

LAND USE COMMISSION
MEETING MINUTES

November 1, 2012 – 10:00 a.m.
Marriott Courtyard Hotel, Haleakalā Room
Kahului, Maui, Hawai`i, 96732

COMMISSIONERS PRESENT: Chad McDonald
Kyle Chock
Lance Inouye
Ronald Heller
Ernest Matsumura
Thomas Contrades

COMMISSIONERS EXCUSED: Napua Makua
Sheldon Biga
Nicholas Teves, Jr.

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

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Walter Mensching

CALL TO ORDER

Chair Chock called the meeting to order at 10:00 a.m.

APPROVAL OF MINUTES

Chair Chock asked if there were any corrections or additions to the October 19, 2012 minutes. There were none. Commissioner Heller moved to approve the minutes. Commissioner Matsumura seconded the motion. The minutes were unanimously approved by a voice vote (6-0).

TENTATIVE MEETING SCHEDULE

Executive Officer Orodener provided the following:

- The regular tentative meeting schedule has been distributed in the handout material for the Commissioners.
- The A09-406 Ka`ono`ulu Ranch docket continued hearings are planned for November 15-16, 2012.
- The A12-795 West Maui docket's oral arguments and decision making will be on December 6, 2012, continuation of A09-406 Ka`ono`ulu Ranch if necessary and a site visit for A12-796 Waiko Industrial Investment is planned.
- The A12-795 West Maui docket's Adoption of Order will be on January 10-11, 2013.
- The 2013 LUC calendar has been circulated and will be adopted as is.
- Any questions or conflicts, please contact LUC staff.

There were no questions or comments regarding the tentative meeting schedule.

ACTION

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

Chair Chock announced that this was a hearing and action meeting regarding Docket No. A94-706's Order to Show Cause and subsequent motions.

APPEARANCES

Joel Kam, Esq., represented Honua`ula Partners ("HP")

Jonathan Steiner, Esq., represented Pi`ilani Promenade North LLC, and Pi`ilani Promenade South LLC, ("PP")

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

Michael Hopper, Esq., Deputy Corporation Counsel, represented County
William Spence, Director, County

Jesse Souki, Director, State Office of Planning ("OP")

Rodney Funakoshi (OP)

Tom Pierce, Esq., represented Maui Tomorrow Foundation, South Maui Citizens for Responsible Growth and Daniel Kanahahele ("Intervenors")

Mark Hyde, South Maui Citizens for Responsible Growth

Irene Bowie, Maui Tomorrow Foundation

Daniel Kanahahele

Chair Chock stated that this was a hearing and action meeting regarding Docket No. A94-706's Order to Show Cause and its subsequent motions and updated the record; and explained the procedures to be followed for the proceedings. There were no questions, comments or objections to the procedures.

Chair Chock stated that the Commission would first address amending the agenda to include County's Motion to Exclude Evidence Related to the 1998 Kihei-Makena Community Plan and Determination of Scope of Review received by the Commission on October 29, 2012.

Commissioner Heller moved and Commissioner McDonald seconded the motion to amend the meeting agenda. Executive Officer Orodenerker polled the Commissioners and the Commission voted unanimously (6-0) to amend the agenda.

Chair Chock stated that the Commission would next address the County's Motion to Exclude Further Public Testimony.

County's Motion to Exclude Further Public Testimony

County

Ms. Lovell presented the Motion and argued the reasons why the County's Motion should be granted.

Petitioner PP

Mr. Steiner stated that PP joined with the County's Motion and would abide the Commission's decision in this matter and shared his concerns about further public testimony.

Petitioner HP

Mr. Kam stated that HP had nothing to add and rested on its written submissions.

OP

Mr. Souki stated that OP generally opposed the Motion and argued why it had taken this position.

Intervenors

Mr. Pierce stated that Intervenors supported allowing Public Testimony and deferred to the Commission on the matter.

Rebuttal

Ms. Lovell stated that County had no rebuttal.

Commissioners

The Commissioners had no questions.

Chair Chock determined that the County's Motion to Exclude Further Public Testimony would be denied and called for Public Witnesses.

Chair Chock advised the audience of the protocol that the Commission would follow during public testimony and how a 2 minute time limit for each witness would be observed.

PUBLIC WITNESSES

1. Patricia Ross

Ms. Ross shared her opinion on how further public input for the proposed project was needed and what her expectations were of its development process.

There were no questions for Ms. Ross.

2. Tom Kelly

Mr. Kelly submitted written testimony and voiced his concerns about the lack of public input in the proposed project and the traffic issues for the region.

There were no questions for Mr. Kelly.

3. Bill Kamai

Mr. Kamai stated that he was service representative for the Hawaii Regional Council of Carpenters and voiced why he felt the Commission should support the proposed project.

There were no questions for Mr. Kamai.

4. Ivan Lay

Mr. Lay stated that he was also a representative for the Hawaii Regional Council of Carpenters and expressed why his organization supported the proposed project.

There were no questions for Mr. Lay.

5. Christian Tackett

Mr. Tackett voiced his support for the proposed project.

There were no questions for Mr. Tackett.

6. Mike Moran (Robin Knox)-

Mr. Moran stated that he wanted to switch his testimony position with Robin Knox. Chair Chock acknowledged his request and allowed Ms. Knox to testify.

Ms. Knox shared her concerns about potential impacts that the proposed project posed to stormwater runoff, increasing impervious surfaces, jeopardizing watershed resources and other issues.

There were no questions for Ms. Knox.

7. Katherine Andrade

Ms. Andrade described why she supported the proposed project.

- There were no questions for Ms. Andrade.
8. Eric Yoshizawa
Mr. Yoshizawa shared his reasons for supporting the proposed project.
There were no questions for Mr. Yoshizawa.
 9. Mike Moran
Mr. Moran stated that he represented the Kihei Community Association and described his organization's concerns about the proposed project.
There were no questions for Mr. Moran.
 10. Esther Juan
Ms. Juan expressed her support for the proposed project.
There were no questions for Ms. Juan.
 11. Elden Liu
Mr. Liu stated that he was a descendant of the Royal Patent for the land and submitted additional testimonial materials regarding his ownership claim.
There were no questions for Mr. Liu.
 12. Robert Martin
Mr. Martin shared his concerns about the proposed project and the lack of public input for the proposed project.
There were no questions for Mr. Martin.
 13. Abel Kahooohanohano Jr.
Mr. Kahooohanohano Jr. voiced his support for the proposed project.
There were no questions for Mr. Kahooohanohano.
 14. Robert Offerman
Mr. Offerman described his concerns about the compliance issues that the proposed project seemed to have in abiding by its original decision and order.
There were no questions for Mr. Offerman.
 15. Marilyn Chapman
Ms. Chapman expressed her support for the proposed project.
There were no questions for Ms. Chapman.
 16. Tom Blackburn-Rodriguez
Mr. Blackburn-Rodriguez submitted a list of names that he had collected that stated their support for the proposed project and provided his perspective of how the region would benefit from it.
There were no questions for Mr. Blackburn-Rodriguez.
 17. Mary Jo Phillips
Ms. Phillips shared her concerns about the proposed project.
There were no questions for Ms. Phillips.
 18. Patricia Nuckolls
Ms. Nuckolls expressed her concerns about the proposed project.

There were no questions for Ms. Nuckolls.

19. Richard Emery

Mr. Emery voiced his concerns about the proposed project.

There were no questions for Mr. Emery.

20. Pamela Tumpap- Maui Chamber of Commerce

Ms. Tumpap submitted written testimony for Nelson Okumura and for herself and voiced her organization's support for the proposed project.

There were no questions for Ms. Tumpap.

21. Joan Martin

Ms. Martin submitted written testimony and shared why she supported the proposed project.

There were no questions for Ms. Martin.

22. Perry Artates

Mr. Artates stated his union affiliation and described why his organization supported the proposed project.

There were no questions for Mr. Artates.

23. Dennis Collier

Mr. Collier shared why he supported the proposed project.

There were no questions for Mr. Collier.

There were no further public witnesses. Chair Chock declared a recess at 11:25 a.m. The Commission reconvened at 11:40 a.m.

Chair Chock announced that the Commission would next address Intervenor's Pre-Hearing Motion on Burden of Proof.

Intervenor's Pre-Hearing Motion on Burden of Proof

Intervenor

Mr. Pierce stated his purpose in filing the Motion and argued why it should be granted.

Petitioners PP & HP

Mr. Steiner stated that Mr. Kam would be addressing the Motion. Mr. Kam described how the Petitioners disagreed with the Motion and argued why it should be denied since the landowners did not initiate the proceedings and how there had been no standard of proof that the Commission applied for the current proceedings on the Order to Show Cause; and that no determination had yet been made that a violation had occurred. Mr. Kam acknowledged that having the landowners making their

presentations first would enable an efficient flow of the proceedings and help the Commission to understand the context of the situation and weigh the presented evidence.

County

Ms. Lovell stated that the County joined in the opposition to the Motion.

OP

Mr. Souki stated that OP agreed with the Intervenor that the burden of proof is on the landowners and described why OP took that position.

Rebuttal

Mr. Pierce summarized his argument for the Motion and why he felt the Commission should grant it.

Commissioners

The Commissioners had no questions. Commissioner Heller commented that the suggestion of the landowners going first made sense for the order of presentations; and provided his perception of how the burden of proof would become important in the event that the evidence is very close and whether or not it was clear that a violation had occurred; and that it may not be important to make the decision on the burden of proof at this time.

There were no other comments or questions. Chair Chock determined that the Motion on the Burden of Proof would be deferred.

Intervenor's Pre-Hearing Motion in Limine Regarding Scope of Evidence

Intervenor

Mr. Pierce stated his purpose in filing the Motion and argued why it should be granted.

Petitioners PP & HP

Mr. Steiner and Mr. Kam respectively argued why the landowners opposed the Motion and why the Commission should deny it. Mr. Steiner argued why the four areas the Mr. Pierce identified in his argument were relevant to the original representations made to the Commission. Mr. Kam stated that he joined Mr. Steiner in opposing the Motion and in the reasons that were expressed by him; and emphasized that the representations made to the Commission in 1994-1995 were the crux of the proceedings and are not just what was set forth in the Decision and Order; and

provided his perspective of why the Intervenors wanted to limit the evidence in the hearing.

County

Mr. Hopper argued why the County's exhibits should be included and considered; and why the Motion should be denied. Mr. Hopper also argued why Mr. Spence should be allowed to participate in the proceedings as an expert, and why County's official notices should be considered by the Commission as well.

OP

Mr. Souki stated that OP had not filed a written response to this Motion but was orally responding to opposing it; and argued why the Motion should not be granted; why the DOT testimony and OP Exhibit 6 was relevant.

Rebuttal

Mr. Pierce argued why representations were an issue and restated his reasons why the Motion should be granted; and described the difficulties in interpreting Condition 5 of the original Decision and Order.

Commissioners

Commissioner Inouye stated that he wanted to hear the all the facts of the case and shared why being presented with all of the evidence was important to him.

Commissioner McDonald echoed Commissioner Inouye's concern about limiting evidence and shared his opinion on why hearing all the relevant evidence was necessary in his decision making and moved to deny the Motion.

Commissioner Contrades seconded the Motion.

Commissioner Heller suggested adding "denying the motion without prejudice" to clarify the motion before the Commission and provided his reasoning for adding the friendly amendment. Commissioners McDonald and Contrades accepted the friendly amendment.

There was no further discussion.

Executive Officer Orodenerker polled the Commissioners and the Commission voted unanimously (6-0) to deny the Pre-Hearing Motion *in Limine* Regarding the Scope of Evidence without prejudice.

County's Motion to Exclude Evidence Related to the 1998 Kihei-Makena Community Plan and Determination of Scope of Review

County

Mr. Hopper presented the Motion and argued the reasons why the County's Motion should be granted.

Petitioner

Mr. Steiner stated that PP and HP had joined in County's Motion for the reasons set forth in their briefs and argued why the Motion should be granted. Discussion occurred and Mr. Hopper clarified that County had identified the pages of Expert Testimony from the 1998 Community Plan that it wished to have excluded. Mr. Kam stated that he had nothing to add.

OP

Mr. Souki stated that OP had no position on the Motion.

Intervenor

Mr. Pierce argued how the County was inconsistent in its arguments regarding the Community Plan and why the Motion should be denied.

Rebuttal

Mr. Hopper argued how the zoning for the original Community Plan was in place and the specific uses of the zoning was discussed and representations were made; and that the 1998 Community Plan was not in existence yet and only in its conceptual stage; and why the Motion should be granted.

Commissioners

Commissioner Inouye restated his interest in obtaining all the evidence to weigh in his decision making and moved to deny the Motion without prejudice to objecting to the evidence as it is presented.

Commissioner McDonald seconded the Motion.

Commissioner Heller commented that having the landowners go first would allow the Commission to be in a better position to evaluate the information presented and that making a decision on this motion prematurely was not necessary. There was no further discussion.

Executive Officer Orodenker polled the Commissioners and the Commission voted unanimously (6-0) to deny the Motion to Exclude Evidence Related to the 1998 Kihei-Makena Community Plan and Determination of Scope of Review without prejudice.

Chair Chock stated that the Commission would next hear Intervenor's Motion to Take Testimony of Carla M. Flood via Telephone.

Intervenor's Motion to Take Testimony of Carla M. Flood via Telephone

Intervenor

Mr. Pierce stated his purpose in filing the Motion and argued why it should be granted.

Petitioners PP & HP

Mr. Steiner acknowledged the Commission's interest in gathering information and stated his reasons for opposing the Motion and argued why it should not be granted. Mr. Steiner requested an "offer of proof" to substantiate the need for Ms. Flood's testimony.

Mr. Kam stated that he rested on his submitted brief.

County

Ms. Lovell stated her reasons for opposing the Motion and argued why it should not be granted.

OP

Mr. Souki stated that OP had no position on this matter.

Rebuttal

Mr. Pierce argued how Ms. Flood was a material witness; why an "offer of proof" was not necessary and why her telephone testimony should be allowed.

Commissioners

Commission Heller expressed his perspective of effective cross-examination and moved to grant the Motion subject to the condition that written text of Ms. Flood's testimony be provided to all the Parties 7 days in advance of her telephone testimony to allow for the preparation of questions and exhibits (testimony to be limited to the subject matter of the written testimony). Commissioner Matsumura seconded the motion.

Commissioner Contrades shared his reasons for not supporting the Motion.

Commissioner Inouye shared his opinion about the Motion and voiced his support.

There was no further discussion.

The Commission voted on Commissioner Heller's motion to grant Intervenor's Motion subject to the condition as follows:

Yeas: Commissioners Heller, Matsumura, and Inouye

Nays: Commissioners McDonald and Contrades, Chair Chock.

Executive Officer Orodener reported a 3-3 tie. Chair Chock stated that he had the discretion to rule on Intervenors' Motion, and given the tie on Commissioner Heller's motion, Chair Chock ruled to deny Intervenors' Motion.

Chair Chock announced the Commission's plans for the remainder of the day. Mr. Pierce requested clarification on opening statement and exhibit presentation procedures. Discussion occurred on the details of exhibit presentation that Mr. Pierce was concerned about. Chair Chock provided guidance on what the Commission expected and declared a recess.

The Commission went into recess at 12:50 p.m. and reconvened at 2:05 p.m.

PRESENTATION OF EXHIBITS

Petitioner PP

Mr. Steiner offered PP's exhibits 1-11, and 13-46.

County and OP had no objections.

Mr. Pierce stated that he had no objections to PP exhibits 1-11 and objected to PP exhibits 16, 35, 36, and 38-46 till introduced (of exhibits 13-46). Discussion occurred on the nature for the objections. Mr. Pierce expressed why he objected to the exhibits. Chair Chock determined that PP exhibits 1-11 and 13-46 would be admitted with the exception of PP exhibits 16, 35, 36, and 38-46. Ms. Lovell restated the exhibits that she perceived as being admitted. Chair Chock restated that PP exhibits 16, 35, 36, and 38-46 would be deferred and the remainder of exhibits would be admitted. Mr. Steiner stated for clarification that PP Exhibits 12 had been withdrawn.

Petitioner HP

Mr. Kam offered HP's exhibits 1-3, 5-10, and 12.

County and OP had no objections.

Mr. Pierce reviewed his documents and also stated that he had no objections.

Chair Chock admitted HP's exhibits 1-3, 5-10, and 12.

County

Ms. Lovell offered County's exhibits 1-7.

Petitioners HP and PP; and OP had no objections.

Mr. Pierce stated that he objected to County exhibits 1, 4, and 7.

Chair Chock asked if Intervenor's objections were on the same basis as HP's exhibits. Mr. Pierce acknowledged that they were and Chair Chock deferred on County exhibits 1, 4, and 7; and admitted exhibits 2, 3, 5, and 6. Ms. Lovell questioned how

County could be expected to present its case when exhibit 1 was County's testimony. Chair Chock responded that an "offer of proof" could be presented when it was County's turn to make its presentation. Discussion ensued and Mr. Pierce disclosed why he objected to County's testimony. Ms. Lovell shared her concerns about County's exhibit 1 being stricken. Chair Chock stated that the Commission would defer and argue on the merits of exhibit 1 when County made its presentation. Chair Chock noted that Mr. Spence had appeared before the Commission as an expert in planning many times and the Commission could weigh and consider his testimony accordingly and requested that the proceedings move on.

OP

Mr. Souki offered OP exhibits 1-13.

Petitioners HP and PP, County and Intervenors had no objections.

Chair Chock admitted OP's exhibits 1-13.

Intervenors

Mr. Pierce offered Intervenors exhibits 1-37 and clarified how he numerically identified his expert witnesses' written testimony (I35-Mike Foley, I36-Victoria Huffman, and I37 Dick Mayer).

Mr. Steiner objected and requested deferral on Intervenors exhibits I 6, I 7, I 8, I 11, I 21, I 24, I 30 and I 35-37.

Mr. Kam stated that he joined with Mr. Steiner.

Ms. Lovell objected to Intervenors exhibits I 9, I 11, I 27, I 30, and I 34. Mr. Hopper added that in conjunction with County's Motion to Exclude the 1998 Kihei-Makena Community Plan that the County also objected to portions of Intervenors exhibits I 35 and I 37.

Mr. Steiner added that his objections to Intervenors exhibits I35 and I 37 were along the same lines as the County and stated that he withdrew his objection to I 36.

Mr. Souki stated that OP had no objections.

Chair Chock noted the objections for the record and stated that they would be dealt with when Intervenors put on their case; and restated what exhibits would be admitted without objection to the record (I 1- I 5, I 10, I 12- I 20, I 22- I 23, I 25, I 26, I 28, I 29, I 31- I 33, and I 36).

Chair Chock concluded the Exhibits portion of the proceedings and announced the order of presentations for the hearing (Landowners, County, OP and Intervenors).

PRESENTATIONS

Petitioner PP

Mr. Steiner stated PP's position and expressed how Petitioner planned to demonstrate that Conditions 5 and 15 of the original 1995 Decision and Order had not been violated and how its proposed project would substantially comply with the representations made by it; and how the island economy and nearby communities would benefit during and after its construction.

Petitioner HP

Mr. Kam stated that HP was not in violation with the 1995 Decision and Order since it had not done anything yet and described how HP had only considered alternatives regarding its portion of the Petition Area and not acted on them. Mr. Kam also voiced why the Commission should find that there had been no violation.

County

Mr. Hopper described the circumstances that he felt were confronting the Parties involved in determining whether the conditions for the 1995 Decision and Order had been violated; and why the County held the position that no violation of the order had occurred and how the proposed project conformed to its M1 zoning and designated land uses; and how the County intended to demonstrate to the Commission how the representations made in the past still applied to the current proposed project.

OP

Mr. Souki stated the reasons why OP felt that the current proposed project substantially differed from what had originally been approved by the Commission for the Petition Area and described what OP's expectations of the hearings outcome were.

Intervenors

Mr. Pierce attempted to exhibit and compare enlarged representations of the original and current proposals (PP exhibits 1 and PP 31) for the Petition Area. Discussion ensued to determine what exhibit reference numbers applied to each exhibit. Ms. Lovell asserted that the exhibits were not accurate. Mr. Steiner indicated how his exhibit differed from what was displayed. Further discussion ensued till the Parties were able to agree on what conditions the displayed exhibits could be used in Mr. Pierce's presentation.

Mr. Pierce stated the reasons why the Intervenors had taken a stance against the current proposed project and referred to his displayed exhibits to show how it had changed from its original plan and described why Intervenors felt that the landowners should have sought to amend the original Petition to reflect the proposed changes and how Intervenors would demonstrate that conditions 1, 5, 15 and 17 of the original 1995

decision and order had been violated; and how PP and HP were not in substantial compliance with them.

Chair Chock asked if the Commissioners had any questions for the Parties before the start of presentations. There were none.

PRESENTATIONS

Petitioner PP

Mr. Steiner offered Martin Luna to the Commission as a witness. Mr. Pierce requested an “offer of proof” for Mr. Luna’s appearance. Discussion ensued to clarify why Mr. Luna was appearing before the Commission. Chair Chock noted Mr. Pierce’s objection and allowed Mr. Luna testimony.

1. Martin Luna

Mr. Luna described his involvement with the 1995 decision and order and shared his recollection of the considerations involved in the crafting of the original Petition; and how the market feasibility study was used by the Petitioner to make its representations to the Commission at that time. Discussion occurred during this portion of Mr. Luna’s testimony regarding how the transcripts of the past proceedings already captured what had happened. Chair Chock requested that the proceedings move on.

Mr. Luna continued to describe the various other aspects of the past proceedings that were involved in developing Petitioner’s position and representations to the Commission regarding proposed retail and other uses for the Petition Area parcels. Mr. Luna summarized the conceptual aspects that were part of his representations and described how no definite plans were included. Discussion occurred regarding how the transcripts were being interpreted. Chair Chock noted Mr. Pierce’s comments. Mr. Luna continued his recollection of what Commissioner Kajioka’s concerns about Petition Area land uses were during the 1995 proceedings.

Chair Chock declared a recess at 3:25 p.m.

The Commission reconvened at 3:45 p.m. (Commissioner Matsumura returned at 3:48 p.m.)

Mr. Luna resumed his testimony and his recollections about the discussions that occurred during the original proceedings. Mr. Pierce restated his objection on how the past transcripts already captured the discussions. Chair Chock noted Mr. Pierce’s objection.

Discussion also occurred regarding Mr. Luna’s testimony and how it conflicted with the “offer of proof” given at the onset of his appearance. Mr. Steiner described what the intent of his questioning was. Chair Chock stated that he noted Mr.

Pierce's continued objection and allowed Mr. Luna to continue. Mr. Luna described his understanding of what the term "light industrial use" meant as related to the zoning code and within the planning community; and how it was applied by Maui County planning.

Questions for Mr. Luna
Petitioner HP

Mr. Kam requested clarification on what type of permitted uses were proposed for the Petition Area during the original proceedings. Mr. Luna provided his recollection on the discussions involving future permitted uses in the Petition Area.

Mr. Kam had no further questions.

County

Ms. Lovell stated that she had no cross examination for the witness.

OP

Mr. Souki requested clarification on the context of the original proceedings and why the various Petitioner Exhibits (2, 3, and 6) depicted representations which were not the same representations made in the current proposed project. Discussion occurred regarding the form of the questions being used. Mr. Souki acknowledged the comment and rephrased his questions. Mr. Luna provided his recollection of the circumstances surrounding the original conceptual plan for the proposed project.

Mr. Souki continued his questioning regarding the discussions that occurred during the original Petition proceedings. Discussion occurred regarding how the transcript was being read. Chair Chock determined that the questioning was appropriate and stated that the transcript was before the Commission. Mr. Luna provided his recollection of how much commercial development was proposed within the Petition Area. Discussion reoccurred regarding the transcripts. Ms. Lovell noted that the transcripts were not complete. Mr. Steiner shared his rationale for submitting the portions of testimony that he had as exhibits. Chair Chock asked why the County had not objected to Petitioner's Exhibits of the transcript. Ms. Lovell stated how the transcript was not inclusive of all the discussions that had occurred at the original proceedings. Further discussion occurred and Mr. Souki stated that he would move on.

Mr. Souki requested clarification on County's responses to 1994-1995 Commission questions regarding the large number of uses permitted by "light industrial" use. Mr. Luna read the portions of the transcript that involved the exchange of questions and described how the County would address the types of uses planned for the Petition Area. Discussion occurred over whether the 2012 Commission could rely on the County's past testimony and whether it was relevant

to what was currently being represented to the Commission; and to the context and relevancy by which it would be received. Chair Chock agreed that the Commission should be familiar with the County's past representations and allowed the questioning to continue.

Mr. Souki requested clarification on the apartment zoning proposed for the Petition Area. Mr. Luna provided his perspective of how the County's responded to questions about that issue and concluded his questioning.

Intervenors

Mr. Pierce requested that the Parties be permitted to rely upon and use the entire transcript in their final arguments and in preparing their Findings of Fact, Conclusions of Law and Decision and Order; and that it get incorporated into the record. Chair Chock responded that the Commission would take notice of the request.

Mr. Pierce requested clarification on Mr. Luna's perception of what obtaining M1 zoning approval allowed the Petitioner to do in developing the Petition Area. Mr. Luna described the various types of uses that he thought the Petitioner was entitled to after obtaining the County's B1, B2, and B3 permitted zoning uses within the M1 category.

Mr. Pierce requested clarification on whether the original representations included the types of residential and retail types of facilities like those included in the current proposed project; and what legal services Mr. Luna had performed for Petitioner Ka'ono'ulu Ranch as the proceedings for the docket concluded. Mr. Luna responded that the past representations of the proposed project did not include the types of facilities that were currently being depicted for the Petition Area; and described what his duties to the Petitioner consisted of when the proceedings concluded; and how he had ensured that the conditions in the decision and order had been recorded to put every landowner thereafter on notice about them.

Rebuttal

Mr. Steiner requested clarification on who Mr. Miskae was speaking for in the transcript and whether limits on the amount of retail were imposed. Mr. Luna replied that Mr. Miskae was representing the Maui County Planning Department and that the Commission, at that time, left it up to the County to make the final determination on the retail limiting issue.

Commissioner Questions

Commissioner Heller requested clarification on what the permitted uses under M1 industrial were and what the past two Amendments to the Petition for the

proposed project addressed. Mr. Luna provided details of how apartment zoning was allowed by M1 zoning and how the planning department and the County interpreted its allowance despite confusion in how the stated permitted uses were worded and stated that he could not recall what the specifics of the two amendments were.

Commissioner Inouye requested clarification on how Mr. Luna perceived the Commission's latitude on the imposed conditions after a Petition had been granted. Mr. Luna shared his opinion of how various different uses would be considered by the Petitioner without undermining the entitlement process and how detailed plans needed to be obtained in a district boundary amendment; and what role that conceptual plans had in the process; and whether the Commission should establish limits within its conditions over issues of concern.

There were no further questions for Mr. Luna.

Chair Chock described the meeting scheduling plans for November 2, 2012 and stated that the Commission would begin its meeting at 9 a.m.

Mr. Souki stated that he had discussed taking two witnesses out of order with the Parties and there had been no objections to his request. Chair Chock confirmed with the Parties that they had approved to the witnesses being taken out of order and acknowledged that he concurred with having the OP witnesses appear out of sequence. Discussion occurred over the length of the presentations and there were no further comments or questions.

Commissioner Inouye moved and Commissioner Heller seconded the motion to adjourn for the day. By a unanimous voice vote (6-0), the Commission voted to recess until November 2, 2012.