LAND USE COMMISSION
MEETING MINUTES

October 4, 2012 – 9:30 a.m.

Marriott Courtyard Hotel,
Haleakalā Room, 532 Keolani Place,
Kahului, Maui, Hawai`i, 96732

COMMISSIONERS PRESENT:	Lance Inouye Sheldon Biga Ronald Heller Ernest Matsumura Thomas Contrades
COMMISSIONERS EXCUSED:	Napua Makua Kyle Chock Nicholas Teves, Jr. Chad McDonald
STAFF PRESENT:	Daniel Orodenker, Executive Officer 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 9:30 a.m.

APPROVAL OF MINUTES

Vice Chair Heller asked if there were any corrections or additions to the September 14, 2012 minutes. There were none. Commissioner Inouye moved to approve the minutes. Commissioner Matsumura seconded the motion. The minutes were unanimously approved by a voice vote (5-0).

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 October 19, 2012 meeting will be held in Kona, Hawai`i for Docket No. A81-525 Y-O Limited Partnership.
- The November 1-2, 2012 meeting is tentatively set to be held on Maui for Docket No. A 94-706. The Commission also is tentatively planning to return to Maui on November 15-16, and December 6-7, 2012.
- 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 to consider the reclassification of approximately 16.7 acres of land from the Agricultural District to the Urban District at Lāhainā, 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, Hawai`i , 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 Corporate Counsel, represented County of Maui Planning Department (County)
Kurt Wollenhaupt, Planner, County
William Spence, Director, 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. Vice Chair Heller stated that after public testimony, the Commission would address Ms. Bolomet's Motion to Disallow Michael Dega's testimony and then continue with the admission of exhibits and the remaining presentations for the case in chief.

Ms. Bolomet stated that there were farmers who wanted to testify but were unable to due to other activities. Vice Chair Heller replied that the public had been advised about the meeting and that the Commission would be attempting to complete the evidentiary portion of the proceedings and needed to adhere to its planned schedule. There were no further questions on the proposed procedures for the day and Vice Chair Heller called for public witnesses.

PUBLIC WITNESSES:

1. Clare Apana

   Ms. Apana stated that she wanted to clarify her opposition to the archaeological study that had been done for the proposed project and described why she felt the study was not sufficient.

   Petitioner, County, OP, and Intervenor Lincoln had no questions.

   Ms. Bolomet requested clarification on the tax map key identification for the area that Ms. Apana was concerned about. Mr. Geiger noted that the line of questioning was straying off point from the testimony presented. Vice Chair Heller requested that Ms. Bolomet focus her questioning on what Ms. Apana had testified about. Ms. Bolomet had no further questions.

Vice Chair Heller asked if the Parties had any exhibits to present. Mr. Geiger and Ms. Bolomet acknowledged that they had exhibits and could submit them during the next break to facilitate the hearing. Vice Chair Heller concurred and stated that the Commission would move on to address Ms. Bolomet's motion.

INTERVENOR ROUTH BOLOMET'S MOTION TO DISALLOW MICHAEL DEGA'S TESTIMONY

Ms. Bolomet argued why her motion to disallow Michael Dega's testimony should be granted.

Petitioner

Mr. Geiger argued why Ms. Bolomet's motion was defective and stated his reasons for opposing it.

County

Mr. Giroux stated that County joined Petitioner in opposing the Motion to Disallow Michael Dega's Incomplete Archaeological Assessment and that he had no argument.

OP

Mr. Yee stated that OP opposed Intervenor Bolomet's motion and argued why it should not be granted.

Intervenor Lincoln

Ms. Lincoln stated that she had no comment.

Rebuttal

Ms. Bolomet restated her reasons why her motion should be granted and argued why the Petitioner, County and OP memorandums in opposition should be disregarded.

Vice Chair Heller asked Ms. Bolomet if she had received Petitioner's exhibits 7 and 19 in a timely manner. Ms. Bolomet responded that she had. Vice Chair Heller stated that he had considered the motion to strike the exhibits and would not be granting it. Vice Chair Heller added that Ms. Bolomet could argue how credible Mr. Dega's testimony was during final argument on the docket and moved on to the continued hearing portion of the proceedings.

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 Lāhainā, 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, Hawai`i, TMK Nos. (2) 4-5-10:005; and requested that Intervenor Lincoln complete the remainder of her presentation/testimony.

INTERVENOR LINCOLN

Ms. Lincoln described topics that she felt the Commission should consider during its deliberations and shared her reasons for opposing the Petition and why it should be denied.

Questions for Ms. Lincoln

Petitioner

Mr. Geiger requested clarification on Ms. Lincoln's knowledge of agriculture, commitment of State funds as related to traffic and its impacts to the Petition Area and its planned open space; and affordable housing needs. Ms. Lincoln acknowledged that she was not an expert and shared her reasons for deciding to intervene and the concerns that she felt the Commission needed to consider when deliberating over the Petition.

Mr. Geiger requested clarification on Ms. Lincoln's knowledge of County Planning Department's criteria for cul-de-sac and greenway design. Ms. Lincoln shared her opinion about the proposed subdivision design and the development of the Petition Area; its local agricultural resources and commercial viability.

Mr. Geiger requested clarification on Ms. Lincoln's knowledge of commitment of State funds and levels of service for traffic in the neighborhood and park space. Ms. Lincoln shared her knowledge of the local history of the area and her concerns of how the proposed project would impact the region.

Mr. Geiger requested clarification on Ms. Lincoln's position on affordable housing. Ms. Lincoln shared her perspective of housing needs within the community and how the Maui Council had handled the proposed project at the County level to accommodate it.

Vice Chair Heller declared a recess at 10:52 a.m. and reconvened the meeting at 11:08 a.m.

Continued Petitioner Questions

Mr. Geiger requested clarification on the flood rating for the Petition Area. Ms. Lincoln provided her opinion of how the area was prone to flooding and stated her awareness of what the area's FEMA flood designations were.

Mr. Geiger had no further questions.

County

Mr. Giroux requested clarification on Ms. Lincoln's concerns about retaining open space areas in the neighborhood and on zoning and the

commercial agricultural viability of the Petition Area. Ms. Lincoln described alternative uses for the Petition Area that she envisioned and what type of zoning and ownership changes might be needed to accommodate open space and agricultural use for the Petition Area; and acknowledged the role of the County Council in determining how the area should be developed and used.

Mr. Giroux had no further questions.

OP

Mr. Yee had no questions.

Intervenor Bolomet

Ms. Bolomet requested clarification on Ms. Lincoln's understanding and perspective of various aspects of agriculture, open space, and traffic in and around the Petition Area. Ms. Lincoln shared her personal experiences of living in the area and what she felt children needed during their development for recreation; and what her participation in the community meetings regarding the proposed project had been. Discussion ensued on Ms. Bolomet's continued use of making statements or arguments instead of asking questions and creating cumulative testimony. Vice Chair Heller requested that Ms. Bolomet stop adding testimony during her questioning and remain on point. Ms. Bolomet acknowledged Vice Chair Heller's request.

Ms. Bolomet requested clarification on Ms. Lincoln's observation of the archaeological dig that Petitioner had arranged at the Petition Area. Ms. Lincoln described what she had observed.

Ms. Bolomet had no further questions.

Rebuttal

Vice Chair Heller described the procedural alternatives that Ms. Lincoln had and inquired if she had anything further to add. Ms. Lincoln responded that she did not. Discussion ensued to clarify whether Ms. Lincoln had formally rested her case. Ms. Lincoln acknowledged that she had finished her presentation.

The Commission went into recess at 11:34 a.m. and reconvened at 12:36 p.m.

Vice Chair Heller called for Intervenor Bolomet to begin her presentation.

INTERVENOR BOLOMET

Intervenor Bolomet stated that she would be calling her witnesses Michael Lee and Robin Knox to the address issues of farming, water, native Hawaiian culture, traditions and practices.

Intervenor Bolomet Witnesses

1. Robin Knox

Ms. Knox stated her qualifications and described her academic and work experience as an environmental scientist. Ms. Knox described her concerns about the proposed project and the wastewater/sewage treatment, flooding, drainage, stormwater runoff associated with it. Ms. Knox also described the difficulty in providing potable water for consumption; and the impact of pollutant discharge on the immediate and surrounding areas; and in meeting EPA and Department of Health standards and obtaining necessary permitting approvals.

Ms. Knox also provided her recommendations to address her issues of concerns for the Commission to consider while assessing the proposed project. Discussion ensued to have Ms. Bolomet focus her questions on the specific docket matters. Vice Chair Heller stated that he would allow some latitude but requested that Ms. Bolomet remain on point. Ms. Bolomet stated that she was trying to provide the Commission with information about flooding and initiated questioning about Ms. Knox's background and experience in studying the flooding caused by Hurricane Katrina.

Mr. Yee asked to voir dire Ms. Knox regarding her accomplishments and experiences during the Louisiana Hurricane Katrina flooding and Vice Chair Heller acknowledged his request. Ms. Knox described how she was involved in ecological, environmental and water quality studies and Mr. Yee stated that OP had no objection to discussion on environmental issues but did have objections to comments regarding flooding which involved a mathematical, engineering and structural analysis.

Vice Chair Heller requested that Ms. Bolomet confine her questions to the areas relevant to the Petition and urged her to refrain from making testimony instead of asking questions.

Ms. Knox shared her opinion of the Louisiana flood control structures and their effectiveness during the levee failures caused by the Katrina storm and cautioned the Commission to consider the adequacy of such structures and the need to ensure that planned protective infrastructures for the proposed project were sufficient to withstand similar natural disasters in the Petition Area.

The Commission went into recess at 1:40 p.m. and reconvened at 1:52 p.m.

Questions for Ms. Knox

Petitioner

Mr. Geiger reconfirmed the written testimony that he had received with Ms. Knox to ensure that it was the same material that had been circulated to all the Parties and requested clarification on Ms. Knox's qualifications in relation to points that she had asserted during her testimony regarding possible legislative outcomes, water quality, and infrastructure features necessary to prevent flooding and ensuring EPA and DOH standards were observed and maintained; and on what study materials that she had reviewed to prepare her comments about the Lāhainā wastewater facility; the water quality and the infrastructure necessary to supply potable water, sewage/wastewater treatment and disposal for the area. Ms. Knox described her work experience dealing with the Clean Water Act and the documents that she had reviewed prior to constructing her testimony before the Commission; her awareness of Maui County Council procedures; the Maui island climate/rainfall conditions, the existing Kahoma Stream flood control channel and its debris basin; and various other infrastructure features related to her areas of testimony.

Mr. Geiger had no further questions.

County

Mr. Giroux requested clarification on Ms. Knox's awareness of the County's consent decree. Ms. Knox shared her knowledge of how the consent decree applied to the Petition and why State and County requirements and compliance issues concerned her. Ms. Knox stated that she had not checked to see if the EPA had filed any notices of violation against the County and described the various permit approvals necessary to comply with Federal, State and County standards for water resources and their care and management.

Mr. Giroux had no further questions.

OP

Mr. Yee requested clarification on the physical capacity of the Lāhainā Wastewater Reclamation Facility and Ms. Knox's perception of

the Clean Water Act and associated environmental concerns and limitations. Ms. Knox provided her perception of the physical capacity of the plant to process wastewater and described her concerns regarding its ability to safely handle existing and future demands; and what types of mitigation measures should be adopted to satisfy the Federal, State and County concerns.

Mr. Yee had no further questions.

Intervenor Lincoln

Ms. Lincoln requested clarification on what areas the Kahoma flood channel serviced and on whether the sewage capacity for the area had been reached. Ms. Knox described how the water from rainfall would be absorbed or diverted and shared her opinion on the sewage capacity conditions currently in place and what might be needed in the future.

Rebuttal

Ms. Bolomet requested clarification on Ms. Knox's credentials in engineering. Ms. Knox described how her career field had evolved and how it required more interdisciplinary studies including engineering and other areas.

Ms. Bolomet requested clarification on the Clean Water Act and Department of Health standards and whether there had been any court rulings that pertain to water management. Discussion ensued regarding the direction of the questioning. Vice Chair Heller instructed Ms. Bolomet that the purpose of re-direct was to re-exam topics that were raised in cross-examination to clarify testimony and that it was not appropriate to raise new subjects. Ms. Bolomet re-focused her questions and requested clarification on how Federal, State and County authority related to each other. Ms. Knox responded that the Federal agency sets a standard, but subsequent agencies can have more stringent standards but cannot be less stringent than the Federal standard; and described how the County and State performed their functions and monitored water and shoreline resources. Discussion ensued regarding the cumulative nature of the testimony. Vice Chair Heller directed that Ms. Bolomet utilize questions to obtain specific and relevant information. Further discussion also ensued about Petitioner's engineering report to correct Ms. Bolomet's use of a misstated reference during her questioning.

Ms. Bolomet had no further questions.

Vice Chair Heller asked if there was any remaining recross from the Parties.

Mr. Geiger clarified that the reference to Table 1 during earlier discussions was part of the Schematic Design Report Lāhainā Wastewater Reclamation Facility, September 20, 2006, and not the CH2, M. Hill report. The other Parties had no comments.

Commissioner Questions

Commissioner Inouye requested clarification of the reference to HAR 15-15-17 used in the testimony by Ms. Knox. Discussion ensued to identify what resource Ms. Knox had used to identify the four criteria that she had commented on during her testimony. Mr. Yee stated that the reference was to Hawai`i Revised Statute (HRS) 205-17.

Commissioner Inouye also requested clarification on what "Functional Plan" had been referred to. Discussion ensued to clarify that it was the "Agricultural Function Plan" referred to during Ms. Lincoln's questioning.

Vice Chair Heller requested clarification on Ms. Knox's position on whether residential or hotel use had a greater impact on runoff pollution from an environmental viewpoint. Ms. Knox replied that lacking any data, she could not comment on it and that it would depend on how the nutrients were being managed.

The Commission went into recess at 3:20 p.m. and reconvened at 3:35 p.m.

Intervenor Bolomet Witness- Michael Lee

Mr. Lee shared his family background and upbringing; and how he gained his cultural knowledge and experience. Mr. Lee stated that he would like to amend parts of his previously submitted testimony. Discussion ensued about the filing of materials by Intervenor Bolomet past the August 1, 2012 deadline. Vice Chair Heller determined that the deadlines would be upheld and requested Intervenor Bolomet abide by them when questioning the witness; and that if the purpose of the amended testimony was to respond to the supplemental testimony from Mr. Frampton, it would not be allowed.

Vice Chair Heller clarified that he was not precluding Ms. Bolomet from going into the subject area, but that presenting it as a specific rebuttal to the supplemental testimony was not proper.

Mr. Lee made corrections to his testimony submitted on August 1, 2012 and described his awareness of the physical features of the Petition

Area that had cultural and historical significance. Mr. Lee also described various facets of his cultural practices, provided relevant Hawaiian folklore background information and translated various Hawaiian words and phrases for the Commission's benefit. Discussion ensued to clarify the document that Mr. Lee was amending and further discussion regarding the direction of Mr. Lee's testimony followed. Vice Chair Heller requested that Ms. Bolomet stay on topic. Ms. Bolomet acknowledged his request.

Ms. Bolomet requested that Mr. Lee clarify portions of Ms. Apana's testimony regarding *lo`i* terraces and *heiau* in and around the Petition Area. Mr. Lee shared more of his knowledge of Hawaiian culture and history of the region. Discussion ensued regarding the cumulative nature of Mr. Lee's testimony. Ms. Bolomet argued that Mr. Lee's testimony was necessary to demonstrate the relationship of the Hawaiian people in the region. Vice Chair Heller allowed Ms. Bolomet latitude and reminded her to remain on point. Discussion again ensued to correct Ms. Bolomet's method of questioning and the subject content of her questions.

Mr. Lee provided his understanding of the historical features of Lāhainā and how it served as the seat of Hawaiian government in the past what role agriculture had in society at that time; and how cultural practices were conducted to foster sustainability for the Hawaiian community. Discussion ensued regarding the cumulative nature of the testimony and its lack of focus on the Petition Area. Vice Chair Heller determined that the questions for Mr. Lee should concern the Petition Area and not Hawaiian history in general.

Ms. Bolomet requested further clarification on Mr. Lee's testimony regarding *heiau* and *ahu* in the area and his family lineage links to them. Mr. Lee shared his family lineage and shared his perception of the cultural value of the area.

Vice Chair Heller declared a recess at 5:03 p.m. and announced that the meeting would resume at 9:00 a.m., October 5, 2012.