMP standards and estimated costs involved for the HOA.

Commissioner Biga requested clarification on the qualifications and process involved with the detention basin maintenance program. Ms. Bigelow shared how HOAs that she was familiar with hired consultants to monitor and maintain this type of facility.

Vice Chair Heller requested clarification on how vacant lot sales and construction upon them within the specified period would be addressed. Ms. Bigelow replied that CC&Rs would be put in place to assist in controlling the situation.

There were no further questions for Ms. Bigelow. Mr. Geiger stated that Mr. Frampton was available for rebuttal, but that he planned to make him available later in the proceeding. Vice Chair Heller called for County to begin its presentation.

County Witnesses

1. David Taylor, Director, Water Department

Mr. Giroux submitted a position statement and resume on behalf of Mr. Taylor which the Parties did not object to.

Mr. Taylor stated that the proposed project was exempt from the County's "Show Me The Water" Ordinance due to its 100 per cent affordable component and described how the proposed project could obtain water.

Petitioner Questions

Mr. Geiger had no questions.

OP

Mr. Yee requested clarification on whether the existing water system had the capacity to provide for the proposed project. Mr. Taylor shared his understanding of what additional capacity was available based on current available resources; and that a study was underway to better determine what level of water supply could be relied upon to serve community needs. Mr. Taylor also described how water meters for the

West Maui would be allocated and the processes that the Maui County Council used to arrive at its conclusions.

Intervenor Lincoln

Ms. Lincoln requested clarification on how the proposed project met the criteria for “infill”, and how it was affected by the 201H exemption “infill” question to and described his understanding of what “infill” development issues were and how “infill” issues were resolved by his department. Discussion ensued to clarify that Ms. Lincoln was referring to a County Exhibit 8 and not a Petitioner’s exhibit; and Vice Chair Heller requested that Ms. Lincoln focus her question and refrain from commenting, and being repetitive and cumulative. Mr. Taylor described portions of the water study that were completed and what type of information he expected the study to provide. Mr. Taylor provided the cost factors that determined rates for water meters and how they applied to the proposed project and described how the fees could be calculated and how service costs were quantitatively determined.

Intervenor Bolomet

Ms. Bolomet requested clarification on water quality and supply capacities for service to the proposed project. Mr. Taylor described what questions he could knowledgeably respond to and how his department conducted demand and cost analyses for proposed projects and what the County Council role in the final determination of prices was. Mr. Taylor suggested departments that he thought could better respond to Ms. Bolomet’s questions and defined what his department’s role was for Ms. Bolomet’s benefit.

Ms. Bolomet referred to Ms. Apana’s Exhibit 2 and described what she was attempting to inquire about. Mr. Taylor provided his opinion of what he thought the Exhibit reflected.

Commissioner Makua departed the meeting at 2:00 p.m. and did not return.

Ms. Bolomet continued her questioning regarding Exhibit 2 and Mr. Taylor continued to express his opinion on what the plans might be referring to and who was responsible for preparing the plans for the Army Corp of Engineers and how “hook up” piping systems were constructed to connect and supply the community. Discussion ensued and Ms. Bolomet was advised to properly frame her questions and that her line of questioning was cumulative to previous testimony. Ms. Bolomet argued that she was attempting to obtain information and Vice Chair Heller commented that her repeated questioning after the witness had already responded to having no knowledge was not being productive.

Ms. Bolomet requested clarification on how water quality was maintained and what methods and materials were used to ensure the safety of the water supply. Mr. Taylor described how his department conformed to Department of Health standards and how chlorine content met Federal and State regulations. Discussion ensued regarding how Ms. Bolomet’s questions were not related to the witness’ expertise and argumentative in nature. Vice Chair Heller requested Ms. Bolomet to move on.

Ms. Bolomet requested clarification on how stream diversion permits were obtained and used by Mr. Taylor’s department. Mr. Taylor shared the details of the responsible agency that issued the permit, how records of the permits were kept and when/how it was decided that permits would be needed.

There were no Commissioner questions and the witness was excused.

2. Jo Ann Ridao

Ms. Ridao had no changes to her submitted testimony and was offered as an Expert in Affordable Housing. There were no objections by the Parties.

Ms. Ridao described why her Department supported the proposed project and summarized her written testimony for the Commission.

Commissioner McDonald excused himself at 2:20 p.m. and returned at 2:24 p.m.

Petitioner Questions

Mr. Geiger requested clarification on the demand for housing in the West Maui area that Ms. Ridao was aware of. Ms. Ridao shared her knowledge of the housing

demand information that her department receives and why housing demand for the area was so high.

OP Questions

Mr. Yee inquired whether the Petitioner and the County had signed off on an affordable housing agreement for the proposed project. Mr. Ridao responded that an agreement hadn't been reached yet and described the County's resolution and requirements for the proposed affordable housing project and what provisions the agreement was expected to contain.

There were no further questions.

Intervenor Lincoln

Ms. Lincoln asked whether or not the County had made decisions based on Ms. Bigelow's testimony about community input. Ms. Ridao described how she thought the community's input was accepted and how it factored in the County's decision-making for the proposed project.

Ms. Lincoln requested how impacts resulting from the proposed project would be addressed. Ms. Ridao described how the proposed project had an "infill" role and how it would have a minimal effect on the existing community. Discussion ensued regarding the definition of "infill" that Ms. Lincoln was referring to. Ms. Ridao clarified what her understanding of what the term meant.

Ms. Ridao described how the park feature factored into the overall plan for the area and how traffic in the area was envisioned to improve upon completion of the proposed project and shared her understanding of various questions that Ms. Lincoln had prepared about the proposed project and the price and income limits involved for units within it. Ms. Ridao also described how extensions could be applied for but was unsure of how they would be granted; and how non-compliance of terms and conditions would be handled by the County; and how housing demand for the area was being helped by the County; and under what circumstances.

Vice Chair Heller announced that the proceeding for A12-795 would be halted for the day and would resume on Friday, September 7, 2012 in order to hear the scheduled agenda item A94-706 Ka'ono'ulu Ranch.

The Commission went into recess at 2:45 p.m. and reconvened at 3:00 p.m.

ACTION

A94-706 Ka`ono`ulu Ranch (Maui)

Vice Chair Heller announced that this was a hearing and action meeting regarding Docket No. A94-706 to consider a Petition to Intervene filed by Movant Maui Tomorrow Foundation, Inc., South Maui Citizens for Responsible Growth and Daniel Kanahele.

APPEARANCES

Joel Kam, Esq., represented Honua`ula Partners

Jonathan Steiner, Esq., represented Pi`ilani Promenade North LLC, Pi`ilani Promenade South LLC

Jane Lovell, Esq., Deputy Corporation Counsel, represented County of Maui Planning Department (County)

Michael Hopper, Esq., Deputy Corporation Counsel, County

Anne Cua, County Staff Planner

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

Rodney Funakoshi, OP

Tom Pierce, Esq., represented Maui Tomorrow Foundation, South Maui Citizens for Responsible Growth and Daniel Kanahele

Irene Bowie, Maui Tomorrow Foundation

Vice Chair Heller updated the record and explained the procedures to be followed for the proceedings. There were no questions or comments regarding the procedures.

PUBLIC WITNESSES

1. Robin Knox- Environmental Scientist
Ms. Knox provided her credentials as an environmental scientist and stated that she was testifying as an individual and not as a representative of any group that she was involved with. Ms. Knox described her concerns about the impact of runoff water to near shore water quality and other safety and environmental concerns that she felt the Commission should be aware of.

There were no questions for Ms. Knox.
There were no other Public Witnesses.

Commissioner Inouye moved for an Executive Session. Commissioner Biga seconded the Motion.

The Commission went into Executive Session at 3:10 p.m. and reconvened at 3:30 p.m.

Vice Chair Heller stated to the Parties how the Commission would be procedurally handling the docket by dividing it into two phases- 1) to consider whether there had been a violation of the Decision and Order and 2) to consider what to do if a violation had been determined.

Mr. Pierce requested to reserve the right to brief the issue and argued why he felt contested case procedures should be followed. Vice Chair Heller described the considerations that factored into procedurally separating the docket into 2 phases and allowed Mr. Pierce to consider filing a Motion or memo and requested that the Petitioner present its case.

Mr. Pierce stated that he would rest on his pleading and requested to have members from the organizations he represented and Mr. Kanahale verify the facts that had been set forth in his Petition to Intervene. Discussion ensued on whether or not the verifications were necessary. Mr. Pierce stated the reasons why he felt it was necessary to build his record. Vice Chair Heller acknowledged Mr. Pierce's request and allowed the verification testimonies.

1. Irene Bowie-Movant Maui Tomorrow
Foundation

There were no objections to Ms. Bowie's appearance to testify. Ms. Bowie stated that she verified the information in the Petition to Intervene to be accurate and true.

There were no questions for Ms. Bowie

2. Mark Hyde- President, South Maui
Citizens for Responsible Growth

There were no objections to Mr. Hyde's appearance to testify. Mr. Hyde stated that he verified the information in the Petition to Intervene to be accurate and true.

There were no questions for Mr. Hyde.

3. Daniel Kanahele

There were no objections to Mr. Kanahele's appearance to testify. Mr. Kanahele stated that he verified the information in the Petition to Intervene to be accurate and true; and described his background and archaeological and historical and other interests in the Petition to Intervene and in the Petition Area.

Mr. Kam had no questions.

Mr. Steiner requested clarification on what cultural/historic sites that Mr. Kanahele was aware of other than what had been disclosed on the archaeological survey of the Petition Area. Mr. Kanahele responded that he was not.

Mr. Hopper, Mr. Hee and the Commissioners had no questions.

Mr. Pierce stated that he rested this portion of his case.

PETITIONER PRESENTATIONS

HONUA`ULA PARTNERS LLC.

Mr. Kam stated that he had nothing to add to his memo in opposition to the Petition and rested on his brief.

PI`ILANI PROMENADE LLCs

Mr. Steiner argued that no interest other than what had originally been indicated in the Petition had been shown and requested that the Petition to Intervene be denied.

COUNTY

Mr. Hopper stated that County had filed a statement of no opposition to the Petition to Intervene and rested on his briefing.

OP

Mr. Yee reserved the right to argue issues of relevance and stated that OP had no position on the Petition to Intervene.

Vice Chair Heller clarified how Mr. Pierce would be representing the three entities and that filings for all three entities would be combined; i.e., there would not be separate filings by each of the three. Mr. Pierce indicated that he would be the only representative for Maui Tomorrow Foundation, South Maui Citizens for Responsible Growth and Daniel Kanahele, and agreed that they would file on a combined basis.

Commissioner Inouye moved to grant the Petition to Intervene with the condition that one attorney represent all three movants in the docket and they would not separate in the first phase as Vice Chair Heller had described in the event of any disputes among them. Commissioner Biga seconded the Motion.

The Commission voted as follows:

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

Nays: None

The Motion passed 6-0 with 3 excused.

Commissioner Contrades moved to adjourn for the day.

Commissioner Biga seconded the motion.

By a unanimous voice vote (6-0), the Commission elected to adjourn for the day at 3:56 p.m.