

**MAUI PLANNING COMMISSION  
REGULAR MINUTES  
AUGUST 24, 2010**

**A. CALL TO ORDER**

The regular meeting of the Maui Planning Commission was called to order by Chairperson Jonathan Starr at approximately 9:04 a.m., Tuesday, August 24, 2010, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

Mr. Jonathan Starr: Welcome, it's August 24, 2010. This is the Maui Planning Commission. We have with us, a few commissioners will be late but we do have Commissioner Jack Freitas, Commissioner Orlando Tagorda. We have James Giroux, sea captain and noted Corp. Counsel our lawyer. I'm Jonathan Starr. I'm the Chair. We have the Director of the Department of Planning, Kathleen Aoki here today glad to have her and Warren Shibuya our Commissioner, our Commissioner Penny Wakida and also Carolyn Takayama-Corden, our secretary for the commission. Mike Miyamoto Deputy Director of Public Works. We have Director Emeritus Jeffrey Hunt one of our staff planners and we'll have other people, Clayton Yoshida who's keeping the Current Division on track around here somewhere.

We will start out as we always do with public testimony. The public is invited and more than welcome to give testimony on any agenda item. They can either give it at the beginning of the meeting or during the meeting when we're discussing the item but before we do decision making. So if any members of the public, we do have a few signed up. We'll start with our sign ups and anyone else wishing to testify can come after them. Leslie Bruce will be our first testifier followed by Irene Bowie. Welcome Ms. Bruce and thank you for I believe driving in from Hana.

The following individuals testified at the beginning of the meeting:

Ms. Leslie Bruce - Item E-1, Department of Environmental Management, Hana Landfill, SMA  
Ms. Irene Bowie - Item E-1, Department of Environmental Management, Hana Landfill, SMA

Their testimony can be found under the item on which they testified on.

Mr. Starr: Any other members of the public wishing to testify on any agenda item please make yourself known. Not seeing any initial public testimony portion of the meeting is now closed. We have a slight change of procedure where we're going to take the first part of the Director's Report first and I'll turn it over to Director Aoki to just introduce the item.

Ms. Aoki: Thank you Chair. The Director's Report as we've provided to you in the past we have the EA/EIS Report, SMA Minor Permit Report and the SMA Exemption Report. I thought I saw a handout to you folks that provided some information on some of the questions you had on Shaw Street, a permit on Shaw Street and also a MECO permit and items that were called into us prior to the August 20<sup>th</sup> meeting on an SMX for Paul Laub in Lahaina. So in addition to that if any members have questions on these reports we will try to get the planners if they're available and can get back to you some time today with your answers. If not, it would be at the next meeting.

**B. DIRECTOR'S REPORT**

**1. EA/EIS Report**

**2. SMA Minor Permit Report**

**3. SMA Exemptions Report**

Mr. Starr: So do any members have any questions or concerns regarding anything listed on these sheets including the minor, SMA Minor and SMA Exemptions that have been published? Commissioner Shibuya.

Mr. Shibuya: Just a question here. Earlier this year I asked the question was destruction and removal of a old columbarium at a church in Lahaina and now I see one of the issues to build a columbarium and perhaps are these within a historical district of Lahaina and if so, how do we address this historical aspects of demolishing a structure and then building something brand new?

Mr. Starr: I believe that planner – project is that okay director to explain.

Ms. Aoki: Can we have Clayton answer?

Mr. Clayton Yoshida: Mr. Chairman, Members of the Commission that property is located within the Historic District so it required both an SMA and a Historic District Approval and Erin Wade our small planner processed the Historic District Approval and the SMA and she worked with the architect for the project, Tom Cannon, on it.

Ms. Aoki: If I could add just so we share this with the Commission, the Historic District Approval has to go before the CRC. So the demolition of the project has to get their approval. So they would be the body to review that permit.

Mr. Shibuya: Thank you.

Mr. Starr: Commissioner Shibuya, anything further on that?

Mr. Shibuya: No. I don't know the process I guess on the – how do you process changes or structural changes to the Historical District.

Mr. Starr: Okay, any other questions or concerns or information wanted on any of these? Commissioner Wakida.

Ms. Wakida: You advised us at our last meeting that if we had questions on this, not this one but the new one that we emailed it in. You still want that procedure?

Ms. Aoki: Yes please.

Mr. Starr: It would be preferable but we don't want to make it so that if –

Ms. Wakida: No, it's okay.

Mr. Starr: I have one question which is just, I guess, how come there's on it looks like a Molokai

one, on Kaluakoi drainage ditch. Is there – do they get a similar list as this and?

Mr. Yoshida: Yeah, I guess all of the SMA Exemptions are coded SM5. So when they pull out the listing it pulls out all SM5, all SMA Exemptions. But this was dealt with by the Molokai Planning Commission.

Mr. Starr: Okay, so it is under their purview and they will see this and they can deal with it if they want.

Mr. Yoshida: Yes, they have dealt with it.

Mr. Starr: Okay good. We'll come back at the end of the meeting for – yeah, we'll come back at the end of the meeting for an acceptance of all of these. Commissioner Mardfin, did you have any questions on the report that you want to try to be answered before the end of the meeting?

Mr. Mardfin: No questions.

Mr. Starr: Okay, very good. Lets move along. Our first item will be introduced by the Director.

Ms. Aoki: Thank you Chair. Mr. Douglas Poseley requesting comments on the Draft Environmental Assessment prepared in support of the Community Plan Amendment from Park to Agriculture for property situated near Milepost 15 Honoapiilani Highway at TMK 4-8-003:047, Olowalu, Island of Maui. The planner for this project is Jeffrey Hunt. The accepting authority for the Environmental Assessment is the Maui Planning Commission and the trigger for this EA is a community plan amendment and with that I'll turn it over to Mr. Hunt.

## **C. NEW BUSINESS**

- 1. MR. DOUGLAS POSELEY requesting comments on the Draft Environmental Assessment prepared in support of the Community Plan Amendment from Park to Agriculture for property situated near Milepost 15 Honoapiilani Highway at TMK: 4-8-003: 047, Olowalu, Island of Maui (EA 2010/0004) (J. Hunt)**

**The accepting authority for the Environmental Assessment is the Maui Planning Commission.**

**The EA trigger is the Community Plan Amendment.**

**The project needs a Community Plan Amendment (CPA) and a Change in Zoning (CIZ). The public hearing on the CPA and CIZ applications will be conducted by the Maui Planning Commission after the Chapter 343 process has been completed.**

Mr. Jeff Hunt: Thank you Director and good morning. The process before you involves a property within the SMA and so for a little bit of background the SMA requires an assessment before performed. Your SMA rules require that there be consistency between the General Plan,

community plan and zoning. So the department cannot process the assessment for this proposal because of this inconsistency that exists on this property. The proposal is for a single family dwelling. So the proposal, the applicant is proposing that the community plan be amended and also the zoning be amended so that they would be consistent with the State Agricultural designation and therefore, we could process the SMA Assessment and eventually the single family dwelling.

As was noted the Community Plan Amendment is a trigger under your state law which is commonly referred to as HRS 343 or your Environmental Protection Law. That's a trigger for an environmental assessment and that's the item before you today is the environmental assessment. The SMA Assessment, the department will handle that in the future. The actual community plan amendment and the change in zoning those will require review by the commission and recommendation to the Council and that will be at a future date.

So the specifics of the proposal is the community plan amendment would be from Park right now it's Park for that property to Agriculture. The change in zoning would be from A-2 Apartment to Agriculture and again, we also need a Special Management Assessment.

The time line that's current is that the OEQC did a publication for the DEA on August 8<sup>th</sup> and that triggered the 30-day comment period which ends on September 7<sup>th</sup> of next month. The department has reviewed the EA, the Draft Environmental Assessment and we find that it meets the requirements for a Draft Environmental Assessment. So the action that is before the commission today is one, is to concur with the department on filing the Draft Environmental Assessment that it meets the requirements for a DEA and also the anticipated Finding of No Significant Impact, a so-called FONSI.

The applicant and the department are also requesting comments on the DEA by the commission. This is your opportunity to review the DEA and ask for additional information. We would remind the commission that the action before you is not to comment on the merits of the proposal but to comment on the adequacy of the information in the DEA. Does the DEA need additional information, is there information that's not in the DEA, is there some issue that you believe should be addressed in the DEA and then again, we'll come back at a future date for the community plan amendment and the change in zoning.

Once the comments on the DEA are – once the comment period is over we will work with the applicant and bring back the final EA sometimes called a preliminary FEA because it's not final until it's actually accepted. We will work with the applicant and bring that back to you. So you'll see the final EA once more or you'll see the EA once more in the final state.

This property is a little bit interesting because it is community planned park. Essentially the Planning Department does not believe that a single family dwelling is consistent with a park designation. It would be awkward to say the least to put a single family home in the middle of a park. It might give a new meaning to the term home run I suppose but it just doesn't seem consistent of a park for community purposes. On the other hand, there's concerns of well, we need more parks. The planning documents that we have at this point show that the parcel itself is not indicated in the long terms plans for the Pali to Puamana Plan or the Maui Island Plan. When we talked to Land Preservation Organizations such as the Maui Coastal Land Trust they speak to bang

for the buck or getting the most for your money. They don't believe it makes a lot of economic sense to try and purchase small pieces of land. They look for bigger of pieces of land that have more acreage and therefore more value for the public. So given all that, essentially if we don't approve a community plan amendment, eventually the county will essentially have to buy the property. Those are the two options but that's coming down the road. Again, what's before you today is an environmental document, informational document and if there's additional information that you want in that document you should ask the applicant to be sure and include that information in this document. And unless there's questions for me, I'll turn it over to the applicant and has a brief presentation.

Mr. Starr: Thank you for your explanation. How long will their presentation be?

Mr. Hunt: It's pretty quick about eight slides I believe.

Mr. Starr: Give me a maximum minutes.

Mr. Hunt: Five minutes. Five or ten.

Mr. Starr: Yeah, that's certainly fine. Any questions for Jeff Hunt before we go to the applicant? Not seeing any, take it way Mr. Applicant.

Mr. Rory Frampton: Thank you Planning Commissioners. My name is Rory Frampton. I'm here representing Mr. Doug Poseley who's here today. Mr. Poseley's a long time Lahaina resident and business owner. I just want to go over a few things. I want to thank Jeff for giving a good introduction to the request and where we are.

So I'll just go over the location, a little bit of background information, what the amendments are and the concept plans. So the property is located in Olowalu just to the west of Hekili Point. On the this map the Olowalu General Store is here and directly makai of the Olowalu Store is the Old Olowalu wharf. So we're just to the east or the Maalaea side of the wharf. This shows the area, here's the wharf again and the General Store is about here and the main entry to Olowalu on the makai side is right opposite the store. This parcel, the subject parcel is parcel 47. It's one of three old land commission awards along the shoreline. You get to the parcel through an easement over this larger parcel which is parcel 84. The subject parcel 47 is separated, it's not shoreline frontage, there's a bit – well, a 100-foot wide government beach reserve that fronts the shoreline and then a portion of Lot 84 fronts the property as well although the applicant does have an easement over this portion of Lot 84 for landscape and access purposes but it is separated from the ocean by that government beach reserve.

This is a aerial photo from 2007 and this triangular shaped parcel is the portion of the property where the house will be located. You can see remnants of the old sugar cane road in this vicinity and that essentially demarcates the boundary between the state conservation area which is makai and the state agricultural area which is everything mauka. This is a photo from 1997 which shows that agricultural road and that was the road that the state based their demarcation for their boundary between conservation and the ag district. So the house site is in former sugar cane fields directly mauka of the conservation district.

The park designation starts at this property and goes towards the Maalaea direction and encompasses what was formerly known as Camp Pecusa now it's Camp Olowalu. When the community plan was adopted in the mid-'90's there was language inserted in the plan that talked about the development of a public beach park at Olowalu near Camp Pecusa for camping and ocean recreational and educational activities and it said, "the final boundaries of this park shall be determined in consultation with the landowner." So at the time that the community plan was adopted there was – they did envision that there would be some adjustments of these park boundaries and that there – I guess I brought that up because there's not really any important magic lines or markers, they didn't base it off of, you know, any particular landmarks but they just said they wanted a general – a park in that area for camping and recreational purposes.

As Jeff mentioned that could take place in using that larger parcel that surrounds this LCA. I would also remind this commission or some of the commission members who were here when they were considering the Maui Island Plan Mr. Poseley did come before you and presented his case and his situation and I believe what came out of this commission as well as in the department's latest version of the Maui Island Plan, the latest version does not include this parcel in the park designated area but the park actually surround it or surrounds it on the west side but it has been removed from the park designated area in the Maui Island Plan, and again, that was recommended by this commission as well as the Planning Department.

So as Jeff mentioned, the community plan would go from Park to Agricultural, the change in zoning would be from A-2 Apartment to Agricultural and I just want to add in the draft EA we used the term A-3 Apartment. On the maps it actually shows A-3. Those maps were adopted in 19– I believe, either 59 or 1960 and the county subsequently abolished the A-3 zone and they said anything on the maps that say A-3 automatically goes to A-2. So that's a correction that we'll be making throughout the documents to make sure that we reference the zoning as A-2. That's just a technicality.

The State Land Use Designation will remain as Agricultural and Conservation so it will remain split zoned. So the community plan amendment and the change in zoning that we're referring to is occurring in the State Agricultural District and this is a close up of the parcel. So here's the subject parcel, there's the ag conservation line that run right through the piece. The proposed house site will stay in the Agricultural District and that's where the community plan amendment and the change in zoning would be affected. Everything makai of this conservation line would stay conservation and I'll show you the proposed improvements.

This shows two parcels, the abutting parcel that also is planned for a house, but on this parcel, the house is situated in the Agricultural District. There's a retention pond and planting scheme proposed for the area in the Conservation District which will require subsequent approval from the Department of Land and Natural Resources.

This shows the planting plan and a retention basin located on the property within the Conservation District and the idea is to capture the runoff from the property and not let it go directly into the ocean and that – the capacity of that retention basin will be able to handle the – all the runoff generated from the property.

So in the EA contents itself you know we have the standard requirements and I won't go over all those in detail but I'll conclude my presentation and see if there's any questions by the commission or comments.

Mr. Starr: Thank you. Members, questions? I'm going to lead off with one. What are the blue areas in the last photo?

Mr. Frampton: The blue areas are water features. So in the front of the house in there's a little pool and in the back there are water features. The house is being designed with kind of courtyards and they may be water features or ponds. They might be dry beds for planting and that kind of stuff, but in this photo the – so the pool is in the front and then the water features are basically the house – at the entry to the house and in between two of the wings.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: Yeah, keeping that up, you said the house was going to be in the Agricultural zone. It looks like the retention basin is in the Conservation zone.

Mr. Frampton: Correct.

Mr. Mardfin: Couldn't put the Conservation zone in the Ag zone?

Mr. Frampton: No, the retention basin itself is going to be – it's about 18 inches deep. It's a big area encompassing a 100 x 30 so about 3,000 square feet. So it's meant to kind of blend into the yard. It basically be a sculpted yard. If you imagine over a hundred feet, it's going to drop about that much.

Mr. Mardfin: But you'll do excavation in the Conservation zone?

Mr. Frampton: Minor excavation yes. It will be more sculpting and shaping of the area to retain the water. Again, it's 18 inches, 18 inches deep.

Mr. Starr: Commissioner Shibuya.

Mr. Shibuya: Rory, can you tell us where the leach field is for the septic system. Is it in the Conservation area too?

Mr. Frampton: No. It's back at the side of the property.

Mr. Shibuya: Show me again.

Mr. Frampton: It's in this area right here.

Mr. Shibuya: Okay.

Mr. Frampton: On the side of the house and I will add that the – there is no sewer or wastewater

collection system in the area so there'll have to be an individual wastewater system but we're going to incorporate a higher standard system which would include aerobic treatment so that the effluent is treated to a greater extent than your standard individual wastewater system.

Mr. Shibuya: I understand.

Mr. Starr: Commissioner Sablas.

Ms. Sablas: Hi Rory. What is the proximity to the camp site for the former Camp Pecusa?

Mr. Frampton: The camp site is in this area and it extends down the, you know, coast but not all the way to Hekili Point. The house is here, I want to say if that's 200 – the property is going to be 200 feet back from the ocean. So if that's 200 feet we're probably looking at least 400 to 500 feet. That's a rough estimate.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: Can you show me on that map, it's a good photo to do it on where the reefs are because I remember when we were doing the Maui Island Plan we were extremely concerned about the reefs in the Olowalu area and I want to know on this –

Mr. Frampton: I want to have a bigger area –

Mr. Mardfin: Okay.

Mr. Frampton: Because the reefs are substantial in this vicinity and they would extend, I mean there's offshore reefs running along the entire shoreline and they don't stop until you're near where that popular surf spot is. You know the reefs offshore extend long the entire –

Mr. Mardfin: Now can you go back to that photo and show me the same thing. I recognize it won't be as extensive.

Mr. Frampton: Well, this photo – this area here are just the shallow reef flats and the real high quality reefs are outside of this area here. So it would be more – it would be extending off this photo and it gets a little – the real high quality areas do get closer to the shoreline near where they call Milemarker 14 but I'd say this whole area is either reef flat or very high quality reef right offshore.

Mr. Starr: I spent several hundred days spear fishing in that waters in the '70's, '80's and '90's and the really high quality reefs are right offshore at this location.

Mr. Frampton: The location of this property is right here and between here and the actual – where the surf break is you know, on low tide you'll probably have about a foot and a half of water.

Mr. Starr: Yeah, it's shallow but right off there is an area called turtle park which is probably the most densely populated area of turtles right around where that break is. Anyway questions



members? Commissioner Wakida.

Ms. Wakida: Yes, I would like a little more information on the history of this property. It's part a subdivision right?

Mr. Frampton: Well not really no. I'll give you the history of the parcel. Technically there was a subdivision in the area but that subdivision did not create these parcels. These three parcels were land commission awards that were granted as part of the Mahele in 1850 and there were homesites back in 1850. So during the Kingdom of Hawaii and they were subsequently purchased – they went through a few transactions and then were acquired by the Olowalu Sugar Company I want to say in around the 1880's, 1888, somewhere in that vicinity and since then it's been owned by the sugar companies and then it was purchased by the people who purchased Olowalu, but those three parcels had existed for that long. When around 2000 there was consolidation and resubdivision in the area which affected the mauka boundaries of these parcels and what they did, it affected more of 45 and 46. There was a lot line adjustment where the back boundary of the parcel was actually moved more makai so that it would more closely approximate the State Conservation line. So there – because those other two parcels were split zoned, they were trying to adjust the boundaries so that it would match up with the State Conservation line. This parcel was reduced from .588 acres to .544 acres. So there was a slight reduction in the size and it mainly had to do with the boundary adjustment on these two parcels which affected the boundary on Parcel 47. So technically yes, it was part of a consolidation and resubdivision which adjusted the lot line but the parcels themselves originated in 1850.

Ms. Wakida: You mean this half-acre parcel has stated intact that size since 1850?

Mr. Frampton: Yes. Except for the minor reduction in size that occurred in 2000 that I explained.

Mr. Starr: Please step to the microphone if you want to speak and introduce yourself.

Mr. Doug Poseley: I was just going to say that –

Mr. Starr: Please introduce yourself for the record.

Mr. Poseley: Oh sorry, my name's Doug Poseley, the applicant.

Mr. Starr: Thank you.

Mr. Poseley: Parcel 44 is the parcel that Michael Moore owns and has a house on. Parcel 45 is a parcel that Jim Riley owns and has a building permit for and Parcel 46 is a parcel that Peter Martin owns and is trying to get a community plan amendment for also. So that's what's happening to those four parcels. Thank you very much.

Mr. Starr: Members? Commissioner Hiranaga.

Mr. Hiranaga: Just a follow up to Commissioner Wakida's question regarding the origination of those parcels. Rory you can explain how you look at those tax map key number, 45, 46, 47 and

it seems odd that they're high because typically lots that existed for a long time usually have lower numbers but in the past the Real Property Tax Division used to not assign tax map key numbers to LCAs for record keeping purposes streamlining their record keeping purposes. The owners probably did some type of a process requesting that these TMKs be established for these LCAs. Again, the LCAs did exist from the Great Mahele but people tend to look at real property tax map key numbers as something of official nature but actually it's just for real property tax purposes for collection and identification. It doesn't really merit that something exists or does not exist.

Mr. Frampton: Correct. And typically if a large landowner owned a big parcel and there were multiple LCAs within that larger parcel it would not have assigned a separate tax map key number to all those individual

So when you have one landowner a lot of times they don't separate it out and I would assume although I don't know in particular I wasn't involved with it but I assume that the explanation you gave for the later numbers was correct that there was a request by the landowner to put TMK numbers on those historic parcels.

Mr. Hiranaga: So you may want to explore that.

Mr. Starr: Okay, Commissioner Wakida, then Commissioner Mardfin.

Ms. Wakida: You talk about your cultural assessment in here but you didn't include any information on that report. I wonder if we could see that.

Mr. Frampton: We could include more information. Thank you.

Mr. Starr: Yeah, we'll be taking comments later so, please hold all these thoughts until we get to the comment period and then we'll add them as comments. Commissioner Mardfin.

Mr. Mardfin: I want to follow up on Commissioner Hiranaga's suggestion and the answers I heard. Are you telling me that this – for tax purposes this might have been all combined into one lot and thereby get – what I can see happening, excuse me of the way I'm saying this, but the way a small lot might have a minimum tax, you could be avoiding the minimum taxes by sticking it all into one larger one. Is that possible?

Mr. Frampton: That could be possible and that would have been done historically, and it's usually the practice of the tax department that would – they would be the ones responsible for consolidating parcels into one tax map key number. What I'll do is I'll find out exactly what happened and the dates of when it happened and I can include that in the final assessment.

Mr. Mardfin: Because that could have saved – I don't know what the value of these are but that could have saved considerable minimum real property tax payments.

Mr. Frampton: And that could have for the prior owner which was the sugar company and when this land was all in agricultural that may indeed have been what happened, but since the new owners have taken ownership of the area, these parcels have been recognized as separate TMKs. So

since around the late 1990's, early 2000.

Mr. Starr: Commissioner Tagorda.

Mr. Tagorda: Good morning. Let me ask you something about permit, obtaining permit and approvals. I know you going into a lengthy process of going through this, obtaining all this permit, this permit approvals are basic sequential in nature that if one permit you don't obtain the project for the proposed property won't go through.

Mr. Frampton: That is correct. This environmental assessment is being done in support of a community plan amendment which needs to occur prior to issuance of the SMA either permit or exemption as Jeff explained earlier and it's really – you know unfortunately the burden is on the applicant to come in and correct these maps to line them up so that they're consistent but the applicant is doing so. He needs to do that community plan amendment first before he can go in and ask for the SMA approval.

Mr. Tagorda: Would you give us some kind of time line when this request to obtain permit on this different agencies will involve like going to DLNR, going to Maui County Council, going to Maui Planning.

Mr. Frampton: Well, the community plan amendment that we're going through now they can take, now days they take anywhere from a one-year to two years. It depends on the complexity of the project. We've turned this application in a couple of months ago but we're moving I would say quite expeditiously. I mean we're moving through, I wouldn't fast but it's been moving along quite well and so I expect that we could do this community plan amendment in under a years time if all goes well. Then we would need to do the SMA – so lets just say it's going take a year for the community plan amendment. The conservation district use permit which would be for the landscaping and the uses in the conservation area as well as the assessment might take another three months, three or four months and then he would turn in his construction plans for his building permit which could take another three or four months. We're probably looking at you know, somewhere around a year and a half to two years, but this project has been – we only submitted it this year. Mr. Poseley purchased it almost five years ago and at the time was going to do a community plan amendment but then was held up while the Planning Department was doing the update of the Island Plan and there was a policy by the Planning Department that where they would not accept community plan amendments and this project actually has been going kind of been bouncing in and out of the county for several years now, but I think we're on track now – with the recent actions by this body, the planning commission as well as the recent update of the Maui Island Plan, and the applicant's desire to be consistent with those requests mainly by seeking agricultural instead of rural for the property once we've made that – kind of if you will break through, the project has been moving along.

Mr. Tagorda: Thank you. The reason why I ask this process is it's kind of little bit – the way I look at it is it's going to really take you a long time to get all this permit and approval. However, I really like to before I ask for more information because going over your draft EA there's so many – it's very limited information I have. So before I ask you all that information I think you have to go think whether you can accomplish getting all this permit and approval. No, it's a comment coming from

this. Thank you.

Mr. Starr: Members? Commissioner Wakida then Commissioner Shibuya.

Ms. Wakida: Thank you. As you know I'm sort of the new kid on the block so I need a little more education. Can you please explain to me about the easement, what is the purpose of the easement, why is there an easement?

Mr. Frampton: Okay, the easement G is located on the portion of Lot 84 that fronts the property. So if you look at it, it almost looks like a dogleg that comes right up and fronts parcel 47. The owners of Lot 84 realized that they don't really have any practical use for that property and that it really, you know, if a house were to be built on parcel 47 it would be kind of like parcel 47's front yard. So when the property was purchased by Mr. Poseley, the owners of Lot 84A who were also at the time were the owners of 47 they granted an easement so that he could use that front portion of the property, that remnant strip if you will that really for all practical purposes is unusable for Lot 84 because of its width and dimensions. So they said, hey that remnant piece of land that's in front of you between the government beach reserve and your property we're going to let you use it for landscaping and access purposes. So essentially the owners of Lot 47 have the right to use that strip of land, that portion of Lot 84.

Ms. Wakida: And while you have that map up, there's a road that comes down accesses Camp Pecusa, the old camp it goes right.

Mr. Frampton: This way, yes.

Ms. Wakida: And where does that road end?

Mr. Frampton: I'll go to the aerial photo. The road comes into Camp Pecusa and it ends – as a road it ends right in Camp Pecusa but it sort of – it maintains itself as a foot trail and so that's kind of the way – there is a government beach reserve and it brings up a good point which I didn't go over which was coastal access. Along the entire frontage of this Olowalu land there's a government beach reserve that runs almost the entire length from one end to the other and the only – there's two spots where the government beach reserve doesn't exist but they have since created easements. So there's a public right of access along the entire shoreline frontage. Unfortunately right now the growth of kiawe trees it's just mainly right here along Hekili Point. This kiawe trees that are state land really prevents people from accessing the shoreline in that area. You'd have to get out in the water to avoid those kiawe trees. So as part of the applicant's or the actions we've talked with the state land agent and we've said, when this house goes in basically the way people go now which is they can go along the shoreline but they got to go around the kiawe trees. They actually go through the applicant's property. We want to be able to establish a coastal trail along the shoreline and clean out some of the kiawe trees. So we're talking about working jointly with the State Department of Land and Natural Resources to thin out or remove some of those kiawe trees so that the public's access would be along the shoreline rather than having to go around this thick strand of kiawe trees and that will be part of the conservation district use application that we take to the State DLNR.

Ms. Wakida: But the public can still access that point down there by that footpath?

Mr. Frampton: Right now they access through the footpath from Camp Pecusa they go along the footpath that goes basically right through the makai portion of the property.

Ms. Wakida: It's not driveable down there?

Mr. Frampton: You can drive to – no, in between the camp and this parcel it's not driveable, it's been overgrown but it's still a footpath.

Ms. Wakida: And is that path on government land?

Mr. Frampton: No, that path is on private lands. So the idea would be when this applicant comes forward to basically shift that to the public land and the coastline.

Ms. Wakida: And so he's talking about removing kiawe trees. How big an area?

Mr. Frampton: Well –

Ms. Wakida: Just fronting his property?

Mr. Frampton: Yes. But there'll have to be some – in order to make an access through the kiawe trees, the state will have to remove even more kiawe trees on their property as well and what we've talked about is working cooperatively with the state when the Doug has his equipment on the site to do the clearing on his property that he would work cooperatively with the state to kind of leverage that and try to get more work done on the state land as well.

Mr. Starr: I have a question. In this area the shoreline portion where the kiawe trees you're saying will be removed, what will be the vegetation planted and what kind of chemicals and irrigation will be there and also what will be the vegetation planted around the house and those extensive water features will there be chemicals utilized in the maintenance of them.

Mr. Frampton: Well the planting plan which we've included in the application really calls for primarily native or Polynesian introduced plants and by selecting plants – and we have in the front area of the parcel you can see on Figure 4 is pohinahina, akuleakule, and akiaki grass and the idea is to use plants that are adapted to the area that are you know, used to being in those coastal environment so that once they're established you would have minimal need for irrigation and minimum need irrigation, I mean, chemical supplement.

Mr. Starr: What's the square footage of the water features and what is the daily evaporation?

Mr. Frampton: I could tell you the square footage. I won't be able to tell you what the evaporation rate is but like I said some of those – it's not been finalized yet as to whether or not those are actually going to have water features or not. Some of them might be dry stone landscape features if you will, but water I'll just mention that since you brought up water, the water is served by the Olowalu Water Company and they will have nonpotable water system that will be used for

landscape purposes and the potable system will be used for domestic purposes. So it will be served by a dual system.

Mr. Starr: Okay, we'll come back to all of this when we have comments. Commissioner Mardfin.

Mr. Mardfin: Is the pool features considered potable or nonpotable?

Mr. Frampton: That's a good question. The landscape portions of it would be nonpotable certainly.

Mr. Mardfin: But I mean if there's a pool there, are you going to put nonpotable water in a pool where the humans are going to be swimming in?

Mr. Frampton: I would think that you would use domestic but I will get back to you on that.

Mr. Starr: Yeah, we'll have that when the comments start. Other questions? Commissioner Shibuya.

Mr. Shibuya: Rory, I noted that you had the location of the Na Ala Hele Trail can you show me where that is and where the suitable camping is?

Mr. Frampton: The first part of your question could you repeat that?

Mr. Shibuya: Location of the Na Ala Hele Trail and there's some kind of access program or area for suitable for camping. It's mentioned in this document.

Mr. Frampton: In which document?

Mr. Shibuya: The one that you gave us. I can't find the right page but probably page 3, it's on the project description, landscaping conservation Native Hawaiian or Polynesian plant and then there's a Na Ala Hele Trail. It's not listened here but I've read it in another place. I just wanted to connect the dots.

Mr. Frampton: I don't recall using the term Na Ala Hele Trail in this document but the discussion I had with Commissioner Wakida would be that the – a trail would be established, a physical trail would be established along the shoreline fronting the property where there is ownership and easement rights for such a trail right now but physically it doesn't exist.

Mr. Shibuya: Maybe that's the thing that you can clear up with me later on. Also there's a national seashore designation, page 59. I just want to understand that.

Mr. Frampton: Are you referring to page 59 that's with a header is "Section 8, Lists of Permits and Approval?"

Mr. Shibuya: Yes.

Mr. Frampton: And there's listed under State of Hawaii one item and then under the County of Maui

there's five items?

Mr. Shibuya: Lets see. I may have written wrong here. I'm looking at several documents too so, it could be the community plan. Yeah, it's in the community plan. I stand corrected. Item No. 9 on page 59.

Mr. Frampton: No. 9 is a implementing action in the West Maui Community Plan and it's listed as an action category for the Department of Planning and it says, "to study the desirability of a national seashore designation for West Maui."

Mr. Shibuya: Is it somehow related with this project?

Mr. Frampton: Not to my knowledge.

Mr. Shibuya: Okay. And under No. 15 it says, I guess the Planning Department would be identifying suitable shoreline areas for public camping and how this relates to this project. I'm – see I'm trying to put all the pieces together and I'm not able to do that especially with this map that is in the community plan and maybe you can help me by putting some lines in some of your maps that be helpful later on. I don't need it right now. I know we're not talking SMA stuff.

Mr. Frampton: Yeah, I would say that those studies were kind of larger regional studies that were to be undertaken by the Planning Department, so I would really defer to the Planning Department as to whether or not they had done those studies, but just with regards to camping, I mentioned Camp Pecusa you know which has – it was formerly Camp Pecusa it's not Camp Olowalu and it has a – they have a series of cabins that's been there for a long time, many of us may have stayed there before. They've also really cleaned up the area and they allow for overnight camping and they've established regular campgrounds with numbered camping areas and public walkways, restroom facilities and the like. So there is camping in the immediate vicinity that has been expanded in recent years or I should say – yeah, I'll say expanded.

Mr. Shibuya: I kind of knew that there were some trails there but I'm not too sure what the names were and that's why I'm trying to relate that what I thought I saw and what I've read about and see if those two are actually the same.

Mr. Starr: Commissioner Tagorda.

Mr. Tagorda: Thank you Mr. Chair. It was mentioned a while ago that there is that Pali to Puamana Plan can you comment on that please.

Mr. Frampton: Yeah that's a plan by the department to look at establishing coastal park areas and from the Pail to Puamana and it's my understanding that this parcel is not listed for acquisition as part of that plan and I would defer to the department to clarify.

Mr. Tagorda: Is that the reason why the Planning Department recommended such consistency that it should be turned into from Park to Ag for single family dwelling something like that.

Ms. Aoki: Just for the commissioners information I was the planner that was responsible for the Pali to Puamana project and I still am. When we looked at the parcels and the plan overall we did look at land uses that current existed along the corridor and comparing what the land uses were with this parcel we noted that it was zoned apartment. It was community-planned park and the underlying zoning was ag. When we looked at it we determined along with our P to P Task Force and the consultant that we hired that given that these three parcels already existed and you had the larger parcel and Camp Pecusa in that area it wasn't really feasible to include these parcels. It didn't really make P to P any better or any worse so we did exclude it from the P to P Plan. As Rory stated it is also not in the Maui Island Plan as part of the park designation or the greenway or you know, conserving it for park use. So when the applicant approached us about doing the community plan amendment we supported the community plan amendment to change it Ag in order for him to be able to use his property. It isn't something that we feel is necessary for the P to P Plan. So that's why it's excluded.

Mr. Tagorda: And know that there's a big development on that Olowalu area and looking at your proposed project there was an old current single family home makai side of that Honoapiilani Highway. Will there be more single family dwelling makai side of the Honoapiilani Highway in the future?

Mr. Frampton: What you're asking about is you know, the likeli – has to do with the Olowalu Master Plan, the Olowalu Town Master Plan. My understanding is that there's limited proposed additional dwellings makai of the road in the applicant's plans. I would defer to that process and to the Maui Island Plan in terms of what's going to come out of that I'm really sure. The only thing I can tell you in terms of future uses – future single family homes in this area right now as Mr. Poseley mentioned earlier there is a structure on parcel 44, I'm talking about the area west of Olowalu Wharf. There is a parcel on 44 right now, parcel 45 has a conservation approval from the state and a building permit from the county already. Parcel 46 has a Conservation District Permit from the state as well and they're working through the county process. So these three parcels although they're vacant will likely have homes on them and what remains – what's going to happen on the rest is really going to be left up to what – what comes out of the Maui Island Plan and future proposals by Olowalu Town.

Mr. Starr: I have a question for Mr. Poseley. Are you developing this for your family home or is this a investment?

Mr. Poseley: Family home.

Mr. Starr: Thank you. Commissioner Mardfin.

Mr. Mardfin: Can I follow up on that? When you say family home, is it family home for your family?

Mr. Poseley: Yes, my family and it's owned by wife and her parents. So we have a place for her parents.

Mr. Mardfin: Is there any intent at all to use this for a B&B?



Mr. Poseley: No.

Mr. Mardfin: Transient vacation rental of anything?

Mr. Poseley: No.

Mr. Mardfin: Thank you.

Mr. Starr: What you list as a pedestrian trail that was public road and hundred years or so people would use that to access the shoreline. There were numerous – there was a gate put in just at the edge of Camp Pecusa around 1996 or 1997 which made it impossible to drive vehicles past that point. People still use it to walk. A lot of people walk their dogs along there and a lot of people access the shoreline by going along that road and going down. Are you looking to cut off public access on that old public road.

Mr. Frampton: I'll repeat dis – you want me to go through my discussion that I talked about before?

Mr. Starr: I'd like you to answer my question.

Mr. Frampton: The answer is no. We want to – well, on that road, yes. That road is the agricultural road that –

Mr. Starr: So in other words, you are looking to cut off public access on the old public road.

Mr. Frampton: Yes, and replace it with coastal access.

Mr. Starr: Coastal access, how are the public going to get to that part of the shoreline. Are you going to provide lateral access from the main road?

Mr. Frampton: The point of access would either be via the Camp Olowalu Road which comes through here or through the State Beach Reserve which is government owned which goes all the way up to the highway which if you've been in the area recently you've noticed that the trees in this vicinity have been cleared out and there is very easy access from the state highway onto the government beach reserve which then would take you down the government beach reserve. Unfortunately then you run into the kiawe trees so you gotta go back out and along the remnants of the old agricultural road that was used by the plantation. That's the road you're referring to. What we're talking about with Mr. Ornellas for the State Department of Land and Natural Resources is to basically establish clearer paths so that the public access would be along the entire frontage of the coastline in this area.

Mr. Starr: It looks to me like you're trying to cut off public access to the shoreline there.

Mr. Frampton: Respectfully disagree 100% with that statement.

Mr. Starr: Okay, any more questions? Commissioner Wakida.

Ms. Wakida: Yes, I have a question about the water system.

Mr. Frampton: Yes.

Ms. Wakida: On page 23, you state that, "the water will be provided by the Olowalu Water Company," and it's a public water system, what does that mean?

Mr. Frampton: Any time you're serving more than 25 customers it's considered a public water system and it's regulated by the Department of Health. So it's not publicly owned but it's considered public because it services that many people and it falls under the jurisdiction of the department of health.

Ms. Wakida: And where does this water come from?

Mr. Frampton: There's a well, there's a well that's up mauka so it comes from that basal aquifer and the wells pump the water from the aquifer, it's pumped into a storage tank and then it's distributed via lines.

Ms. Wakida: And you said it's a well makua?

Mr. Frampton: Yes, in the Olowalu vicinity. So it's – here's the house, here's the highway, the store is over here, the petroglyphs if – over here, the well is right about in this vicinity. So it's right in that Olowalu area.

Ms. Wakida: Thank you.

Mr. Frampton: You're welcome.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: What's the elevation of the property at the point where he wants to put the house?

Mr. Frampton: It's about seven or eight feet.

Mr. Mardfin: And the conservation portion of his property what's the elevation?

Mr. Frampton: I want to say four or five feet.

Mr. Mardfin: Have you given any thought to the effect of sea level rise on property, home or retention basin or anything?

Mr. Frampton: Because it's a number of feet above the – right now the projected sea-level rise I know there's a lot of different options on that but over the life of this house it's not anticipated to be a problem, but that's of course subject to debate and discussion, but even the most lets say extreme scientific predictions doesn't have it rising more than a couple feet that would be extreme over a hundred years.

Mr. Mardfin: Over a hundred years they expect considerable – somewhat more than that, we're looking at a meter or two. But it starts to hit before it hits the bottom floor of the house, it starts to affect the sewage system, septic system, retention basin, that sort of stuff so I think you ought to take consideration of that.

Mr. Starr: Please want to hold comments. Commissioner Tagorda.

Mr. Tagorda: Just to follow up, Commissioner Mardfin concern, I think that property the proposed property is on two flood zone AE and X, could you explain to me in a narrow strip, X and the residence would be on, but what the property is that and what's the area would be. And I believe it's only about five feet from mean sea level.

Mr. Frampton: The flood zones what was formerly, on this map it's shown as Zone C but is now updated to Zone X, they both were the same and that's an area of no flood hazard. So where the house is being located it's not in a designated flood zone.

Mr. Tagorda: But the narrow strip that's a portion of the property is Flood Zone AE.

Mr. Frampton: Correct. And that's an anticipated run up from a tsunami occurrence.

Mr. Tagorda: Would you give us, give me a estimated area of both part of the property, the Z or X and AE.

Mr. Frampton: It basically is around the conservation area. I could give you that.

Mr. Starr: I've been staying at Camp Pecusa around 1999 when virtually that whole area between the old road and the shoreline was underwater. It does flood.

Mr. Tagorda: Can I have another question Mr. Chair?

Mr. Starr: Yeah please.

Mr. Tagorda: Going back to that Olowalu water system. You mentioned there's a well that – as a source of that water, drinking water system. What's the capacity of that well?

Mr. Frampton: I'm not sure but my guess it's somewhere close to a million gallons per day.

Mr. Tagorda: Million gallons per day and that water is committed to none, nobody else but agricultural aspect of the property and no?

Mr. Frampton: Oh no, it's for the whole – it serves the whole Olowalu –

Mr. Tagorda: Olowalu.

Mr. Frampton: And it's anticipated – if they ever do a Olowalu Town it would be a source of water for the Olowalu Town.

Mr. Tagorda: What will be your source of nonpotable water?

Mr. Frampton: It comes from the old irrigation system which is a stream diversion water.

Mr. Starr: Commissioner Sablas.

Mr. Sablas: There's so few camping areas on Maui and as our island gets developed sites like Camp Olowalu is going to be really looked upon as a place where our residents can go and really be away and enjoy what Maui is for. My concern again, this is why I asked about the proximity of the project site to a camp site and then having more homes there and then I'm concerned again, I know the intent is good about clearing the kiawe so that there would be beach side access but what guarantee do we have that that would be in perpetuity. I mean what's happens if it overgrows again and then it's impassible and then you had cut off the road. So what mitigation steps are you taking to insure that this area be a camping site because there's nothing – you know that, there's very few camp sites on our island.

Mr. Frampton: I can't speak to the longevity of Camp Olowalu. I'm not sure what the long term. I know from what I've seen of the Olowalu plans and I might be – from what I've seen of the Olowalu plans the intent is to keep the camping there and to keep recreational aspects in that vicinity. With regards to the long term perpetuity of the access along the shoreline it's government-owned land fronting this property so it will always remain under state ownership and the beach reserve is a hundred feet wide so it's really going to be up to the landowner which is the State of Hawaii to maintain that in the long term for access. If it ever gets overgrown then the public is going to go to the State of Hawaii to say, hey you guys need to better take care of your property so we can access the shoreline. I mean, that's really what it comes down to in the long term. We're going to help initially with the – with heavy lifting if you will, to get that area cleared up so that access can be established.

Mr. Starr: How do you propose to gain the shoreline access when right now there's no way to pass between the berm and the ocean when the tide is high at the Camp Pecusa, at the house that's I guess to the – the house toward the highway from Camp Pecusa. It's impossible to pass there when the water is up, even when the water is down it's very, very difficult to walk along that soft black sand. How do you propose to create a trail when there's that – there's a high berm there that's artificially maintained to keep the water out of Camp Pecusa and out of that house. So you say that in eliminating the road you're going to create public access along the shoreline, but right now there's no, there's no way to walk along there. How you're going to create that?

Mr. Frampton: Well, nothing's going to be changed in that area where the – the area that you're referring to which is near the – we call it the house with the red tile roof, there's a accessway off the highway from Camp Pecusa, my understanding that's going to be – we're not affecting any of that. That road's going to be there and as I understand it and I've been there recently that area has been substantially cleaned up by the state right now so that from the highway to the shoreline there is a – it's been considerably improved. But again, this project quite a ways away from that and we really won't have anything over there and I'd defer to either to the State of Hawaii or the owners of the larger parcel.

Mr. Starr: Yeah, but by cutting off the access on the old public road, then you'll make it impossible to get there since it is a long ways and there's no way to traverse along the beach.

Mr. Frampton: I'll let the applicant speak to that but the road goes through Camp Olowalu and there's a nice trail that goes inland through Camp Olowalu that then connects – that you could then connect to the shoreline. So there's a – if you've been through Camp Olowalu recently you notice that there's a nice improved pedestrian walkway that's setback from the shoreline or you can go on the shoreline.

Mr. Starr: On private property.

Mr. Frampton: Right.

Mr. Starr: Mr. Poseley I think wanted to make a comment.

Mr. Poseley: Well, what I suggest is –

Mr. Starr: Please introduce yourself again for the record.

Mr. Poseley: Doug Poseley. What I suggest is one of two things. If dealing with the state results in a situation where they don't want to do anything Camp Pecusa down where Lot 47 is you could still use the access is there now and then when it comes to the property we'll make an agreement that the existing road instead of going across the easement could go – we'll make the same road that goes down a little bit and right along on the makai side of the drain. So the road would still be there. So access could be right along the makai side of the easement either on the government beach reserve or whatever just to make sure that there's always access that way and we can also make from where Lot 47 starts from the south side we would make a trail down to the ocean to there also.

Mr. Starr: So what I'm hearing is that you're willing to create a public access easement and create, you know, an accessible trail that will go down there from the public road.

Mr. Poseley: Yeah.

Mr. Starr: Good. That's what I was hoping to hear. Commissioner Hiranaga.

Mr. Hiranaga: So Rory, do you have a map that shows where that existing orange roof house is situated in relation to the 100-foot conservation setback.

Mr. Frampton: This is the parcel where red tile roof is, parcel 2 and then this strip of land right here is identified as parcel 1, that's the coastal beach reserve.

Mr. Hiranaga: Where does it end?

Mr. Frampton: It ends right here and there's a small land remnant that fronts parcels 45 and 46 but there's a public access easement that's been established across that. That's one of the few areas.

And the other area is right here along parcel 44. The rest of the area is all either government owned. – Well, the whole thing has a – either government owned or there's public access easements across the front of the two parcels.

Mr. Hiranaga: You don't have an aerial showing the existing home and then superimposing the 100-foot setback because I think it may appear that the landowner has incorporated that 100-foot setback into his yard –

Mr. Frampton: I haven't done any explorations of what's going on that property.

Mr. Hiranaga: You know, I used to camp past Camp Pecusa in the late '60's with my father and my uncle because I didn't have a drivers license yet but, you know and used to go spear fishing, Hawaiian sling down to the point and we also used to come in through the old Olowalu sugar mill by the landing and we go spear fishing with the Hawaiian sling all the way to the point. I don't know if we really want vehicular access in that area. I mean, it may keep the area more pristine if you're forced to do pedestrian access along the shoreline or a trail that's created, but it's really not that far a distance because we used to swim it all the time.

Mr. Frampton: I haven't heard the discussion and correct me if I'm wrong Commissioner that this discussion has been talking about vehicle access. I thought we were talking about pedestrian access.

Mr. Hiranaga: Okay, well I heard mentioned county road or ag road so when I hear road I assume it's paved vehicular.

Mr. Frampton: The idea would be to establish pedestrian access. The road had been mostly overgrown and is used now as a foot trail.

Mr. Starr: I mean I'm hoping that there'd be a way to at least park near the highway and then walk down.

Mr. Frampton: The shoulder area on – next time you go to Lahaina take a look at what the shoulder area in the vicinity of that and at maybe at the next meeting if you want we could have the land agent come in who's really responsible for the getting accessing along that – from the government road onto the state beach reserve.

Mr. Starr: Yeah, I would like to see Mr. Ornalles at that. Commissioner Mardfin, then we're going to take a short break.

Mr. Mardfin: This is just a factual question. What is, if you're talking about walking it, what's the distance from where you said people would come in to the point which is about where your property is and then up the other direction?

Mr. Frampton: You're saying the access from the highway here?

Mr. Mardfin: From there to about there is how far, a mile, two miles?

Mr. Frampton: No, maybe a half mile, quarter mile to a half mile.

Mr. Mardfin: I just wanted to get –

Mr. Starr: Just to be clear it is impossible to walk that along the shore because there's a berm that's about five feet high that is kind of an artificial berm. I help build it and maintain it. There's layers and layers of old carpet from the hotels in there packed with about a hundred dump trucks of dirt and that's continuous along there. So the high tide hits against that berm and then there were a series of stairs leading up to climb over the berm. And then when the tide is up, you can't walk there and there are also kiawe trees at several places that are growing all the way to the water so there's no way to walk there without either walking across the lawn of the orange tile roof and then across, you know, the lawn at Camp Pecusa which is kind of private property even though it's state reserve land and you can't swim it because that's – coral heads that's one of the few places where the coral heads are still healthy and they come up to the surface. You know there are channels maybe five feet wide, some places 10 feet wide between the coral heads where you can swim in and out but the coral heads come up to the surface. As that degrades they'll collapse as we were shown a couple weeks ago but right now they're still healthy all the way into shore.

Mr. Freitas: You cut the beach access off.

Mr. Starr: Yeah, anyway, I'm sorry to do that. I spent a lot of time there and regret helping build that berm now. We're going to take a 10-minute recess and we're going to come back, last questions, we'll have public testimony then we'll give our comments. So we'll be back in 10 minutes.

A recess was called at 10:35 a.m., and the meeting was reconvened at 10:52 a.m.

Ms. Domingo excused herself for the remainder of the meeting.

Mr. Starr: The Maui Planning Commission August 24, 2010, unless we have more questions we'll be taking public testimony, any commissioners have any other questions? Commissioner Wakida.

Ms. Wakida: Yes, I have a question for Mr. Frampton and it's another one of these I need some education. Now the leach field and the septic tank that's on Figure 3 I guess, is about 200 feet from the ocean, correct.

Mr. Frampton: At a minimum it's a little more than that.

Ms. Wakida: Little more. Can you give me a little education on how a septic tank and leach field work?

Mr. Frampton: I'll try to keep it brief but yes, the idea is that the wastewater from the house would go into a holding tank and the solids settle out and then the effluent flows out of the top and then goes to a leach field and percolates down through the soil to the ground water table. In this case, that hold tank is going to have an aerobic unit in it which means that it will have air bubbles and stuff going through it. So it will actually help the organisms treat the wastewater so it will be a better – it's more polished. It's a better I don't know the exact technical term but it's a higher quality of

effluent than you would have if you didn't have the aerobic treatment and then periodically you'd come and pump the solids out of the tank. So - and especially with an aerobic system you would have a maintenance agreement with a firm that would come in and maintain the system, the air pump as well as come in and maintain the tank itself.

Ms. Wakida: Okay so basically the liquid portion sort of percolates through the ground, right.

Mr. Frampton: Yes, it does.

Ms. Wakida: And the water table is how far down?

Mr. Frampton: In this case it's probably going to be about four or five feet maybe a little more. We measured it in the abutting property where it's at about foot or two lower. We had about, during high tide we had about four feet.

Ms. Wakida: Okay, okay thank you.

Mr. Frampton: You're welcome.

Mr. Starr: Commissioner Shibuya.

Mr. Shibuya: I just wanted to get it clear as to the zoning of this area. Is it rural, agriculture, apartment? What's the correct zoning on this?

Mr. Frampton: Depends on which layer you're talking about. The state land use, the state land use is most of it is ag and there's - let me just refer to this photo. So the state land use has basically all this, the former ag field, the former sugar cane fields as ag and then everything makai of the old plantation road has conservation. So from the State Land Use District it's Conservation and Ag and as that relates to the property, that line runs right through the makai portion of the property. So this smaller piece of the property that Commissioner Tagorda asked me for measurements of, that portion is in the conservation district as well as Easement G and that's .2199 acres or basically two-tenths of an acre Easement G is. So that's the conservation line, ag that way. The county zoning from way back in the '60's had actually started off with A-3 Apartment which would allow for - you know, but then abolished A-3 and it's now considered A-2 so that's on the county zoning and that county zoning only affects this portion of the property because the state retains exclusive zoning powers for anything in the conservation district. And then the community plan is what we're seeking to establish as this area as Ag as well. So if these requests are granted this portion of the property would be community plan Ag, County Ag and State Ag so we'd wind up Ag on all layers on that property.

Mr. Shibuya: It's interesting that you're not using it for ag, you're using it for a house.

Mr. Frampton: Yes. And if you read through the EA and the Alternative Sections you know, the original discussion was to come in and establish rural zoning because that actually is more reflective of the parcel size and it's more reflective of the use.



Mr. Shibuya: That's correct.

Mr. Frampton: The Planning Department felt that establishing a spot zone of rural wouldn't be – anyway they wanted to have it ag so it would be consistent of the surround agricultural area both in the Maui Island Plan and the state zoning and everything else. So it was the Planning Department that really strongly encouraged the applicant to request Ag instead of Rural. The Ag Zoning District allows for substandard lot sizes because when they did create the Ag District there were hundreds of or probably maybe thousands of small parcels like this, old kuleanas that got zoned Ag. So there's a section in the Ag Zoning District that allows for and establishes a separate set of standards for it's called substandard lot sizes and through the rezoning process we're going to request that those standards apply to this parcel so that it would be treated as a substandard lot in the Ag District and it has a little smaller setbacks. And the county's policy on those smaller sized parcels for parcels I believe it's under one acre is that they don't require farm plans because it's just not realistic to make someone farm a small parcel.

Mr. Shibuya: And this is very uncomfortable for me because you know, I see it as Rural and not really Ag and this is where you have a gentleman's estate type of thing, you're going to put a castle on it and you're going to still have Ag and you're going to have differentiation in terms of the taxing. It just smacks against all fairness.

Mr. Frampton: Well, there won't be a differentiation on the taxing. The taxing will be based on the residential use. They won't be able to get an Ag dedication for this parcel. So the taxing would be a issue. It won't be a differential treatment because of the Ag zoning.

Mr. Starr: Commissioner Hiranaga.

Mr. Hiranaga: Mr. Chair, I just wanted clarification. Are we still in the asking of questions portion of the process?

Mr. Starr: Yes we are.

Mr. Hiranaga: Oh, okay.

Mr. Starr: And as soon as we pau that we'll –

Mr. Hiranaga: I have a question.

Mr. Starr: Yeah, go ahead.

Mr. Hiranaga: Does the applicant state anywhere that he will not engage in agricultural activities some time in the future?

Mr. Frampton: We don't state that we will not, no.

Mr. Hiranaga: Okay, thank you.

Mr. Starr: Commissioner Shibuya.

Mr. Shibuya: In one of the findings and conclusions No. 13, page 57, it says, "requires substantial energy consumption." With this in mind I'm assuming the energy consumption is electricity and if that's the case then I would like to see some kind of a not only conservation but some initiative for generating renewal energy.

Mr. Frampton: Thank you.

Mr. Starr: Once again that's a comment. Save that as a comment which hopefully we'll get there. Are we ready to take public testimony? Okay, members of the public who would like to testify on this, if there's anyone please let yourself be known. Not seeing any, public testimony is closed. We ready for comments? Looks like we are. Who would like to start off?

Mr. Shibuya: I'll go ahead and start up.

Mr. Starr: Commissioner Shibuya then Commissioner Hiranaga.

Mr. Shibuya: On the findings on page, findings and conclusions on page 57, No. 13, it requires, "This development requires substantial energy consumption," so therefore, I'm assuming it will be electricity and therefore I would like to see not only aggressive conservation efforts but some initiative to generate renewable power however they want to do it, I would like to see that type of initiative reflected.

Mr. Starr: And Mr. Hunt, you're noting these down am I correct?

Mr. Hunt: That's correct.

Mr. Starr: Okay, Commissioner Hiranaga.

Mr. Hiranaga: I think it would be helpful just going back providing kind of a historical recap regarding the history of land commission awards, how these land commission awards came about, origination of tax map key numbers, purposes of tax map key numbers. Also, when then West Maui Community Plan was adopted. I think if you provide some type of a timeline to clarify, you know, when this lot originated, how long it's been in existence. And also, if you have one, it may be useful to include the title report. If you don't have the title report, an extended title report I wouldn't suggest you doing it because it costs about I think \$5,000 at least to get an extended title report back to the Mahele but if you had it, and you possible may have it when you purchased the property, that might be useful to the commissioners to see how title passed, probably went from Olowalu Sugar to Pioneer Mill to someone else.

Mr. Starr: Commissioner Wakida.

Ms. Wakida: I would just like to sort of piggy back on Commissioner Hiranaga's request that I would like not just narrative on this but some documentation. I think he asked for some of that too, but I want to be clear on that.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: This is a follow up also. Just to elaborate on the above. If you can figure out and you may not be able to, but if you can figure out what real property taxes have been paid out from a historical point in view. You know if it was lumped in with a larger piece then that's – just say, for this six-year period it was lumped in with a larger agricultural zone.

Mr. Starr: I want to add one. This area was site of a – it's called a battle but it was a really massacre where quite a few Hawaiian people were killed by navals on fire on the beach and there's still quite a bit of fragments and canon ball parts and bone fragments along the beach there and the community has always made it a point to leave them there but I don't see any mention of that in the documentation and I'd like to go into the history of the Olowalu massacre and explanation of why it shouldn't be made a memorial to the people who do died there. Commissioner Wakida.

Ms. Wakida: I would like to see an inclusion of the CIA in this document as well.

Mr. Starr: Commissioner Shibuya.

Mr. Shibuya: On page 57 again, on the findings and conclusions on Item No. 12, I'd like to have pictures showing the scenic vista and view plains not only mauka but also makai of proposed area, showing that you have two-story structure and how this thing would fit into the environment.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: On page 48, you refer to light pollution and it would be helpful, you know you say you won't have the lights showing out onto the ocean and that sort thing but if there were a map showing the extent that light would intrude toward the ocean that could be helpful.

Mr. Starr: Commissioner Hiranaga.

Mr. Hiranaga: If you could provide a aerial photo of the area say from the red tile roof house to Olowalu Landing and overlay the 100-foot conservation area just so that we may see what manmade improvements in fact are encroaching onto that conservation area that's being alleged to block access along the shoreline. So the aerals you had I think are maybe too far away, we need to get closer in and just focus between Olowalu Landing and the red tile roof house. Thank you.

Mr. Starr: Would like to show public shoreline access including but not limited to the access that will be provided from the main highway by the applicant. Commissioner Mardfin.

Mr. Mardfin: You've said it here today that there is no intent to make this a TVR or a B&B but it would be useful to have such a thing in the document because if it were to be used for that sort of thing it could affect the archaeological mitigation plan and so I would, you know, if it's really and truly not going to be used for B&B then the archaeological mitigation plan might be sufficient. If it was going to be used for that then might be very much be insufficient.

Mr. Starr: Commissioner Wakida.

Ms. Wakida: Yes, you referenced, the substandard agricultural lots and the zoning as far as the size of the lot but then you also referenced some place where there was an exception to the ag plan and I would like to see that included that information included where that is referenced.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: Mr. Frampton, I know we had the – that science varies on sea level rise and I'll admit there is variation. About a month or so ago we had a presentation and we were given a range by the people that seemed to know it best between .8 and 2.0 meters by 2100, 90 years from now. That works out to be between about three feet and about six and a half feet. If you took as a point estimate something like five feet and projected what the impact of a five-foot increase, if you want to use metric that's fine too but the equivalent of five-foot increase in sea level rise what the impact would be on both the retention basin and the septic system. That would be very helpful.

Mr. Starr: I'd like to see surveyed elevations above sea level in detail for the property and the conservation easement. Commissioner Mardfin.

Mr. Mardfin: On page 42 it refers to coastal eco systems and throughout it – the big concern in my mind of this property is the impact on the reef and so if you had more details on the potential impact on the reef both the current sea level and at higher sea levels, how will the septic system affect if any the reef system. How will the retention basins, drainage effect if any the reef system. That's a crucial issue in an environmental statement.

Mr. Starr: On that I'd like to add a quantification of lawn chemicals and also emissions from the septic system, how long it will take for them to enter the ocean and what their effect, projected effect will be on the reef. Also, quantification of reef, current reef health and water quality at that site. Commissioner Wakida.

Ms. Wakida: I'm not sure if this has already been covered by regarding the government beach area and the proposal to clear out that kiawe, that growth along there I would imagine pretty much protects that area from erosion and runoff and stuff now. So I would like to see what, if any, the conversation is that you're having with the conservation people or whoever you're having it with about removing that kiawe what that involves.

Mr. Starr: Yeah, impacts of the landscaping change on that conservation and the state land, right?

Ms. Wakida: Yes.

Mr. Starr: Members? Commissioner Shibuya.

Mr. Shibuya: This is more towards the Planning Department. It has nothing much to do unless the trail actually goes through the property but I would like to see some sketch or outlining of historical trails like the Piilani Trail and where they would be located if they did exist or if you can somehow come up with some idea where it would be.

Mr. Starr: Since this is ag land I'd like to show an alternative which is for it to be used for ag purposes. Like to have the maximum square footage of the water features and the amount of water that will be used and evaporated and those potential impacts in light of the save water code. Let him write for a second. Tell me when you caught up Jeff.

Mr. Hunt: Okay.

Mr. Starr: Commissioner Wakida.

Ms. Wakida: I notice that all the correspondence that you've included and your responses, the correspondence were all most of them or if not all were from '07, I hope that you would include any more recent correspondence that you have.

Mr. Starr: Commissioner Sablas.

Ms. Sablas: As follow up to Commissioner Wakida's request about correspondence. I would like to see the position of the Camp Olowalu and what they think about this development and the proximity to the camp site.

Mr. Starr: Okay. I'd like to have comments from some of the long time shoreline fishermen and other water users, you know, ocean resource users in that area. Commissioner Mardfin.

Mr. Mardfin: I notice in Appendix D that you're already contacted Department of Hawaiian Homelands and OHA and the State Historic Preservation Division. I'd also suggest you contact the Maui Burial Council and see if they have any input that they would want to make into your final EA.

Mr. Starr: I would like to see some kind of study done on the impacts on reef health from cumulative development in this area and taking into account other projects that are in the entitlement process. Any more? Okay, I guess that's it. Last chance. Do we need to have them read back or are we willing to leave it to Mr. Hunt? Commissioner Hiranaga.

Mr. Hiranaga: I do have an objection to one comment request.

Mr. Starr: Okay, which one? Do you want them read back?

Mr. Hiranaga: Maybe for clarity.

Mr. Starr: Okay, Mr. Hunt.

Mr. Hunt: You'd like me to read back my list of your comments?

Mr. Starr: Yeah. You can abbreviate them if it helps you with it.

Mr. Hunt: Would like to see conservation efforts in renewable power. History of the LCA, how the TMKs and the numbers, the purpose of the TMKs, the date of the West Maui Community Plan, when the lots were create, the title report if not too expensive. Documentation regarding the

previous comments. Figure out property taxes paid the, the history. Information on the site of the massacre and whether to leave artifacts, provide a history, why not make a memorial, include the CIA in the EA. Include pictures mauka, makai including computer generated two-story structure. Address light pollution showing map of the extent of the light extrusion. Aerial photos with an overlay of a 100-foot conservation area including the blocking of the shoreline near the red tile roof. Show public access from the highway to the shore. Include or address no B&B, TVR use. Include the exception to the farm plan requirement. Use a five-foot increase sea level rise and include the impacts to the retention basin and septic system. Survey the property elevation in detail for the property and the easement. More details on potential reef impacts including septic tank, retention basin and drainage. Quantify lawn chemical and septic emissions, time it would take to enter the ocean and effects on the reef and quantify reef health at the site. Discuss a government reserve and document discussions with the state regarding removing the kiawe trees, include impacts on the removal of the kiawe trees. Include a sketch of historical trails and potential trails. Provide an alternative to show use for agricultural purposes. Indicate the maximum square footage of water features and the amount of evaporation, rate of evaporation and address the State Water Code. Include more recent correspondences. Contact Camp Olowalu for comments including any concerns regarding proximity. Obtain comments from fishers and other ocean users in the area. Contact the Maui Island Burial Council for comment. Include impacts on reef health due to cumulative development in the area include other projects in the entitlement process. And then an objection.

Mr. Starr: Yeah, which one you want to separate out?

Mr. Hiranaga: Maybe, clarification on the request regarding TVRs and B&Bs because it sounded like a condition versus a request for information. So maybe the requestor could restate his request for information.

Mr. Starr: Yeah, could you read that one back again and perhaps we can wordsmith that one.

Mr. Hunt: My notes say include reference to note B&B, TVR use as this could affect the archaeology report.

Mr. Mardfin: Lets see if I can restate it in a way that will satisfy my fellow commissioner. To ask for information on a single family dwelling only impact on the archaeology of the area and ecology of the area versus if this were used as a B&B or TVR what the impact would be on the archaeology and ecology of the area. Is that clear?

Mr. Hiranaga: Better.

Mr.Mardfin: I'm willing to make it to that.

Mr. Starr: Is there anyone else have a concern? Commissioner Tagorda.

Mr. Tagorda: Inquiry Mr. Chair. After all this requests and comments that fellow commissioners ask and if the applicant have comply satisfactorily with the request and informations it will come back to us as a final EA Mr. Chair?

Mr. Starr: Yes, it will come back as a final EA and at that point we can decide whether it's complete and there will be no significant impacts. If it's incomplete we could ask it to be redone again and if it does have potential impacts then we could decide that the applicant should do an environmental impact statement which is a more complete study that is capable of dealing with the impacts.

Mr. Tagorda: Thank you.

Mr. Starr: Did I get that right? Lucky again. Okay. I think we've kicked this one around. Mr. Hunt.

Mr. Hunt: Just to go over the agenda item again, the department is requesting concurrence by the commission on filing the DEA and an anticipated FONSI. So at this point, the department's anticipating a finding of no significant impact and we're asking for the commission to concur with that. It's a standard procedure.

Mr. Starr: I'm sorry, I, for one, have never agreed with that standard procedure until we see the document and what it says. So, you know I don't know how other commissioners feel about it, but I, for one, do not want to concur that it's going to be no significant impact until I see it. Commissioner Mardfin.

Mr. Mardfin: I'm at the same vein, I'll make a general comment right now, I don't see necessarily huge impediments but you just never know what will come up with additional information. So it may turn into a big impediment.

Mr. Hunt: We will bring back the final for your review and at that time we can go over this FONSI again and see if there's any change in that. Again, the way the process works is if the planning commission accepts the EA then that's the environmental document unless there's an appeal or some subsequent action. But at that point, you will be at a crossroad. Are you going to accept the EA which is an abbreviated document, it will be a little bit thicker than what it is now or will you require a full Environmental Impact Statement which are inches thick.

Mr. Starr: And that would be the document we'll use later for the – our successors will use later for when the SMA comes before us. So if it's not answered in the document – it's better if our questions are answered in that. Commissioner Hiranaga.

Mr. Hunt: If I could just clarify just to be precise that would be your supporting information document for the community plan amendment and change in zoning recommendation. The SMA may come to you or may not. If the department determines it's exempt then that would just be administrative action.

Mr. Starr: Right, so we may not see it for an SMA but we know we will see it in an advisory capacity am I correct?

Mr. Hunt: You would make a recommendation to the Council regarding the community plan amendment and the change in zoning.

Mr. Starr: Okay, Commissioner Hiranaga. I apologize for -

Mr. Hiranaga: Just wondering if the director or Corporation Counsel can maybe brief us on how this standard practice of the statement, anticipated finding of no significant impact. Is it because at this point if we felt the draft EA was inadequate or inappropriate we can make a motion to – that you want a environmental impact statement or – I mean, why, I really don't see the need for that.

Mr. Giroux: I didn't study it last night but this issue has been around for a long time. Basically procedurally the EA process what it tries to do is save everybody a headache by not going the slow road when you know you should be going the high road and basically what the department is telling you is they don't see this in the future even with all the information you're going to get to be bumped up to an EIS. But you don't have to go along with that. Normally, they put that in as part of part of the processing of the paperwork. It's when the draft comes back to you and you on the day you decide that whether or not you're going to accept it or not is when this accepting authority can say with all of the information that has been given to us today, this needs an EIS. That the impacts are too great, this, you know, there's no mitigation. There's no way that this is a FONSI. So you still have that authority because you are the accepting authority. What the department is saying is that this is their conclusion now. If you go along with it now, you're basically letting everybody kind of rest easy but that doesn't mean that you're going to, you know, you're going to be stuck with that because it's not until you accept the final EA can you make the determination of whether or not it is a FONSI or not if that helps.

Mr. Starr: Yeah, Commissioner Hiranaga.

Mr. Hiranaga: So that statement is basically prompting us to say if this draft EA is unacceptable and someone is advocating in the Environmental Impact Statement instead now is a good time to say something.

Mr. Giroux: I mean, with what you heard today I mean if there's something that tells you that there is no way in God's free earth that this is going to be a FONSI, it probably be a good time to let the applicant know so they don't waste their time going through this process. We just go straight to the EIS process.

Mr. Starr: My own belief is that we don't have – we're not capable of kicking it up to an EIS at this point. All we're here to do is to give comments. And just one other thing is that you know, I appreciate the department doesn't you know, see any real problems with it, but this commission is the deciding agency and the responsibility is with us and not with the department in any way, shape or form. That's why we're here is specifically to make that decision not the department though I really for one, really appreciate their comments. I think they're trying to do the right thing. Commissioner Mardfin.

Mr. Mardfin: Two things. One, in an effort to be open and transparent about this the thing that if I were the applicant, the thing I would be most worried about is the information developed on the impact on the coastal reef system, marine system. That's the thing that could kick it up in my opinion. The second thing I wanted to ask you Jeff if this comes back next time with a final EA and we say okay, as is, it's a FONSI. Is there an ability and you're saying that that may never come to us a third time as an SMA because the department may give it an SMA Exempt. Is there an opportunity to put some conditions on it?



Mr. Hunt: The –

Mr. Mardfin: Or to recommend conditions to the department to put on it?

Mr. Hunt: The opportunity would be more likely in the change in zoning where you can do conditions on that. Generally speaking a community plan amendment you don't condition that. But the change in zoning –

Mr. Mardfin: And the change in zoning will come to us?

Mr. Hunt: Yes it will or recommendation.

Mr. Mardfin: And at that point we could put conditions on if we thought appropriate.

Mr. Hunt: Could recommend conditions.

Mr. Mardfin: Recommend conditions with our approval. Thank you.

Mr. Starr: Okay, lets move along.

Mr. Hunt: Thank you.

Mr. Starr: Commissioner Hiranaga.

Mr. Hiranaga: As a minimum I think you know, if the department is requesting concurrence by the commission on filing of the DEA we can do that.

Mr. Starr: Um ...

Mr. Hiranaga: We don't have to do the second part. We're not objecting to the filing of the DEA.

Mr. Starr: Um, I, I, for one, would prefer not to. I don't know how other members feel. I don't really think – we are the deciding agency. I – is that for comment period?

Ms. Aoki: I would agree with Commissioner Hiranaga because it gives us, the department, the ability to file it with OEQC with the comments and incorporate those comments and the answers back from the applicant in their final draft.

Mr. Starr: Yeah, I think I had misunderstood. We're asking for the filing of the draft as a draft not the filing of the document in which case they'll open it up for public comment in which case I think Commissioner Hiranaga is right. So in that case, a motion would be in order to as you wish. Commissioner Tagorda.

Mr. Tagorda: Again, point of inquiry Mr. Chair. If we do accept the filing of the document as a DEA with all the attached requests for information what happens to the document? Does it come back to us as the final EA?

Mr. Starr: It will come back to us as a final and –

Mr. Tagorda: Are we in concurrence with the recommendations of the Planning Department that finding of no significant impact on this DEA.

Mr. Hunt: There's two items that statement kind of combines and maybe we can work on this in the future to make it clearer. The first is that you concur with us, you concur with the department that we determine the document meets the requirements for a draft Environmental Assessment. There is administrative rules and legislation that sets out the minimum requirements if you are going to submit a environmental assessment. We went through it, the department went through it and we felt it met those requirements and so we forwarded it to the OEQC for public publication.

The second item is then the FONSI. So there's two items there really.

Mr. Tagorda: Yeah, the FONSI is the one I'm really kind of concerned. Whether are we finding no significant impact here or?

Mr. Starr: I don't think there's any motion like that.

Mr. Tagorda: Yeah.

Mr. Starr: That's been issued and you know, as far as the other aspect we can concur in which case they will elicit comments. My understanding is that they will elicit comments from the public or if we don't then that will occur after we've seen it – after we've seen it again and dealt with the final.

Mr. Hunt: The way the process works is there's a comment period going on right now and we will incorporate those comments. That first one that concurrence is we felt the document met the legal requirements for a DEA. If the commission feels otherwise and we miss the boat let us know and then we tell the applicant, no, you guys don't even feel this is a legal document. Frankly, the concerns I've heard I don't think the commission has any concerns it whether it meets the legal requirements for a DEA. I do hear concerns about issuing an anticipated FONSI. And if the commission doesn't want to agree with the anticipation of a FONSI, I think you have the ability to address that at the next step when you –

Mr. Starr: I know I have concerns until I see the final document. Commissioner Mardfin.

Mr. Mardfin: I'd like to make a motion and my motion's based on what's on our agenda not the second piece of paper. The agenda says, "the commission may take action to affirm that it is the accepting the authority and provide its comments on the draft EA." I move that we affirm we are the accepting authority and we have provided comments on the draft EA.

Mr. Starr: Is there a second?

Mr. Shibuya: I'll second.

Mr. Starr: So we have a motion by Commissioner Mardfin, seconded by Commissioner Shibuya,

the motion is?

Ms. Aoki: Your motion on the floor Chair is that the commission affirms that they are the accepting authority and they have provided comments on the draft Environmental Assessment.

Mr. Starr: Okay, Commissioner Hiranaga.

Mr. Hiranaga: Just want confirmation from a procedural point that this meets the requirements of the department so that this document will not be held up for process by the motion on the floor.

Mr. Hunt: We would – yes, we would continue processing it as a DEA because we believe it meets the legal requirements and we will come back to you with the final EA and you can address whether there are significant impacts or not.

Mr. Starr: Okay, Commissioner Mardfin.

Mr. Mardfin: Mr. Chairman, after voting on this motion I will propose a second motion that will I believe satisfy the concern.

Mr. Starr: Personally I don't have concern, but are we ready to vote?

Mr. Shibuya: Unless you want to do a friendly amendment?

Mr. Mardfin: No.

Mr. Starr: No. Okay, all in favor of the motion, please a hand. All opposed?

**It was moved by Mr. Mardfin, seconded by Mr. Shibuya, then**

**VOTED: To Affirm that the Commission is the Accepting Authority and Have Provided Comments on the Draft Environmental Assessment.  
(Assenting - W. Mardfin, W. Shibuya, K. Hiranaga, J. Freitas,  
O. Tagorda, L. Sablas, P. Wakida)  
(Excused - D. Domingo)**

Mr. Starr: Director.

Ms. Aoki: Chair your vote is unanimous.

Mr. Starr: Thank you. Commissioner Mardfin.

Mr. Mardfin: I move that now going to the August 4<sup>th</sup> memo from the Department of Planning, No. 3, Action by the Commission, Section A, "the Department is requesting concurrence by the Commission on filing the DEA with the OEQC for publication." I've eliminated the words, "and an anticipated Finding of No Significant Impact Determination." So my motion is to concur with the Department of Planning on the filing of the DEA with the OEQC for publication.

Mr. Starr: Is there a second to this motion?

Mr. Shibuya: I'll second.

Mr. Starr: We have a motion by Commissioner Mardfin. Seconded by Commissioner Shibuya. It's now a property of the body. Please read back the motion.

Ms. Aoki: Chair, I believe your motion on the floor is that the commission concurs with the Department of Planning on the filing of the DEA with Office of – well, Office of Environmental Quality Control for publication.

Mr. Starr: And that's without any – passing any judgement on it. Ready to vote? Commissioner Mardfin.

Mr. Mardfin: I just want to make sure that Jeff, this is what you were asking for I believe? Well, I mean, you wanted more than that, but it's what we're willing to give you at this point.

Mr. Hunt: Well, the department is fine with that motion.

Mr. Mardfin: Okay.

Mr. Starr: And I do think it's good we're having this discussion and trying to understand the process. All in favor please raise a hand. All opposed.

**It was moved by Mr. Mardfin, seconded by Mr. Shibuya, then**

**VOTED: Concurrence by the Commission on the Filing of the Draft Environmental Assessment with the OEQC for Publication.  
(Assenting - W. Mardfin, W. Shibuya, K. Hiranaga, J. Freitas,  
O. Tagorda, L. Sablas, P. Wakida)  
(Excused - D. Domingo)**

Mr. Starr: Director.

Ms. Aoki: Chair, the vote is unanimous.

Mr. Starr: Okay, thank you very much.

Mr. Hunt: Thank you.

Mr. Starr: Okay, we'll move along to our next item. Director, do we need time to set up for the next? I don't think so. Director Aoki why don't you introduce the next item.

Ms. Aoki: Thank you Chair. The Planning Director is notifying the Maui Planning Commission pursuant to Section 12-202-17 (e) of the Maui Planning Commission's SMA Rules of her intent to process the time extension administratively on the following:

Mr. Dennis Boehlje for Betsill Brothers Construction, Inc., requesting a two-year time extension on the Special Management Area Use Permit condition to complete construction of the Kalama Heights Phase 2 project, a 36-unit multi-family project with related on and off-site infrastructure improvements located at 101 Kanani Road, TMK 3-9-017: 002, Kihei, Island of Maui. Representing the Planning Department is Planner Paul Fasi. The commission shall acknowledge receipt of this request for the time extension. The commission may decide whether to waive its review of this time extension or request further review of the time extension at a future meeting.

#### **D. DIRECTOR'S REPORT**

- 1. Planning Director notifying the Maui Planning Commission pursuant to Section 12-202-17(e) of the Maui Planning Commission's SMA Rules of her intent to process the time extension request administratively on the following:**

**MR. DENNIS BOEHLJE for BETSILL BROTHERS CONSTRUCTION, INC. requesting a 2-year time extension on the Special Management Area Use Permit condition to complete construction of the Kalama Heights Phase II project, a 36-unit multi-family project with related on and off-site infrastructure improvements located at 101 Kanani Road, TMK: 3-9-017:002, Kihei, Island of Maui. (SM 1 970012) (P. Fasi)**

Mr. Starr: Mr. Fasi, it's in your court. Please give us a little background. I believe this is a second extension?

Mr. Paul Fasi: Actually it's the fourth time extension on this. They're in two-year intervals. So two years is pretty quick. The applicant sent us a letter of June 11<sup>th</sup> requesting a two-year time extension in order to complete construction. Of course, that won't happen in two years so they'll be back again for another time extension request. The applicant's representative is here to explain to you the reasons for the time extension. The Planning Department would concur with the applicant that a two-year time extension is warranted.

Mr. Starr: I have a question for the applicant. This is a project that was originally for seniors with a certain degree of care to create facilities for people aging in place and then I forget if it was the last time or the time before when it came before us it was decided that it would not be for a project that would provide care for seniors but rather just a housing or condominium type of project because there was no financing available at that time for these type of aging in place facility that Kalama Heights originally was so that was left out and now two or four years later we're being told there's no financing in place for the luxury condominiums that they want to build in place. So I'm wondering you know, why we should pass on our ability to review this project now and see if it's still is reasonable since it didn't – it doesn't meet the original intent and entitlements that were created for this property.

Mr. Dennis Boehlje: Dennis Boehlje for Betsill Brothers Construction. The answer to your question is kind of complex. Four years ago was the time frame you're addressing when this property was transferred and the permit was transferred to Betsill Brothers. At that time it was clarified that they

would be building a senior project but it would be for sale. It wasn't the extended care project that part of the original was built, as Phase 1 was built and that was approved by the commission at that time. You alluded to the economic situation of – that was addressed at that time and that was that that type of facility as Phase 1 was built was not economically viable when it still is not. Now we're dealing different type of economic viability with the down turn in the residential real estate market. These I would not characterize as luxury condominiums considering people have approached Betsills to build them as affordable units to satisfy project requirements for other requirements. These are not luxury units. However, they were designed to be sold as condominiums to seniors. So that's essentially what you approved four years ago. And since then we've asked for one time extension was granted that in 2008. So this is the second time extension for that time frame. I think what Paul alluding to or other time extensions were granted prior to the previous owners before even starting construction. Since that time we have started construction, taken out permits, improved Auhana Street as required under the permits, we have just not started construction on the Phase 2 itself in terms of the buildings. Did that address your question?

Mr. Starr: Yeah. Okay, just for clarification what's before us is not the merits of the project but just whether we will review this or we will pass on it and leave it to the department to review it. Commissioner Freitas.

Mr. Freitas: Yeah, I'm new on the commission. You just stated that the permit was transferred ...(sound interference -PA system)...

Mr. Starr: Turn that one down I think that's pointing at the speaker right above it.

Mr. Freitas: That permit was transferred four years ago. When did that project get permitted before it was transferred to Betsill Brothers. And I understand from Commissioner, from the Chair, that this was originally deemed for senior citizens care center and then it was transferred to Betsill and now the intent is for condominium. Please clarify for me I'm new on the commission.

Mr. Boehlje: Sure. The original permit involved variances, Conditional Use Permit, SMA Permits, all took place in 1997. Phase 1 was constructed over the next, it took several years, I want to say it took seven, eight years to complete Phase 1. Phase 2 was the part we're dealing with now and that's what I alluded to in my response to the Chairman. Phase 2 was acquired by Betsills from the original owners and that transfer and the condominium plans, planned to do it as a condominium was approved by this commission four years ago.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: What did Phase 1 consist of?

Mr. Boehlje: Phase 1 was 80 units of rental for rentals for assisted, it's not entirely assisted but for seniors, a portion of it was for assisted care.

Mr. Mardfin: 80 did you say?

Mr. Boehlje: 80 units.

Mr. Mardfin: And how many of those have been constructed?

Mr. Boehlje: All of the first 80 units.

Mr. Mardfin: Are they inhabited by seniors?

Mr. Boehlje: Oh yes. I mean, my understanding – we don't retain – we didn't retain ownership of that. The original owners still own Phase 1. My understanding is it runs 80 to 90% occupancy something like that and they are seniors.

Mr. Mardfin: And is there some sort of assisted care aspect to that?

Mr. Boehlje: I believe they offer a number of units and they're not – my original understanding was about 20, 23 units were going to be assisted care.

Mr. Mardfin: Okay, on Phase 2 how many units are anticipated?

Mr. Boehlje: 36 units.

Mr. Mardfin: And those will also be for seniors?

Mr. Boehlje: They will be for seniors, yes.

Mr. Mardfin: Exclusively.

Mr. Boehlje: Yes.

Mr. Mardfin: But not those needing assisted care?

Mr. Boehlje: Not necessarily. They will be accessible units, there can be arrangements made with the owners of Phase 1 if they want to join in their meal programs, things like that but they're not directed to assisted care people.

Mr. Mardfin: What's the distance –

Mr. Starr: I don't want to get too far from our agenda item which is to decide whether we want to look at it or pass on our ability to do so. Commissioner Hiranaga first and back to you Commissioner Mardfin.

Mr. Hiranaga: Could you explain what the Special Use Permit was for?

Mr. Starr: Commissioner Fasi, Planner Fasi, I'm sorry, I didn't mean to make you a commissioner.

Mr. Fasi: The Special Use Permit is for the use of a senior residential housing complex which is not a allowable use in that zoning.

Mr. Hiranaga: Is it because of the underlying zoning?

Mr. Fasi: Yes.

Mr. Hiranaga: Which is residential?

Mr. Fasi: Underlying zoning is A-1. And the – just to let you know, the Special Use Permit expires in 2015.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: I understand the Chairman's concern that we not move around but I need to ask some questions to know whether I'm willing to waive review.

Mr. Starr: Okay.

Mr. Mardfin: What is the physical distance between Phase 2 and Phase 1? Roughly.

Mr. Boehlje: We're talking about, I mean, obviously they're adjoining properties. I would say the buildings are separated by maybe 50 feet.

Mr. Mardfin: Oh okay.

Mr. Boehlje: Just the setbacks.

Mr. Mardfin: And the intent of these are to be sold not to be rented?

Mr. Boehlje: That's right. In the Phase 2 yes.

Mr. Mardfin: And is it for low income housing, low income prices?

Mr. Boehlje: No.

Mr. Mardfin: Market housing.

Mr. Boehlje: No, not by regulation it's not for – it's market.

Mr. Mardfin: Market value.

Mr. Boehlje: Yes.

Mr. Mardfin: Thank you.

Mr. Starr: Commissioner Hiranaga.

Mr. Hiranaga: Market value you mentioned it was targeted for elderly, so are you putting that as a



CC&R or what type of condition are you placing upon yourself that you would fulfill this representation?

Mr. Boehlje: Yes, that was our representation four years ago that we would put that in the CC&Rs and it would be for 55 and over.

Mr. Hiranaga: But that's not a condition of the SMA Permit?

Mr. Boehlje: My understanding is it isn't a condition of the SMA Permit because it's assumed – part of the application that it's stated in the application that they will be for seniors and I know back in the day I looked through the files to see what was necessary here and it was approved for seniors so there wasn't any necessity of a condition on the permit.

Mr. Starr: Okay, we ready? Commissioner Shibuya first and then back to you.

Mr. Shibuya: Yeah, I'm troubled with this, the reason why it's delayed for noncompletion is because there was supposed to be some kind of a retaining wall surrounding the properties is it not to provide some protection and/or contain the seniors within that property?

Mr. Boehlje: There are retaining wall requirements and most of them have been built with the Auhana Road improvements. So those have been met as a condition of – Phase 1 had a bond for the road improvements on Auhana and Kanoe Street. All of Auhana has been completed now. The bond has been released for that and that's the retaining wall I believe you're referring to because there is only minor retaining wall work left with Phase 2 along Kanoe Street in fact, I don't think there's any retaining wall there that's necessary. It was on Auhana Street and that was completed.

Mr. Shibuya: Yeah because when you have seniors some of them have behavioral capacities of youngsters and even though they move slowly they don't have the judgement and so they'll cross streets at the wrong places and do it at time when you really don't, are not aware that they are doing it. I'm very sensitive about this and so the standard of care is much higher and therefore, I would like to see that construction completed. Now if it's not done then let's say we deny this what happens to the units?

Mr. Boehlje: Let me just say it has been done. The part you're referring to is done. The only – if there's I don't believe there are any more retaining walls to be built except as part of the new construction on site. All the other retaining walls were done as part of the road improvements for Auhana.

Mr. Shibuya: And so I just want to know, I don't want ...(inaudible)... word stuff, is it done or is it not done?

Mr. Boehlje: What you're referring to is done.

Mr. Shibuya: So it is enclosed so that you don't have seniors wandering off.

Mr. Boehlje: No. The retaining wall, the purpose of the retaining wall was to stabilize the property.

It's not a bordering wall to keep people in. It's to stabilize the road and the property along Auhana Road. That's the retaining wall that's referenced. There are no walls around this property keeping people in either as Phase 1 or 2 proposed, there aren't walls on this property for that purpose.

Mr. Starr: Okay, Commissioner Mardfin then Commissioner Hiranaga.

Mr. Mardfin: You're requesting a two-year time extension to initiate construction?

Mr. Fasi: No, it's a two-year time extension to complete construction.

Mr. Mardfin: Oh. What is the likelihood you will be completed by August 31, 2012?

Mr. Boehlje: It's not very good. It's just that that's what we were dealing with in terms of the request. I mean, I'd prefer, we would have liked to ask for a five-year extension and if you can grant that that would be great. We originally thought that we were asking for starting construction but as staff pointed out the condition that we're asking for a time extension on in that permit says for completion of construction so that's the condition we were addressing we applied for it.

Mr. Mardfin: And the reason you're suggesting is because the applicant has been unable to secure favorable financing and economic conditions. Have you secured favorable financing yet?

Mr. Boehlje: No, no.

Mr. Mardfin: Do you anticipate?

Mr. Boehlje: Things would have to go awfully well for us to be able to start construction in the next few months.

Mr. Starr: These questions would be more suitable for the entity doing the review. Commissioner Hiranaga.

Mr. Hiranaga: I'm trying to understand how ownership is set up because you said the original owners still own Phase 1.

Mr. Boehlje: Yes.

Mr. Hiranaga: And Betsill Brothers owns Phase 2 or the SMA permit has been transferred to them. So has the parcel been subdivided or how is ownership taken?

Mr. Boehlje: Yes.

Mr. Hiranaga: So there's two separate parcels?

Mr. Boehlje: Yes there are.

Mr. Hiranaga: I guess I have one more question.

Mr. Starr: Yeah, go ahead and then Commissioner Wakida.

Mr. Hiranaga: Unfortunately, I would like more specifics on your drainage plan as far as what is being retained pre development post development. I'm not sure if you're prepared to answer those questions at this time?

Mr. Boehlje: I can address that if it's okay Mr. Chairman?

Mr. Starr: I feel we should be deciding whether to review it or not and trying to review it here.

Mr. Boehlje: Well actually if he meets my, if he satisfies my concern I would be prepared to grant the extension but?

Mr. Starr: Okay, I'll let you give you a brief answer but please we really should be deciding the factor.

Mr. Boehlje: Well the short answer is that a large gully goes across the site, all of the drainage is retained on the property, released into that gully. It's subsurface drainage controlled into that gully as required by the Public Works Department so it's all being retained on site and flows into I'd say about four acres of the site, the whole project is drainage. So it's more than adequate.

Mr. Hiranaga: I guess I need more clarification. He's saying the surface runoff is being retained but then it's allowed to flow into a subsurface drainage that seems to conflicting.

Mr. Boehlje: The standard when you have a gully traversing a site it's to keep it contained if there is heavy runoff running through that gully it's contained until such time as the flow goes down.

Mr. Hiranaga: You're talking about above site source.

Mr. Boehlje: Yes.

Mr. Hiranaga: So as far as what's going to be generated due to the improvements are you just meeting the minimum county standard of capturing or retaining post development or are you also retaining pre development surface runoff?

Mr. Boehlje: Well, there's no drainage –

Mr. Hiranaga: No, the surface runoff generated on that site prior to development are you going to be retaining that with your proposed drainage plan?

Mr. Boehlje: I'm sorry I didn't understand ...(inaudible)...

Mr. Starr: I think we should move along and decide whether we want to review it. We're definitely straying away from our agenda item which is whether we want to waive our review. Before entertain a motion either way, I want to see if there's any public testimony on this. Not seeing any

–

Ms. Wakida: May I ask a question?

Mr. Starr: Yeah sure, yeah go ahead.

Ms. Wakida: I'm not sure what this – I'm a little thick here on what this project is. I'm new at the commission and what I was given is a retirement community and then you say now half of it a retirement community and the other half gone to Betsill and they're going to build condominiums but they're only going to sell them to people that are 55

Mr. Fasi: Or older.

Mr. Wakida: Am I correct so far?

Mr. Fasi: That would be 55 or older.

Ms. Wakida: Or over. Yeah. So what's the tie-in to a retirement community I mean just because other than age?

Mr. Fasi: I believe that is the tie-in right there the 55 or older requirement and it's not your classic standard you know 65 or older retirement community. It's 55 or older.

Ms. Wakida: Okay, and is there anything I don't want to belabor this, but is there anything on this project that is specific retirement living that's different from any other condominium project?

Mr. Fasi: I'm going to defer it to the applicant, I'm not sure how they set their program up.

Mr. Starr: Lets decide whether we want to look at it or not rather than looking at it further. I really feel we have simple item before us. Commissioner Hiranaga please consider the point.

Mr. Hiranaga: I'll make a motion. Because – I'll make a motion that we not waive the review of the SMA extension request.

Mr. Starr: Is there a second?

Mr. Shibuya: I'll second that.

Mr. Starr: So we have a motion by Commissioner Hiranaga, seconded by Commissioner Shibuya, the motion is?

Ms. Aoki: The motion on the floor is that the commission will not waive the review of the extension request.

Mr. Hiranaga: For me, the underlying reason is because I believe the – I guess none us were sitting on the commission when this was approved originally but the underlying reason for a special use permit I think being approved was because of the proposed intent and that intent has now been modified so I think I would prefer to look at it as a stand alone project because it is on

a subdivided lot and it's not being proposed by the original developers that got the SUP so I think it needs a second look.

Mr. Starr: Commissioner Tagorda.

Mr. Tagorda: My comment here is it the applicant whether the change ...(inaudible)... or not, if all the conditions set forth before us the commission in the past commission I think we should just waive, on my point of view, I didn't like to waive because if we go through again to the old ways of first phase we might not agree that they did first phase. We only the second phase of this project and they're trying their best to get financial help to get it completed and most of this project are completed right?

Mr. Fasi: That is correct. The first phase was 80 units and the second phase was 40. When the project was first proposed it was for a total of 200 units and they brought their total number down to 120 from 200 to get their permitting from the Planning Commission.

Mr. Starr: Thank you Mr. Fasi. I just want to add a comment, I believe I was the only commissioner now sitting who was here when it was changed from the senior support housing with medical services to the condominium. I was in the minority and do not feel that was a right thing to do because there's a huge need for senior care living and at the time that change was justified by the ability to build it quickly and provide jobs. Anyway, for whatever it is I would like to move along and have our vote and then we can one way or another and then have lunch. Commissioner Hiranaga.

Mr. Hiranaga: If the – came back in '08 for an extension I believe I was on the commission also and I do recall there was discussion regarding view plains from the people across the street. I guess it was an extension. It wasn't the original SMA application.

Mr. Starr: That was the first extension after the change over to the condominiums. We ready to vote? The motion just to clarify.

Ms. Aoki: The Maui Planning Commission will not waive the review of the extension request.

Mr. Starr: All in favor please raise a hand. All opposed.

**It was moved by Mr. Hiranaga, seconded by Mr. Shibuya, then**

**VOTED: To Not Waive the Commission's Review of the Time Extension Request.**  
**(Assenting - K. Hiranaga, W. Shibuya, J. Freitas, L. Sablas, P. Wakida)**  
**(Dissenting - O. Tagorda, W. Mardfin)**  
**(Excused - D. Domingo)**

Mr. Starr: The count.

Ms. Aoki: You had five yeas and two noes.

Mr. Starr: Okay, so it will come back before us for review. We're going to take a recess for lunch. See you all at 1:00 p.m. Thank you very much.

A recess was called at 12:00 p.m., and the meeting was reconvened at 1:06 p.m.

Mr. Mike Hopper replaced Mr. James Giroux.

Mr. Starr: Maui Planning Commission, August 24<sup>th</sup> we're back in session. Before we proceed with our next item we had a change in counsel. We have another representative of Corporation Counsel will be our lawyer this afternoon another one who's really familiar with the planning process but I will turn it over to him because he has a disclosure to make about the next item.

Mr. Mike Hopper: Just to in the interest of openness I did represent the Department of Environmental Management when it went forward to the Land Use Commission to get a Special Use Permit and assisted them in preparing that permit. I haven't represented the department in any way with respect to their SMA Permit and today I will be only representing the commission in this matter. I spoke with the Chair, he didn't have an objection but I wanted to have that disclosed to you and make clear again I'm only representing the planning commission at this meeting today.

Mr. Starr: Any commissioners have a concern with that? I don't. Okay, thank you very much. I'll pass it over to our Director to introduce the next item.

Ms. Aoki: Thank you Chair. This afternoon we have before you Hana Advisory Committee to the Maui Planning Commission transmitting their recommendations on the application by Ms. Cheryl Okuma, Director of County Department of Environmental Management requesting a Special Management Area Use Permit for the County's Hana Landfill for land consolidation, boundary realignment and grading activity on approximately 74 acres at TMK 1-3-006: 012 and 1-3-006: portion of 007, Hana, Island of Maui.

This action was deferred from your July 28, 2008 meeting in order for the State Land Use Commission to act on the Land Use Commission Special Use Permit and at the November 10, 2009 meeting. Our planner for this project is Paul Fasi.

## **E. UNFINISHED BUSINESS**

- 1. Hana Advisory Committee to the Maui Planning Commission transmitting their recommendations on the application by MS. CHERYL OKUMA, Director, COUNTY DEPARTMENT OF ENVIRONMENTAL MANAGEMENT, requesting a Special Management Area Use Permit for the County's Hana Landfill for land consolidation, boundary realignment, and grading activity on approximately 74 acres at TMK: 1-3-006: 012 (por.) and 1-3-006: 007 (por.), Hana, Island of Maui. (SM1 2007/0003) (P. Fasi) (Deferred from the July 28, 2008 meeting in order for the State Land Use Commission to act on the Land Use Commission Special Use Permit and at the November 10, 2009 meeting .)**

Mr. Paul Fasi: Good afternoon Commissioners. If I could remind this body that the applicant's

requesting a Special Management Area Use Permit in order to consolidate approximately 45 acres of state-owned land into the Hana Landfill site. Secondly, to realign the landfill boundaries after consolidation and creation of a runoff retention basin. This item has been discussed since February 21, 2008 for the Hana Advisory Committee. It has been before this body and today, up to this date, the applicant has received their State Land Use Special Use Permit and they've received their County Special Use Permit. So today, we are reviewing the application for the Special Management Area Permit.

The applicant does have a power point presentation regarding the last issue that was discussed on November 10<sup>th</sup>, I believe, 2009 and the matter was deferred due to ground water monitoring report being inconclusive and this body wanted more ...(inaudible)... After that on May 4, 2010, the Planning Commission did do a site inspection at the cinder quarry in Hana, however, the matter was not discussed, it was not on the agenda but since this body was in the area just made a visual inspection.

So today up for discussion is the ground water monitoring report and I believe the applicant has a power point presentation to you, for you to present that.

Mr. Starr: Before we proceed about how long is the presentation?

Mr. Fasi: About 30 minutes.

Mr. Starr: That's okay. Please introduce yourself and welcome Director Okuma.

Ms. Cheryl Okuma: Yes, good afternoon Chair Starr, Commissioners. Cheryl Okuma, Director of Department of Environmental Management. We do have a presentation and I would like to introduce our consultants, Ray Matasci from Brown and Caldwell and Mich Hirano from Munekiyo and Hiraga. If I can turn this matter over to Mich. Thank you.

Mr. Mich Hirano: Thank you Director Okuma and good afternoon Chair Starr and Commissioners. My name is Mich Hirano with Munekiyo and Hiraga and we've prepared a power point presentation for the Maui Planning Commission this afternoon and I would also like to provide a little bit of background because there are three new planning commission members to the body and I would like to just go over a little bit of the background.

The Hana Landfill has served the region since 1969. It is a single disposal facility for waste in the East Maui District and it services the districts of Keanae, Nahiku, Hana, Kipahulu and Kaupo and it provides essential waste disposal for residential and commercial waste as well as recycling and green waste composting.

This is the regional location map of the Hana Landfill. The existing landfill covers approximately 29 acres and it was deeded over or the management control of the landfill site was transferred to the County of Maui from the State of Hawaii in 1969 and it's been used as the landfill disposal area for East Maui since that time.

Boundary readjustment is approximately 45 acres and the requirement and the reason for the

boundary readjustment was that over the years the Hana Landfill actual active waste disposal area had encroached off of parcel 12 which was the original landfill site into parcel 7 which is the adjoining parcel. It was about a five-acre expansion and then as well over the years the area around the landfill has been used for environmental monitoring. There are methane gas probe wells located not only on the landfill site also on the adjoining State property and there are ground water monitoring wells that are used.

The actual application will not expand the active area of the landfill. That has been established for some time in the current area and really the expansion, boundary adjustment is to create a buffer for the landfill and for the placement of these environmental monitoring wells.

Just a picture of the landfill. This is off of Waikoloa Road just to north of Hana as you approach Hana before you get into Hana you turn left off Hana Highway and you come into the landfill site. It's a fairly nicely landscaped landfill. It has received awards for landscaping and as you can see this the active area of the landfill. It retains commercial and residential waste. It averages approximately four tons a day. There's groundcover that's put over the landfill to keep the litter from blowing and contain the landfill deposits as well as cover it and this is what you see a dump truck and as well a machine bulldozer that just piles the landfill consolidates it into one area. Again, you see this as the active area of the landfill and the retention basin will be kind of the foreground or the detention basin rather. Another slide of the landfill.

As Paul had mentioned, the landfill really, the County of Maui Department of Environmental Management is requiring to get the permits for compliance purposes and they had applied for the State Land Use Special Use Permit which was approved in July 2009. The County Special Use Permit was approved in July 2008 and we are before you today for the Special Management Area Use Permit. Upon successful application of the Special Management Area Use Permit this will enable the County of Maui to be in compliance with Department of Health for the landfill operations and then apply for a landfill operating permit. I'd like to turn the presentation over now to Ray Matasci of Brown and Caldwell because some of the action that the Department of Environmental Management is requesting approval for today is the detention basin that would be built to capture the storm water runoff from the active face of the landfill.

Mr. Ray Matasci: Thank you Mich. Good afternoon Commissioners. Chair Starr this is kind of a tough subject after lunch to talk about ground water hydro geology and landfills and retention basins but hopefully you'll find this information useful.

One thing to mention also is there is a compliance issue with this landfill and that is DOH will not grant the County the Landfill Operating Permit until they have all of the permits they need including this SMA Permit.

Brown and Caldwell completed some technical work and this is what I'd like to talk to you about today and I'm sure there'll be questions that we can discuss. But there are really two parts to this that I'd like to share this afternoon. First, I'd like to talk about the groundwater valuation that was completed in the last few months. The objectives, approach, the findings and our recommendations and then I'd like to talk about the detention basin and what the design concept is and what the design criteria are for this basin.



Here's a closer view of the landfill site plan. This is the existing boundary again and you can see the landfill did encroach here's the actual historical boundary right here in orange dash but the landfill did encroach outside of its boundary and as Mich had mentioned there's environmental monitoring, there's three landfill gas probes located outside of the existing boundary that were installed in 1993 as part of the monitoring for this landfill and there's ground water monitoring wells currently at the site. This is the background well we call HL-1 and then here is HL-2 and HL-3 and this landfill is located about half a mile north of Hana Town.

So the goal of the ground water evaluation is to address concern about the direction of flow and the potential release to the south of the landfill. Earlier the commission and others in the public expressed concern about potential contamination to the south and that the possibility that the existing ground water wells would not pick that up if that were the case.

Now the way we did that was first to review the accumulated the geologic and ground water data to recommend if and where additional ground water monitoring is needed and then we reviewed existing ground water quality data to evaluate based on the quality data if the ground water is or if the landfill is impacting ground water.

So the approach we took is first to resurvey the existing ground water monitoring well reference points and I'll talk a little bit more about that in a minute why that's important. And then the second is we evaluated the existing ground water data using the new reference well points as well as the available monitoring data that's been accumulated over the last about 14 years as well as other regional geology and ground water information that's available from the State and USGS.

So first the resurvey of these injection wells. This is a picture of one of the three monitoring wells. This is well No. 2 and this is a picture looking down into the well. So basically the way the well is constructed is there's a hole that's drilled down to the water table and then this PVC pipe which is actually slotted exists down in, I should say placed down into the ground water table and then there's gravel and sand that's placed down between this interior casing and the hole and then it's sealed at the top so that nothing can flow down into the water from here. And this steel casing right here basically protects that interior PVC casing and this little mark right here is the reference point for this ground water well. So this the location, this is an example of a well that is used to sample for ground water quality and also is used to determine the ground water elevation. Basically the way that is done there's a device right here that's basically a tape with gradations on it, it has a sensor on the end of it and it's lowered down into the well and then when it touches water it makes a sound and then you read the distance from this reference point down to water and so if you know this elevation right here and you know the distance down to the ground water, the depth ground water you can then establish what the ground water elevation here is. And once you do this at all three wells and you know all the ground water elevations you can then use that to determine what the direction of flow is and what the gradient is.

So one of the things that we had postulated, we always you know when these wells were installed in 1993, we go back to this drawing right here it was anticipated because of the regional ground water flow that the water would flow from the west to the east towards the ocean and so that's why this background well was put in this location and these two wells were put to the east of the landfill.

When these wells were initially installed and actually in subsequent times the depth to ground water measurements were taken and then compared against those reference well elevations. That data indicated that the water was flowing to south or southwest and so as we thought about that as we were thinking about the need, potential need for an additional monitoring well the question – one hypothesis was one if in fact the ground water was really flowing to the east but yet we're measuring it as if it's flowing to the south that could occur if those reference points were incorrect and so that's why we went back and resurveyed those reference points.

So it turns out that one of those reference points was wrong. Wells 1 and 3 were about the same relative elevation but this well right here Well No. 2 which is the one to the farthest east and a bit north was actually a foot lower. So instead of the water flowing to the south and we went back and looked at the data and make additional measurements recently it showed the water flowing to the east to northeast so I'll talk a bit more about that.

Here's a picture of the regional well data. Basically we went back to the State and gathered information about other ground water wells, monitoring wells that are in the vicinity of the land fill and there are actually four wells. There's two right here, one right here and one in this location right here and the from the State data base we actually gathered some information about the water surface elevations at these four locations. And when you look at that water surface elevation as you would expect these are basically contours five, four, three, two, one as you would expect the water flows towards the ocean, you know to the east and the northeast and that's what the regional data suggests.

Now as I alluded to a moment ago when we went back and took this new survey data and by the way we measured, we sent out the surveyor. We had them measure the relative elevations of these three wells and based on those new reference points have indicated the water was not flowing to the south but between east and northeast. Well, we sent the surveyor out there a second time because we wanted, when you do surveys there are internal checks and they should be right the first time, but we sent the surveyor out a second time a number of months later to see if they would get the same result because these had been surveyed before and when they went out the second time the measurement, the relative measurements of these three wells came to within one-hundredth of a foot of each other so we were confident that this survey was correct and the second time also, the first time we didn't actually tie the elevations to a known benchmark because we thought that the closest benchmark was up by the airport which is a number of miles away and it would have been quite expensive and really what was key was the relative elevations but when our surveyor did a little more research they found out there were a couple of benchmarks south at the harbor. So the second time they went out they not only measured the relative elevations but they tied the elevations to a known benchmark at the harbor. So again, when we looked at, we took that survey information, we went back and looked at a representative sample that actual seven dates in that period from about '95 to 2008, and then when we looked – we went out on October 20<sup>th</sup> and two times during that day we measured water surface elevations and when you combine that with the regional data we believe in our opinion based on this data that the water is flowing in the east to northeast direction.

Now the water surface elevations and the water in the vicinity of the landfill is influenced by the tides and we have two tidal cycles. We have two highs and lows in each day, approximate 24-hour

period and there is some uncertainty with some of this data and remember that almost all of the data that's been collected was collected as a snapshot. So in other words, you can imagine you got the ground water that is flowing from mauka to makai and it's meeting, it's flowing into the ocean and the level in the ocean is going up and down and so what you have at any specific period in time there may be some small changes in direction but the net direction is in the east to northeast and so again, when you combine the reevaluation of the existing monitoring data that we did plus the additional depth to ground water samples we collected on this study and then combining that with the regional data we're confident based on the existing data that it's flowing in this direction.

We also looked at the water quality data that was collected in the past 14 years. Now these wells as I mentioned a technician will come out, collect a sample from each of these three wells and twice a year and actually I believe that is being – as of late last year that's being increased to quarterly and then those samples are measured for I think somewhere around in the field and in the lab for about 75 different parameters. And so there's a fairly good history in terms of data from those existing wells. And based on the water quality monitoring data to date there's no evidence of a release from the landfill to ground water or changes in the ground water over time. Now I have to qualify that though and say that these two wells as I mentioned, you know, based on the information that we have in our professional opinion it's flowing in this range in the east to northeast that's its net positive direction.

Now if it were flowing to the east the existing wells H-2 and H-3 would be sufficient but there is a possibility at this point it could be flowing to the northeast and if that were the case these two wells would be cross gradient not down gradient of the existing flow and so our recommendation is that a new well be installed to the northeast of the existing active landfill area.

So this new ground water monitoring well is recommended northeast to improve both the understanding of the direction of flow and confirm absent of release and by the statement, "improve understanding of flow," we have three wells here ideally those would be equal distance apart and so you can see if– ideally this well would have been better if it was further north. But again, you know based on before there was any data before anything was done the expectation was that the water was flowing to the east, the northeast and so that's principally why those two wells are put there. But again, we recommend that an additional well to the northeast be constructed.

We also have been involved with the design of the storm water detention basin for the landfill and the design storm based on federal and state standards for the landfill is the 25-year recurrence interval but 24-hour duration. I will note, just for a perspective for a 25-year storm in a 24-hour period this is based on the NOAA weather station at the airport about 13 inches of rain would fall. For a 5-year, one-hour rainfall about four inches would fall. Just again to give you a little bit of perspective in terms of the volume of rainfall over that storm duration.

So that the intent of the storm water detention basin is to capture runoff from the active landfill area and it's primary purpose is sediment control. So here's a – this gives you kind of a perspective of where the storm water detention basin is located. It's south of the landfill and there are – there would be temporary diversion berms but as the storm water moved off of the active landfill area these berms would divert the flow into this basin. Here's a close up picture of the design. Again, there's the connection to the northeast swale. Here's the one to the northwest. It would direct flow

into the detention basin. This is a ramp down into the basin so that it could be cleaned and this is an emergency spillway.

In terms of dimensions it's about a 110-foot wide, about a 156-foot long and in the center it's about 11 feet deep and the volume of that is about 2.4 acre feet and this volume is sufficient again in terms of design for the 25-year, 24-hour storm but it is also large enough to capture the post development 50-year, one-hour storm. So with that, I'll hand it back to Mich.

Mr. Hirano: Thank you Rick. I'd just like to give the commissioners just a brief update of the actions that the Department of Environmental Management has taken since they were before you for the Special Use Permit approval. As you have just seen the drainage detention pond was design by Brown and Caldwell. The ground water gradient analysis was carried out just to determine ground water flow and placement of a third monitor or the fourth monitoring well.

Since the Fall of last year 2009, the County of Maui has also now been carrying quarterly ground water sampling at the landfill. The Department of Environmental Management has also received approval from the Department of Health to use a alternative cover at the landfill. This would be a tarp that would be used three times a day and then the cinder will be used two times a day and that would reduce the amount of cinder that is being used at the landfill for ground cover.

There was a solar power diesel tank installed at the landfill and that was done a few years ago.

All the metals that were, the scrap metals that were stored at the landfill, the old cars, have been removed from the landfill and have been shipped or barged over to Oahu. That was a cost of about \$980,000. It's a very expensive operation but the landfill now has been cleared and cleaned of all the scrap metal and they are no longer taking scrap metal at the landfill site.

The County had also resolved all the Department of Health violation. In 2006, there were some violations that were cited at the landfill and the Department of Environmental Management had taken the action to resolve and remedy all those violations and are now in compliance with the requirements.

The recycling center has been installed or have been placed at the landfill site. However, it isn't operational they are waiting for the Special Management Area Use Permit and the Department of Health Landfill Operating Permit to be able to start recycling at the center or at the Hana Landfill but the facilities are in place to receive the recycling.

And finally, the Department of Environmental Management has just completed the design of the renewal energy and using solar power for electrification at the Hana Landfill management office site which is an onsite small office at the landfill and so that will be powered renewable energy, solar energy.

And then in process and ongoing the County is again looking at the slope stability study and this is at the cinder pit which was a requirement and a condition of this Special Use Permit and they're engaging with a consultant on the slope stabilization study to start that in this year. They will also and will be carrying out the Cultural Impact Assessment as it was required as a condition of the

State Land Use and County Land Use Special Use Permit. They've been actively pursuing with the Department of Land and Natural Resources the license for the cinder pit and as well they are as they indicated to the County and to the Commission they are committed still to the transfer station study, however, funds haven't been identified for those initiatives and those are why they are pending and in process right now.

The Department of Environmental Management does request approval of the Special Use Permit from the Maui Planning Commission and this is a compliance issue that would allow the County of Maui to seek the Department of Health Landfill Operating Permit. So with that, I'll just close my presentation and thank the commission for listening to the presentation and the project team is available to answer any questions that the Commission may have.

Mr. Starr: Okay, thank you Mr. Hirano. Members, questions? Commissioner Mardfin.

Mr. Mardfin: The Cultural Assessment Study you were mentioning --

Mr. Hirano: Yes.

Mr. Mardfin: Is that for Olopawa Cinder Pit or is that for the landfill?

Mr. Hirano: It's for the cinder pit. Yes, it's for the cinder pit.

Mr. Mardfin: The cinder pit.

Mr. Starr: I have a question for Mr. Matasci. I understand there's a likelihood that the flow is to the east or northeast, you know, but looking at detailed topographic maps, you know, it looks like most of the slope is still to the south. I would assume, I mean, let me start with a simple question. What happens to the leachate, in other words, the trash that's been put there and over the years and the new trash will have some amount of water flowing through it and that will leach the chemicals, some of them toxic, some of them not so, away from the site and in a wet place obviously it will travel further. Where do they do? Where do they end up?

Mr. Matasci: What that passes through the landfill goes down into the ground. Now the question, it is a question about what or how much that water might pick up as it passes through the landfill and that is the purpose of the monitoring wells to measure anything that might be released in that water that passes through the landfill.

Mr. Starr: Now is it an accepted given that the leachate with whatever amount of those chemicals will hit the ocean?

Mr. Matasci: I would say that the water that passes through the landfill and the water that passes by those monitoring wells as I said, the intent or I should say the trend would be that it would go to the east or northeast so eventually it would make its way into the ocean.

Mr. Starr: The subsurface there is lava.

Mr. Matasci: Correct.

Mr. Starr: And Hana is famous for lava tubes that's one of the attractions that people come to Hana for it's to go and adventure in the lava tubes. They were used for burials, they're extensive and they, that area particularly from Wainapanapa to Hana Bay is filled with underground tubes. If there were a lava tube that were running south or running in virtually any direction with the right gradient would there be a chance that the leachate would find its way into that lava tube and then travel in a direction other than the what you call I believe the predominant ground water flow direction.

Mr. Matasci: There's a possibility. Now I mean if there are lava tubes, we don't know where, if or where there are lava tubes in that area. I will mention, answer you question though about the, I want to talk a little bit about the topography because if you look at the topography in this area it generally is you know, follows the contours of this, of the area just mauka of the landfill. And it does turn slightly to the south in the vicinity of the landfill but keep in mind that the water is down 40 or 50 feet below the landfill approximately and the local topography doesn't necessarily direct what's going on down 40 or 50 feet where the water is.

Mr. Starr; I understand. I'm actually looking at a much more detailed topo map on the County GIS system.

Mr. Matasci: Right.

Mr. Starr: And the localized, ...(inaudible)... to flow northeast, the landfill is at approximately 50 feet elevation according to this.

Mr. Matasci: Right.

Mr. Starr: And it would have to flow up to about 90, it's about 90 feet between the landfill and the coast to the northeast, but I understand it or may not, the strata of the lava may go up. My point though is, if there is a to be a monitoring well drilled to the northeast which I feel is prudent would it not make sense to also drill one to the south because to the south lays the primary recreation spot and fishing spot for the Hana Community in terms Hana Bay and the fish ponds. That's where all the kids swim, learn how to swim, that's the canoe club is in the water everyday. So, you know, I assume you were asked a question where should we put one monitoring well? Well, wouldn't it make, be more prudent to perhaps put two monitoring wells and put one to the south and put one to the northeast?

Mr. Matasci: Actually the question to me was not where to put, the question was is there more monitoring wells needed and no one said to me or gave us the direction if and where should we put one more monitoring well and I would say in my opinion that the prudent action is to put in one additional well in the area was based on the existing data where the flow is most likely to go. Now if in fact down the road we have a, now a network of four wells and for some reason, you know, this is incorrect. I think it's unlikely but if we're incorrect you could install another well at some point in the future but each well costs anywhere from a \$150,000 to \$200,000 on that order and then you have the additional cost of monitoring that well each quarter going forward.

Mr. Starr: So, yeah, are you willing to stake your reputation that it's not going into Hana Bay where the liability would lay if indeed there is a plume of toxins going into Hana Bay where all the kids learn how to swim and so on?

Mr. Matasci: I'm willing to tell you that based on the existing data that we have and using the best science that we've got that the most likely direction is in the east to northeast. Now I can't tell with a hundred percent certainty that it's not going to the south but based on the existing information that we have, in my opinion, in our opinion, that's not just mine but our hydrogeologist, it is going in this direction and given that, the most prudent next step is to put a well in that direction.

Mr. Starr: That's a good next step but, you know, I, for one, will not rest easy until I see at least one additional one to the south. I have one more question before I turn it over which is are you recommending in terms of monitoring the possible emissions of leachate into the ocean? Are you recommending, you know, say tissue sampling all along and around the coast which I understand is what was suggested by Department of Health, State of Hawaii.

Mr. Matasci: Okay, in my opinion if you're trying to ask, answer the question is this landfill affecting the nearshore waters? In my opinion, it would be inadvisable to sample the nearshore waters if you're trying to answer that question, and let me explain in a minute. The reason is, to this point these monitoring wells have not given any evidence that there's a release and so lets say you went out here and collected a sample or in Hana Bay and you found something. You wouldn't even know actually what to measure, but if you found something how would you know, and given all the information closest to the Landfill tells you there's no release, how would you know it's the landfill or surface water runoff or someone, something else dumping, you know, into the ocean. So if you're trying to answer the question, is there anything in the nearshore waters that could have gotten there from any particular source that could be a concern that's a different question. But you're trying to answer the question is there anything from this landfill that is affecting the nearshore waters you would wait until you measured something that was being released from the landfill in one of these wells and then you would look for that. So lets say for example, there was a release to the northeast and there was say a particular pesticide then you would say, "okay, the landfill has had a release and there's a particular compound," and then you would say, "okay, what are the off site impacts?" And you would go look potentially at, you know, tissue samples of fish or other creatures and see if you could find that particular compound. But right now at this point, the data that you've got although it doesn't confirm because in our opinion this network of monitoring wells is not complete. If you went now you wouldn't know what to look for and you wouldn't know what its source because all the data suggests the landfill is not releasing anything.

Mr. Starr: Seem to be circular logic that is designed to protect the County of Maui but is, has a likelihood of putting the people of Hana at risk.

Mr. Matasci: Actually I'm not sure actually how I see it circular logic because the normal procedure is you would look closest to the landfill and confirm there was a release and closest to the source and then you would look if there were release beyond that landfill. I could give you an example, I hope this isn't too long but we just studied for – we did the closure for the Molokai Kalamaula Landfill and this was in the early '90's and part of the closure, an EIS process was to go out and do tissue samples in creatures in the vicinity of the landfill. And it turns out that in some of those

creatures we found some arsenic and so people became very concerned about that. However, the arsenic in the groundwater, in the soil in the vicinity of the landfill was no greater than any other place a mile up or down. We ended up going up and down the whole coast of Molokai and we found that arsenic in this case was inherent in volcanic soils and crabs for instance, crawl in the soil and may accumulate it. And the County ended up monitoring, there was a condition imposed, the County ended up monitoring crabs up and down the coast for five years at a cost of I think close to a quarter of a million dollars and it turns out that it wasn't the landfill at all. And so there's an example I think of we had data that showed the landfill was no different in other areas but we ended, the County ended up spending about over a period of four or five years, a quarter of a million dollars proving that.

Mr. Starr: Normal logic isn't to put an unlined dump and operate it without any permits for 30 years on lava rock, 300 feet from the ocean in a place where people eat a lot of their food from the sea. But anyway, I've been asking enough. Commissioner Mardfin.

Mr. Mardfin: Can you show me on one of your maps where Kainalimu Bay is?

Mr. Matasci: Okay, I got that from the USGS map and it shows this as Kainalimu Bay in this area right here.

Mr. Mardfin: I was looking at some of your maps and I didn't see that.

Mr. Matasci: Okay, it says it I think it's right there, I'd have to blow it up but I think that's – that map says that's Kainalimu Bay.

Mr. Mardfin: Okay, I just didn't see it. Commissioner Starr earlier asked you if the groundwater was eventually getting out into the ocean and your study shows that there certainly was a tidal impact so your study concluded that there was a connection between the groundwater and the ocean. At what depth would this would it be oozing out. I don't know what the right word is, but lets say oozing out into the sea water?

Mr. Matasci: I think that would be pretty difficult to say precisely. We do know in the report there's actually a figure and when we looked at the geology there's what's called a clinker zone which is a highly permeable basaltic rock. It tends to be more broken, less solid and based on the geologic logs that were created when those wells were constructed, that clinker zone would terminate we estimate, I mean, it's very, I'm not a geologist, I'm an engineer. Actually that's one of the things, geology can be a little bit fuzzy because you have view points and you interpellate that we estimate it could be a couple hundred feet offshore. That's where the clinker zone goes but that doesn't necessarily mean that's where the water goes because there could be fissures, you know, and –

Mr. Mardfin: Are you referencing Figure 5-2?

Mr. Matasci: Correct.

Mr. Mardfin: I'm looking at Figures 4-2 and 4-3, and they are both from October 20, 2009, one's at 9:00 a.m. and the other is at a little after noon.



Mr. Matasci: Right.

Mr. Mardfin: And they show rather grammatically different directions. One is going northeast and one is going east of southeast perhaps or maybe east.

Mr. Matasci: Correct.

Mr. Mardfin: Is that variability, is that due to the tides, is that – what is that due to?

Mr. Matasci: What you're seeing there is an example, it's a snapshot and imagine lets say there were a contaminant particle that was released from the landfill, it would not take a straight shot east say to the ocean. And in the vicinity of the landfill you've got as you've pointed out the tides that influence the water heading mauka to makai. So imagine, you have the mauka to makai gradient and you have the ocean coming up and down and so basically at any one particular instant in time and that's why you'll see that when we took those measurements in the wells, you need to do them within a relatively short period of time like in a half-hour because you will see as you took snapshots, you will see some changes in the direction at that specific point and so it will oscillate a bit but its net direction – that's a good example, this was taken I think, oh about four or five hours apart, something on that order and that gives you an idea of how the tides do influence the instantaneous direction that the water – what the gradient will be. But the next direction in our opinion is to the east, between the east and northeast.

Mr. Mardfin: Yes, one more. In reading the totality of your report it sounds like the previous studies were in error because we were getting testimony what it was six months to a year ago that the water was probably going south or to southeast. Could you, do you have an opinion as to why that was an error?

Mr. Matasci: The error was created or I'll call it propagated or repeated because of the error in the survey. And basically if those, I'm going to back up to this well.

Mr. Mardfin: Was that Well Number 2 that you were talking about?

Mr. Matasci: That's Well Number 2, and actually this is the one that changed the most. The other two in a relative sense, Wells and 1 and 3, basically stated the same relative elevation. But this reference point right here when we measured it twice again, it dropped a foot relative to 1 and 3. And so you can imagine when you look at this network right here. So imagine if the reference point is a foot higher here so that that tells you, that's going to lead you to believe is the water service elevation is a foot higher and it's going to incorrectly tell you that your water's flowing to the south. So if that reference point is actually a foot lower then relative to these the water is going to flow in this direction. So the error was caused by the survey being wrong. Now, I've gone back and I have, I've spent hours looking at the previous survey and there's a lot of, I have a lot of hypotheses but I can't tell you exactly why. If you look at this well, the surveyor could have measured the top of the casing and not the reference point. He could have measured it with the lid on top, there could have been a number of different things. But even when I look at that, I look at those difference and I know the difference in elevation between the interior casing and the exterior casing that doesn't completely explain it. So I can't tell you exactly why the previous survey was wrong,

all I know is I am confident that the existing survey is correct, but the reason we concluded and all the previous work had concluded that water flowed to the south are all based on using the prior reference points and if those were wrong it changes the conclusion.

Mr. Mardfin: Were you able to go back and recompute things using the adjusted height for Well 2?

Mr. Matasci: Correct. I mean, that's what we did if you look at on page 44, Table 4-2, we went back and looked at that's a sampling of the previous data and we reevaluated those evaluations based on the new reference points and that's how we concluded.

Mr. Mardfin: Is that 4-1 or 4-2?

Mr. Matasci: It's Table 4-2 on page 44. Those are the revised ground water elevations. Table 4-1 has the survey information but the revised ground water elevations are in Table 4-2.

Mr. Mardfin: My 4-2 talks about an October 20<sup>th</sup> sample. Am I on the wrong page?

Mr. Matasci: It has those at the bottom. Those are the last two. But if you look at the ground water measurement date for the first seven points, this is the table right here.

Mr. Mardfin: Oh, I'm sorry, I'm on the map. I'm on the figure not the table.

Mr. Matasci: The table, right.

Mr. Mardfin; The table, excuse me. Okay. Usually in science we talk about a mean effect or general effect and you basically said it's somewhere between east and northeast we often talk about a variation, you know, your mean and standard deviation and a lot of types of figures. Any guesstimate as to what the – within a – with a normal curve two-thirds what the extent would be?

Mr. Matasci: No, I would hazard to guess and the reason I say that is a couple of things. Number one, these previous studies except one exception were snapshots and so – and we tried to give you an idea of what the tide was doing at that time, but it's very hard to determine.

The other piece of information that we thought would have been helpful because there was and this is what we recommended, actually it's in the report, once this forth well is installed, we recommend that sensors be placed in the four wells and continuously measure the changes in elevation for our lunar cycle for close to 30 days to see the complete change and see how they change relative to one and another and then you will have a much more precise sense of the ground water flow.

There was a title study that was done in '96 but as we dug into that, there were some inconsistencies and we don't completely trust it. So because of that, because these are just snapshots and we don't trust the title study, it would be difficult to, you know, give you a standard deviation.

Mr. Starr: Commissioner Tagorda.

Mr. Tagorda: Looking at those monitoring wells, you have three of those things there in that area, and it only monitors the quality of water and it doesn't – it does tell you what other compounds are being monitored, any I right?

Mr. Matasci: Well, the way the ground water quality is monitored is the technician will drop a sampler down this well, anywhere from 30 to 90 feet and capture a sample of that water. And then, there'll be some field analysis done there in the field. There'll be some field instruments to measure certain things and then samples of those waters will be sent to laboratory for analysis and it measure – the combination of the field measurements and the laboratory analysis will give you information on approximately 75 different compounds. But there's no online, there's no device in the well that continuously measures any particular compound. The way you find ..(inaudible)... water quality is you take a water sample and you measure some things In the field and you send those samples to the laboratory for analysis.

Mr. Tagorda: Okay, let me just follow up. And on those three monitoring wells, I believe they went into depth of only not even touching the aquifer beneath that landfill. So what's the status of that aquifer beneath the landfill?

Mr. Matasci: The monitoring wells actually go down into the aquifer. They go all the way down. Now how far you go down depends on where the well is at because the ground water is at about sea level. At about zero elevation. And so this well I think is on the order of about 90 feet deep plus and it goes down into the water table I think another somewhere around five feet or more. This well is on the order of about 35 feet deep but again, it goes down below the water table about the same amount.

Mr. Tagorda: Talking about those three different specific locations of those monitoring well some they become cross gradient, some they become down gradient, when does this well become such, cross gradient, down gradient?

Mr. Matasci: Well, because the challenge is we have I think a good sense of the general direction of the flow but we don't know based on the information precisely where it's going and so we say that the predominant direction is northeast to east. So if in fact, with better data and I mentioned this lunar cycle monitoring, we determine that the water is flowing to the east then these two wells would be down gradient. If it turns out that once we install these wells and we monitor ground water level for about a month and the water's actually going in the northeast then these wells would be cross gradient. So whether it's cross gradient or down gradient really is based on the actual direction, net direction of the flow. Does that answer your question?

Mr. Tagorda: Yeah, okay, by proposing to add another monitoring well and those three previous wells that's been there for over 40 years and they gather the same datas up to know don't you have some kind of doubts that the proposed number 4 well will be in the wrong place?

Mr. Matasci: Well, based on – the reason we had concluded or the previous studies has concluded that the water was flowing to the south was because these reference points, the elevations were wrong. So now that we're confident about those elevations and when we went back and just as when we went out there in October and measured the depth from that point to ground water, the

previous studies did the same thing. They measured the depth to ground water and so we looked at the data too. Well, a sampling of that data and that's – so the basis of our conclusion that it's flowing in the east to northeast direction are based on our re-analysis of that previous data plus the data that we collected just recently in terms of the depth from the reference point down to the ground water.

Mr. Tagorda: Okay, educate me more about this formula that I've seen in your – it's about that ground water velocity. And you have a formula there of  $B = KI \text{ over } N$ . And yeah ...

Mr. Matasci: What page is that?

Mr. Tagorda: Five I guess. Explain more to us why is it that there's a given formula here with two unknowns K and I and you was able to make a conclusion that the values for ground water flow was acceptable in a acceptable range.

Mr. Matasci: I don't know what, that's not this report that I support to you just recently. So I'm not sure which report that is.

Mr. Tagorda: He doesn't have ...(inaudible)... you don't have this one here? Oh, this consultant one? Is this not yours? I'm sorry.

Mr. Hirano: Oh it's the environmental assessment but what table are you looking at?

Mr. Tagorda: Landfill and land acquisition.

Mr. Hirano: Is it the drainage?

Mr. Tagorda: Yeah, Hana.

Ms. Aoki: Which chapter?

Mr. Tagorda: Page 5, URS.

Mr. Hirano: What is that?

Ms. Aoki: He said it's on page URS-5. Do you know what chapter it's in Jim, Commissioner Tagorda. Drainage –

Mr. Tagorda: Appendix B.

Ms. Aoki: Appendix B.

Mr. Matasci: Okay, I see the page that you're referring to. This particular formula is calculating how fast the flow is moving. By the way it's moving very slow. They may be in a, say in a period of hours, it might move inches maybe a foot. So this formula is used to tell you how quickly the flow is moving. You can determine the direction by simply looking at the differences in elevation and

that's all we're doing here.

Mr. Hiranaga: Mr. Chair, we are having difficulty hearing the discussion.

Mr. Starr: Yeah, I'm sorry. I apologize. Please continue.

Mr. Matasci: So the, what we're showing here is the direction not necessarily how fast. So in order for you to estimate how fast you have to have an idea of how easy it is for the flow to move through the ground and so that's what some of these other coefficients estimate like. ...

Mr. Tagorda: The reason why I mention this things is because in that specific landfill, it uses cinders and top soil to cover all those things above ground.

Mr. Matasci: Correct.

Mr. Tagorda: So that might give some kind of velocity above ground for the water runoff to go through those lava rock faster.

Mr. Matasci: The movement of ground water which is moving in the horizontal direction is determined by the characteristics on the ground down below. And not necessarily the characteristics of the soil say covering the landfill or an area adjacent to the landfill. You're right that does have an impact on how quickly the water can move through the ground down to the water table, but it doesn't necessarily, the soil characteristics on the surface don't necessarily affect how quickly, how fast the water moves horizontally once it down underground.

Mr. Tagorda: So that being said, the detention basin that this plan could be built for this landfill will solve this problem that might arise from that use of that cinder pit being a porous material. Is that right?

Mr. Matasci: Well, this detention basin right here, I do want to point out it's not lined. Okay, so the water would flow into this detention basin and be captured here. Now, it could infiltrate into the ground, but presuming that the water's flowing to the east, northeast, if that water which was flowing into this basin and subsequently infiltrating into the ground, if it was having an effect on the ground water it should be picked up by this monitoring wells.

Mr. Tagorda: Talking about, being not lined there's clamor among laymans like me that when you line a landfill you probably lessen the problem that might come. Is that right? And why can't we not line this landfill?

Mr. Matasci: Well, to line this landfill to day, you would have to – it would be an expensive proposition and in actuality there's the potential you could create some more issues in the process. You would have to basically excavate about 40 years of trash, a mixture of trash and soil and then reline it if that's what you're talking about or cap that existing landfill.

Mr. Starr: Commissioner Freitas.

Mr. Freitas: Yes, you folks are talking about ground water. How long does it take to percolate down to the water from the top and the reason why I'm asking is because there were hundreds of cars with refrigerant, batteries, unbelievable pile of stuff there that cost \$900,000 like you said to remove. And that section of the landfill was just covered over with cinder. And my second question is I'd like to know if they took soil samples from that area.

Mr. Matasci: First question, I don't have a good answer for you. It depends on what's directly underneath. It could be hours, it could be days, it could be months. You know, so I can't give you a precise answer. It's going to vary depending on what the strata are. Now with respect to your second question, I'm not sure. I don't know the answer to that. Maybe – so no, there weren't samples taken.

Mr. Freitas: There were no samples taken?

Mr. Matasci: No.

Mr. Starr: Okay, Commissioner Wakida.

Ms. Wakida: So you're saying that you don't know what's under – what kind of soil is under the landfill?

Mr. Matasci: Well, I will say that what we do know we get from a couple of sources. Number one, when we drilled these wells right here, the third one over here, it's common, standard practice basically that as the driller goes down into the ground and the cuttings come up you characterize that data. So that gives you a profile at that point. And so you, as we did in the report, you can interpolate and get an idea of okay, you know what the profile is at this point and the profile is at that point, you can essentially connect the dots.

The other source of information which you have is and it's referenced in this report and our hydrogeologist looked at it there are studies that had been done that have looked at the sequence of lava flows over time and so you can gain some sense of the general progression of the soils in the area by looking at the, what's been studied about the different lava layers in this case.

Ms. Wakida: Yes, and so well, but so what have you got? I mean, so what kind of soil have you come up with and just in a nutshell.

Mr. Matasci: It varies. There's some, most areas it can be very hard and dense, but below if you look at the report there's a Figure 5-1, it gives you a very general sense of what the soil may be based on the information we've got and what we see is we call it this clinker layer it is a highly permeable basically broken basalt that dips gently eastward down to the ocean and most likely that's a fairly, highly permeable area. So you have alternate layers of dense and – not alternate but you have significant layers of denser material with this kind of broken, permeable, clinkery material.

Ms. Wakida: Yeah so, I mean, common sense tells me that if you've got a dump and everybody's dumping God knows what into it and then you get a good amount of rain then all this stuff

percolates down and it percolates into this layer, and it's eventually all going into the ocean.

Mr. Matasci: Well, –

Ms. Wakida: That mean that's would be the common sense attitude, right?

Mr. Matasci: Right. What we don't know how much, how much contaminants and what contaminants might be picked up, if any, or at what concentrations as the water makes its way down. I mean, we – I think we tend to think oh, could be really nasty stuff, but it may not be, and that's the purpose of the ground water monitoring wells is to capture and sample the water down gradient of the landfill. So if there is a release that you would capture that and you'd be able to measure what might be contaminating the groundwater and at what concentrations.

Mr. Starr: I want to ask some more questions about this survey and you know, remember that this, I don't know, does everyone have a copy of the EA for this? There was an EA prepared that, it was a rather unique case where the applicant was the Department of Environmental Management, the body that prepared it was the Department of Environmental Management, the accepting agency was the Department of Environmental Management, we're using that for an SMA, however, now we know that a lot of the very basic data in it is wrong. And I'm trying to figure out what the heck happened to the surveyors on their way out to Hana. I'm looking at, in the CD Rom you gave us, Table 4-1, the Hana Landfill Well Elevation Surveys and in that, you know, we have four survey dates of April '93, October 2008, September 2009, March 2010.

The first one, HL-1 between the first and second one the elevation dropped one foot. In the next one, the well casing dropped another foot and a half and then in the third one for that same well casing it rose two and a half feet. The second well, instead of dropping one foot, it dropped three foot. The next survey showed it at the same elevation. Instead of dropping another foot and a half and then the third one it rose two and a half feet. The third well, dropped two foot the first time, stayed the same and then rose two and a half feet. So it's – don't you think it's rather difficult to have much confidence in this or the documents that were based on it?

Mr. Matasci: Let me explain. The first survey, the purpose of that survey was to specifically measure the elevations of the well. That's the April 1993 survey and those reference points have been used up until this day. The second survey it was actually the primary purpose of that survey was a topographic survey. In other words, it wasn't to measure the interior elevations of those casings. We don't even know in fact if they opened up the casings and measured the reference points. In fact, we think they didn't because these are locked and to our knowledge they didn't open them up. The main purpose that they were out there surveying was to create a general survey of the area. It wasn't to measure the wells. The third survey that you see there, control point, okay, if you notice HL-3 we did not as I mentioned before tie back to a benchmark. So if you look at it, HL-3 we assumed an elevation at HL-3 and assumed that it was the same. See, it's 48.93. So we assumed it was the same as the previous survey and then we measured the other relative elevations from that. It just to get the relative elevations of the wells. The fourth one, we actually tied it into a benchmark and if you take the fourth survey and you subtract the fourth survey from the third survey it's exactly the same. It's 2.33 or 2.34 feet. It's actually the same and that's because the only thing that changed was the benchmark. But again, the third survey was so

...(inaudible)... it was an assumed reference point because we thought we had to go all the way back to the airport in order to get a benchmark and that would have cost probably 5 to \$10,000. So that's why three and four are different and they're different by the same exact amount and again, I emphasize, the primary purpose of the second survey was just topographic, it's part of the master plan. The first survey was the original one and again, that's been the basis of all the reference elevations done to date.

Mr. Starr: Now, I'd like to ask Ms. Okuma what her confidence level is in the current data as well as what her confidence level is in the information provided in the EA that you signed off on both as the applicant and the accepting agency?

Ms. Cheryl Okuma: We've had some pretty extensive discussion with our consultants particularly in terms of the differences of the survey and we had many of the same questions you've had and I can say that in talking to our consultant I'm very confident that, you know, in terms of this current information. So I am confident in terms of the questions you're asking.

Mr. Starr: Okay, Commissioner Mardfin.

Mr. Mardfin: One, I want to say thank you for having hired a consultant to do this. I was, as you know, I was very concerned about the direction of the water and I feel much better about at least knowing the direction. There were other issues about it, but that makes me feel – I'm glad you went in and decided to recheck the science of it. That's very important in my book.

I have a couple of other questions, if somebody wants to keep going with the water, I'll postpone. If we're finished with the water, I have some other issues.

Mr. Starr: Lets not say finish but why don't you proceed.

Mr. Mardfin: Okay, you're talking about a landfill alternative cover. Could you explain that a bit more?

Ms. Okuma: Yes, basically that's a method by which we can utilize landfill tarp and we were able to get Department of Health approval to do this on a pilot basis to see how it will work. And so basically we just started using that tarp and we basically roll that out on top of the landfill after you've gotten materials in there and I believe we tarp it, it's actually three, three times a week and the rest of the time we do use the cinder. And so hopefully, we will be able to reduce the use of our cinder by utilizing the tarp and also reduce the amount of our operational cost.

Mr. Mardfin: The reason I ask is because most, almost all the garbage pickup is on Friday. I don't know why you don't use it six times a week or something and just use the additional cinders one day a week like Saturday or something after they've collected all the garbage on Friday. I mean, there is an ability for other people to go down during the week and deposit –

Ms. Okuma: Right, because it is open, right. It's not just submitted to –

Mr. Mardfin: Right, but the bulk of it is on the Friday pick up except on Thursdays when we have



furlough Fridays.

Ms. Okuma: Yeah, I believe though that we have quite a bit of folks coming through on Saturday. Now that landfill is closed twice a week that was to contain our operational costs. So it would now close Sundays and Mondays. That was recent because of our economic situation. But one thing I just want to mention to people at least everyone forget because we've been up here a number of occasions in terms of the Hana Landfill but you may just recall that under our Solid Waste Plan we are looking at being able to put this landfill on a standby basis.

Mr. Mardfin: That was going to be my next set of questions.

Ms. Okuma: Yes, and we are still moving in that direction but we do need to undertake a study. We need to get the funding for that, of course, to look at the feasibility of basically making this a transfer station. That was one of the points that Mr. Hirano put up on the power point for you. So we are looking at that, but we will still need these permits even if, even though it does become standby because we still need to have an alternative method.

Mr. Mardfin: And the last time you were here we were talking about recycling and there was some uncertainty about what things would be recyclable. Is that in question?

Ms. Okuma: I think we cleared that up. We cleared that up the last time we were here before you.

Mr. Mardfin: Would you repeat it please?

Ms. Okuma: Let me see if I, if you can hold on one minute.

Mr. Mardfin: I think Planner Fasi has some input here.

Mr. Starr: Or Tracy why don't you introduce yourself?

Mr. Tracy Takamine: Tracy Takamine, I'm the Division Chief of Solid Waste. Recycling we're looking at cardboard, just the basics, cardboard, plastics, I believe glass, batteries, propane tanks.

Mr. Mardfin: Metal cans?

Mr. Takamine: I don't believe we're doing metal cans at this time.

Mr. Mardfin: If it's glass or plastic bottles, do the people get their five cents for putting in there?

Mr. Takamine: None of this landfill, we do not have HI5 redemption. It's going to be limited in terms of whatever we collect we're going to have to haul back. I mean, we do not have an operator. So we are setting it up where our staff from Central Maui Landfill will probably have to drive out there with bins, swap it out and bring it back to our central location. It's not going to be a fully staffed facility as you are familiar with in Kihei and the community college area.

Ms. Okuma: First of all, in terms of your question I'm going to rely on the official record but based

on some notes I have here, we said that the recycling program in this area would include and not be limited to glass, aluminum, plastics, we currently do batteries, newspapers, cardboard, appliances and we currently do oil.

Mr. Mardfin: Just for your information, about five months ago, Hotel Hana Maui and it's related operations of Hana Store and the Hana Ranch Restaurant got together with four non profits in Hana, the Hana Youth Center, Ohana Makamae, Hale Hulu Mamo and the Hana Cultural Center, and we now, the hotel will separate out plastic bottles, metal cans and glass bottles and each of the four non profits have a month where they pick it up, take it to the other side and are able to get the five cents on it. So it's a – it prevents bottles, cans and glass and plastic bottles and cans from going into the landfill and it gives it some support to the non profits. We got, the Hana Cultural Center got about \$450 on our last trip over.

Ms. Okuma: Thank you for that information. Appreciate it.

Mr. Starr: Members? First Commissioner Shibuya then Commissioner Wakida.

Mr. Shibuya: I'm concerned about the testing of the water. Who does the testing of the water, that's the sampled water. Is there one laboratory?

Ms. Okuma: We have a consultant who goes out and does the sampling and that's URS, but I believe URS sends it to a lab. Test America is the laboratory.

Mr. Shibuya: And so that has been the same testing lab for all this time? We don't know?

Ms. Okuma: We're not sure.

Mr. Shibuya: Just for the past year, two years?

Ms. Okuma: I think it's been longer than a year or two years.

Mr. Shibuya: I just want to understand.

Mr. Ray Matasci: This is Ray Matasci again. I don't know exactly, but I'll tell you from experience that it's very unlikely that it was the same exact test lab for all, you know, two times a year, the last 15 or so years. There have been two primary consultants that, Brewer Environmental Services was the first one and they had the contract for about six or so years and then URS about the time since around 2000. But I'll say analytical labs have to follow very specific protocol you know when they, and they have to be EPA certified and so, and there's a number of different labs and most of them are on the mainland, when you do analysis they're typically shipped overnight to the mainland. But it would be doubtful it was same exact test lab.

Mr. Shibuya: Okay, I'm looking at Table 3, page 9 of 12, in this, okay. I'm going to ask first the compounds in organic carbon.

Mr. Matasci: What is the compound?

Mr. Shibuya: Yeah.

Mr. Matasci: Total organic carbon is not a specific measurement. It's – many of these tests are looking for a very specific compound. Total organic carbon is one of those that measures a very broad spectrum of compounds as kind of a general indicator. So it's basically the sum of all of the organic carbon, you know, in the water.

Mr. Shibuya: Okay. Dissolved solids. What does that –?

Mr. Matasci: Okay, dissolved solids again, –

Mr. Shibuya: Heavy metals?

Mr. Matasci: Is all solids again, all solids are things like that are dissolved in water like say salt, sodium chloride, those kinds of things so that, it's again, it's a cumulative measure of the total amount of – the water that you drink probably has something like 250 to 500 milligrams per liter of dissolved solids. It's primarily minerals, salt, those are the principal things. Heavy metals, there's –

Mr. Shibuya: They're not testing for cadmium?

Mr. Matasci: You know, I'd have to go back and look in the record to be certain about this, but there were some things that may have been measured and there's a process by which if you've measured or analyzed the water for a certain period of time and it was non detect for the whole period of time there is a process at which you can then stop having to measure that and I'm not certain about that but I think that may be why cadmium is not measured. And I'll mention just one other comment as you're looking at this table. There's a – it says, "EPA test method 8260," down at the bottom. That's actually a test that measures, I don't know it's probably something in the order of 40 different compounds and so, okay, all right thanks. So just to complete the point on that that is a test for 40 or 50 compounds and if they're all non detect, they'll show ND. I was incorrect if you look at Table 5, there's the different metals analysis, it was in a separate table. That's on page 12 of 12.

Mr. Shibuya: Okay. And it's not exceeding the limits so.

Mr. Matasci: It's not exceeding, it's actually the protection limit. They can only measure down to a certain point.

Mr. Shibuya: That's correct.

Mr. Matasci: And so they show the detection limit next to it, but they it's not detected. So they're telling you how low they can measure.

Mr. Shibuya: These are very low.

Mr. Matasci: Right.

Mr. Shibuya: These are very trace levels here.

Mr. Matasci: Yeah, it's part per billion.

Mr. Shibuya: Yes, I understand. I feel a little bit better.

Mr. Starr: Commissioner Wakida.

Ms. Wakida: This table that Commissioner Shibuya is referring to is from Well H-3 is that correct?

Mr. Matasci: There is a table for each of the wells.

Ms. Wakida: But the one he was referring to was H-3. Is that ...

Mr. Shibuya: Yes.

Ms. Wakida: According to your monitoring results on page 6-2, you summarized that the monitoring results say that the site, the groundwater is unaffected, however, you have since pointed out that the water is not running in that direction. The groundwater is going in a different direction. And since there is no well in the direction that the groundwater's running there has been no real monitoring then of the release into the groundwater whether there is or isn't anything.

Mr. Matasci: Okay we come back to this slide here. Again, this is the range in direction of flow. If the water is actually flowing to the east then these wells and the conclusions has been made that there is, there's been an absence of release would be correct. But as we pointed out, if the water if flowing to the northeast, we're not again sure of the precise direction flow, but if it's actually flowing to the northeast that is correct that there could have been a release or there might be a release and these wells would not pick it up. That's why we're saying this existing network of monitoring wells is not adequate and there need to be additional wells to confirm that there is an absence of release. So we don't know for certain because this monitoring well network is not sufficient and there needs to be at least another well.

Ms. Wakida: Right. So that data may show there's just trace of certain dangerous chemicals, solids or whatever and when in fact there may be some going in the other direction.

Mr. Matasci: It's possible. It's possible there could be again, based on our review of the data that if in fact you add the additional well and the water's going to the northeast rather than to the east and there was a release that the existing network of wells would not have caught that.

Mr. Starr: Okay, we're going to take a ten-minute recess. We'll be back.

A recess was called at 2:39 p.m., and the meeting was reconvened at 2:52 p.m.

Mr. Starr: ... commission meeting of August 24th is back in session. Before we continue with our questions, I'm going to ask Corp. Counsel, Mr. Hopper, to read to us our criteria for issuance of an SMA permit regarding the ocean and shoreline and so on.

Mr. Hopper: Thank you Mr. Chair. To find the criteria for deciding whether to grant an SMA permit you would look at Hawaii Revised Statutes, 205A-26. This is referenced in your rules as the section that you're supposed to use in determining whether or not a permit should be granted. You also have a long list of goals, objectives and policies of 205A. I won't go over that since it's way too long, the key phrase in criteria is set forth here, it states that "no development shall be approved unless the authority has first found, a) that the development will not have any substantial adverse environmental or ecological effect except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety or compelling public interest. Such adverse effects shall include but not be limited to the potential cumulative impact of individual developments each one of which taken in itself might not have a substantial adverse effect and the elimination of planning options; b) that the development is consistent with the objectives, policies and special management area guidelines of this chapters and any guidelines enacted by the Legislature; and c) that the development is consistent with the County General Plan and zoning."

And there's also a separate section that states, and this can go towards your sort of mitigating conditions if you feel conditions are warranted. "The authority shall seek to minimize where reasonable, a) dredging, filling or otherwise altering any bay, estuary, salt marsh, river mouths, slough or lagoon; b) any development which would reduce the size of any beach or other area usable for public recreation; c) any development which would reduce or impose restrictions upon public access to tidal and submerged lands, beaches, portions of rivers and streams within the special management areas in the mean high tide line where there is no beach; d) any development which would substantially interfere with or detract from the line of sight towards the sea from state highway nearest the coast; and e) any development which would adversely effect water quality, existing areas of open water free of visible structures, existing and potential fisheries and fishing grounds, wildlife habitats, potential or existing agricultural uses of land."

Again, the goals, objectives and policies referenced in the criteria is a separate reference to a different section which is very extensive and I think the basic idea is that you would assess the environmental effects of the project. If there is an adverse effect, determine if it's outweighed by the other concerns listed and see if there are any mitigating conditions that you could place on the project to mitigate those and then look at the project in light of those conditions and there are some case law in this as well, but that's the basic standard you're looking at.

Mr. Starr: Okay, thank you Mr. Hopper. Members? Commissioner Mardfin.

Mr. Mardfin: I think I want to ask the Director of Environmental Management if - there were some references in here to what's going to happen in Olopawa Cinder Pit could you elaborate on that?

Ms. Okuma: Okay, as we understand it's with the State DLNR right now, the state office here and they are working on, I guess we will need some sort of license or document from the State and that's basically being handled in their office.

Mr. Mardfin: You're not doing an environmental assessment?

Ms. Okuma: Well, I think - I'm going to have Mr. Hirano address that.

Mr. Starr: Mr. Hirano.

Mr. Hirano: I think preliminary discussions with the District Agent for that license to be renewed there will be a environmental assessment and that's the indication that I heard.

Mr. Mardfin: There will be an environmental assessment.

Mr. Hirano: There will be an environmental assessment done for the renewal of that license.

Mr. Mardfin: Thank you.

Mr. Starr: Members any - Commissioner Wakida.

Ms. Wakida: I want to thank whoever put this chronology together I appreciate that and it would be helpful also on any other projects that we get. I don't know who generated this particularly those that started way back before I came on and some of us these projects seem to go back several years like the one we were dealing with earlier so that we can get an update. That was very helpful.

Mr. Hirano: I think Paul Fasi did that.

Ms. Wakida: Thank you Paul.

Mr. Hirano: I won't take that from ...

Ms. Wakida: This document, is this new information that we were given today?

Mr. Hirano: The ground water report?

Ms. Wakida: Yes.

Mr. Hirano: Yes it was.

Ms. Wakida: Okay.

Mr. Hirano: It was, it was new information.

Ms. Wakida: Right so we haven't had a chance to study this any of us?

Mr. Hirano: Well, it was sent, it was sent to the commissioners two weeks ago by disk.

Mr. Starr: By disk.

Mr. Mardfin: On a disk.

Ms. Wakida: Did we get it?

Mr. Freitas: On a disk.

Mr. Mardfin: DVD disk.

Ms. Wakida: Oh disk. Thank you.

Mr. Freitas: Yeah, I got a question. It says the existing landfill's footprint will not be increased.

Mr. Hirano: That is correct, yes.

Mr. Freitas: And what is the extended life of the, estimated life of the landfill as it stands now?

Mr. Hirano: The life span was 2050, 2050 so 40 more years.

Mr. Freitas: And I ...

Mr. Hirano: Oh I'm sorry, 80 years.

Mr. Freitas: Eighty years?

Mr. Hirano: Eighty years is the life span.

Mr. Starr: Eight zero.

Ms. Aoki: Eight zero.

Mr. Hirano: Eight zero, yes.

Mr. Freitas: I got a question for the Director or Tracy. Would you folks consider doing soil samples on that or would you do soil samples on that existing portion of the landfill where the automobiles and all of that trash was? Because I was there and there was battery acid and there was a lot of stuff there. I would like to see that done.

Ms. Okuma: First of all, that was not required by the Department of Health. However, we don't have funding for that. If we can get funding for it then we could do that, but right now we don't have funding for it. As you know, you know, it's been a pretty tight budget.

Mr. Freitas: The soil samples, taking soil samples is not that costly because I just had one acre done, soil samples. It's not a, it's not a ...

Ms. Okuma: We'd still have to look at what would be involved in that. As I said, we did not factor that into the solid waste budget so we would need to look for the funding for it and we may not have it.

Mr. Starr: I have a follow up question. Would you be willing to ocean samples based on a protocol that would be created by the State Department of Health whether it be tissue samples throughout

the shoreline or some other means?

Ms. Okuma: You know, based on our discussions with the consultant, and first of all I want to say that we are in order to move forward and do some of this costly testing and it is quite a cost we would need to look at justification for that and given our very tight budget and economic constraints we always look at what is the justification in order to take, do any of these types of activities and I think as Mr. Matasci just explained when we do that fourth well that will determine whether or not there's a release from the landfill and if there is a release then of course, we can then talk about looking at whether there's any ... (inaudible)... between that and what's happening in the ocean. But right now there's very little justification to do that kind of costly monitoring in the ocean. So I guess, you know, what I'm basically saying is we'll get data from that fourth well. We should look at what that data is and if that data shows that there's a problem then we can address looking at what's happening in the ocean. We will then know what to test for.

Mr. Starr: So what would be time frame for putting in that forth well?

Ms. Okuma: First of all, we'd have to get funding for it for the next fiscal year because there is no funding for it this year. That's our normal process, but I believe the cost will be, the cost approximately \$200,000.

Mr. Starr: So are you committing to putting that well in and if so, in what period?

Ms. Okuma: We would make the request in the Fiscal Year 2012 budget.

Mr. Starr: So it's a definite possibility you might put it in.

Ms. Okuma: I think it's a definite possibility.

Mr. Starr: Beautiful. How about the well to the south toward Hana Bay?

Ms. Okuma: Again, I think you just heard from our consultant and based on their professional judgment I think the only thing we can go forward with today is the forth well. I believe we have justification for that.

Mr. Starr: I guess the health of the people of Hana is not worth very much to you?

Ms. Okuma: I didn't say that, it just doesn't appear that there's that information or data to support a fifth well.

Mr. Starr: Commissioner Freitas then Commissioner Mardfin.

Mr. Freitas: Yes, in all respect, you know, you say the justification for the soil samples. The reason why, I'd like to give you a reason why I requested, I asked about soil samples is those cars sat there for years and years and years and you had brake fluid, you had antifreeze, you had battery acid, you had oil, all what you call going into the soil. Now the wells are mauka side of the, of where the automobiles was and that area now nobody would ever know that anything was there because it



was cindered over after the clean up. And I felt it would affect the ground water because of years and years and years that's why I asked the question how long it takes to percolate, the water to percolate down to the aquifer.

Ms. Okuma: Right, and I guess I'm not saying that we wouldn't do it. I'm saying we would have to find the funding for it because that's not something we budgeted for.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: If we make drilling of the forth well and some, I'm not sure you need soil sample testing if you're doing ... (inaudible)... testing because I think it would accomplish the same thing. But if that was made conditions to approval of an SMA permit wouldn't you have to find the money in order to go ahead?

Ms. Okuma: Well, if we don't have the money now it would be in Fiscal Year 2012, we can make the request in Fiscal Year 2012.

Mr. Mardfin: What happens if you don't get the SMA permit approved?

Ms. Okuma: Then we won't have an Operating Permit and our noncompliance continues.

Mr. Starr: Commissioner Shibuya.

Mr. Shibuya: I'm just concerned here. We need to do the right thing and yet we have to keep one eye on the budget and willingness of the public to pay for it. Would the public be able to absorb additional charges perhaps by the weight of the trash that's committed to the landfill? If we do that then guess what, they throw it on the side of the road or some gulch in any way. So now we're caught in a catch-22 situation. Damn if we do and damn if you don't. We do it right, we're going to charge you more. If you do it wrong it don't cost anything. So what do we do?

Mr. Starr: That's why we're here. Go ahead.

Mr. Hirano: Chair Starr could we just have a few minutes just to huddle and see if we can come up with a proposal that would be satisfactory to the commission?

Mr. Starr: Okay, we're going to take a five-minute recess and then we'll take public testimony before we do any -

A recess was called at 3:06 p.m., and the meeting was reconvened at 3:09 p.m.

Mr. Starr: Maui Planning Commission, August 24th we're back in session. Director Okuma.

Ms. Okuma: Yes, thank you for letting us doing a little huddling here. Before I turn this over to Mich who will basically summarize what our conversation was here on the side, I just want to remind the commission that one of the reasons why we've worked very hard for these past couple of years to try to get ourselves to this SMA point because we are noncompliant and we're noncompliant

because we don't have a Department of Health Operating Permit and we can't get the Operating Permit until we go through all of these processes including the SMA and being in a state of non violation is basically a \$25,000 per day liability for as long as we haven't had a permit and my understanding is we haven't had one in many, many years so we've been making our best effort to get ourselves into compliance. So with that, I would like to turn this over to Mr. Hirano.

Mr. Starr: Yeah thank you and, you know, I think everyone would like to see the County be in compliance with this, but, you know, I think we also feel strongly about the SMA process and that no further harm be done. So hopefully we can find a solution ...

Mr. Hiranaga: Mr. Chair, I kind of caution you to speak for commissioners. You may speak for yourself but when you use the word "we" I'm not sure who in "we" you mean.

Mr. Starr: Okay. I assumed we all feel strongly about the SMA process. Please Mr. Hirano.

Mr. Hirano: Thank you very much Chair Starr. You know, the County of Maui and Department of Environmental Management as well is very concerned with operating the landfill within compliance to County and State Laws and as well to address your comments and not to take it lightly, but there is a financial constraint that the Council and the Department of Environmental Management is facing this current year. So when we talked we would like some time and perhaps as a condition of the SMA permit that they will do that forth well in 2012, that's the next budget year and that they will at that time take soil sample and provide that to, you know, provide that information back as a report to the Department of Planning who in turn can report it to the commission and monitor that well for a certain period of time. And if it does show that there's further studies that may be warranted then at that point make that decision. So, you know, that I think will allow the project to move forward. It would address the commission's concerns, the community's concerns but at the same time give the Department of Environmental Management some operating room to be able to process that and the budgetary requirements for next year.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: Did I just hear the Director say you were being fined \$25,000 a day?

Mr. Hirano: Potentially there could be a \$25,000 fine ...

Mr. Mardfin: So a \$200,000 well would be eight days worth of noncompliance?

Ms. Okuma: No, they would go back to the time that the County didn't have a permit and my understanding it's been many, many years since the County did not have a permit. So they will go back to that point in time.

Mr. Mardfin: But a forth well is eight days worth of fines. Eight times 25 is 200.

Unidentified Speaker: ... where's the money? There's no money.

Mr. Mardfin: I'm just asking. So we're not paying fine - you're not paying the fines?

Ms. Okuma: No, this is a potential fine. They haven't come down on the County at this point in time. They know that we're going through this process. We've been advising them along the way and told them that we are proceeding to try to get through these permitting process so that we can actually apply for a Department of Health permit so they know that this process is going on, but potentially, potentially that fine is \$25,000 per day for each day of noncompliance.

Mr. Starr: Director, would there also be a willingness to commit to beginning a process of testing the near shore, say spot testing, random spot testing the near shore waters?

Ms. Okuma: I think it was just basically summarized in Mr. Hirano's statement that will take data and samplings from that fourth well for a period of time and if, if it is determined that there are some constituents that are of concern then we can come back and talk about what other testing is necessary at that point in time. So as I've mentioned before, I don't believe that that near shore monitoring can be justified.

Mr. Starr: Even if the plumes coming out somewhere else?

Ms. Okuma: And we don't ...

Mr. Starr: ... The plume could be very localized ...

Ms. Okuma: ... We don't know that ...

Mr. Starr: ... (inaudible)...

Ms. Okuma: We don't know that. We will know once we get the data from the fourth well.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: As a matter of fact, the testimony was not - you wouldn't necessarily know that because there could be other ways it could go in. Commissioner Starr mentioned there could be underground lava tubes that are directing it in ways unknown. So a fourth well would help know where the general groundwater is going but wouldn't necessarily insure that it wasn't flowing into someplace else.

Ms. Okuma: Well, I believe the explanation was the purpose of that fourth well will help us to make a better determination of what's going on in that area, groundwater plus whatever is moving through that groundwater and whether it's coming from the landfill. So that's what's make sense from a scientific point of view is to find out what's going on closest to the potential source. If there's a concern about anything from the landfill going into the ocean, your first step is to find out what's going on closest to your source and closest to the source are where those wells are plus that fourth well.

Mr. Starr: Members, further questions for the department or their consultants? Are we going to have public testimony? The commission would welcome the members of the public who would like to offer testimony on this. We'll start with Mr. Blummer-Buell. Welcome, and thank you for driving

in from Hana today.

Mr. John Blummer-Buell: Aloha Chair Starr and Members of the Commission. I just want to start by thanking all of you that came out to Hana for the hearing on the - it wasn't a hearing it was a public meeting on the SMA permit and I can tell you, people out there appreciated it. I think you got a good sense of the Hana community by coming out there.

My name is John Blummer-Buell from Muolea, Hana. I am a more than 35-year user of the Hana dump. I have been in the current process since making comments regarding the environmental assessment in 2004 and have made at least eight submissions which are in the record. The County of Maui has admitted they did not, did not, address the issues related to the illegal mining of cinder at Olopawa Mountain for the Hana dump, but you can't run that dump without it. And it's a requirement of State Law. The County has not addressed the corresponding legal issues as required in the special management area process. This is a matter of public record.

Now I just want to go right to one of the things that I was going to ask for today and that's an environmental assessment for the Olopawa Mountain mining operation before making any final decision. Now I think I heard Mr. Mich Hirano saying they're going to do an environmental assessment for the mining operation. I would be satisfied if you would request a supplemental EIS to the one that we was previously approved, but put a date certain on it. The questions that I asked in 19 - in 2004, if we had those answers a lot of the money questions that Warren Shibuya asked would already be answered. That I urge you go back to your disk, and Paul Fasi put together a very good disk. Read my comments to the environmental assessment and the final EIS that's 2004. They didn't do it.

The dump was a 100 foot or so hole in the ground when I first made a deposit. I have seen used motor oil, stale gasoline, diesel oil, used barrel of herbicide 24D, used barrels of the herbicide 245T which is Agent Orange, asbestos siding, mercury and lead batteries, toxic household and garden chemicals, large amounts of plastic, tires, vehicles and the like deposited at the unlined and illegal dump directly adjoining and draining into Hana Bay. This has always been a concern for me and my family and I'll tell you I recycle just about everything. I go to the dump once every four or five months at this point.

There is little question that toxic chemicals are draining into Hana Bay and I want to comment on that. I totally agree with Jack, Jack's idea that that soil should be tested. I'm glad that he saw that metal, the pile of metal and everything. And I think that's a prudent step to take just to find out what is in that area because based upon the water flow projections today that's going to be seeping right down to where they think the water is going. So I think it would be a sensible test to make.

Hana Bay is the swimming place of local keiki. A place where Hana residents crabs, fish and opihi. Did you know there are around a dozen adjoining fishponds impacted by the dump? Leslie Bruce has offered to let you take tissue samples from her pond. The entire area is very special. It's historically, spiritually and cultural significant place. I want to comment, when Mich Hirano who I like and respect says there's no expansion of Hana Landfill that is just not true. This is a vertical expansion. I was told by Charlie Jencks and other Public Works Directors and the community was this landfill would remain at grade. We're talking about going 80 feet. And when I heard Mr.

Hopper read the section about not blocking the view to the ocean it's already blocking the view from Hana Town. Check it out sometime from the crosses.

The record clearly shows the county did not address the environmental impact as required by Hawaii State Law. The County admits it. The record shows the Hana Advisory Committee wanted an environmental assessment for the illegal mining operation. I went through the whole transcript of the meeting in Hana, they wanted an environmental assessment. I talked with one member that thought they had passed it. And instead what we have is a, we have No. 17 substituted which is that the applicant execute a legal document with the State of Hawaii and the County of Maui regarding the removal of cinder ash from the Kaeleku area. That's Condition 17.

Mr. Starr: I'm going to ask you to wrap up pretty soon.

Mr. Blummer-Buell: I will. Please make that a date certain, don't give in, those questions should have been answered six years ago. So make that supplemental EA or EA a date certain and I would really be very pleased with that.

At your site visit May of last year Ward Mardfin helped identify new issues at the mining operation that have not been addressed as required by State law. Ward asked James Perry of Hana Public Works why they weren't mining further mauka in the mauka direction. Jimmy responded because there is a stream about a hundred yards back. Well, that situation exposes the County of Maui tax payers to potential millions of dollars of property damages to the million-dollar homes and other homes and properties impacted by the mining. And there have been massive floods through that, those housing areas before.

Mr. Mardfin also asked Mr. Perry if the County found any archaeological remains? No, said Mr. Perry. I asked, how could you find any remnants in an area that has been culturally and environmentally destroyed completely?

Mr. Starr: You gotta wrap up John.

Mr. Blummer-Buell: Okay. What do I want for the Hana community and future generations? One, an environmental assessment for the Olopawa Mountain mining operation before making any final decision. I heard that we're going to have one make it a date certain. And a quick supplemental environmental assessment would be the least financial encumbrance on the County. Completion of the transfer station plan Mr. Takamine said it was in the works during our site visit. Thank you for that transfer station idea. I talked to him outside and they're looking for money to do that. Three, discussion of an alternate lined landfill site. That's another issue should be examined in an EA. Just got two more Mr. Chair.

Mr. Starr: Really, really fast.

Mr. Blummer-Buell: Okay. Tissue sampling and water sampling of ocean life and water by independents entities. And finally, I would like to see this entire issue be sent back to the Hana Advisory Committee to the Maui Planning Commission for their review and further recommendations after what we've heard today. So I appreciate ...

Mr. Starr: Okay, thank you.

Mr. Blummer-Buell: ... all your efforts.

Mr. Starr: Members, questions? Thank you. Any other members of the public wishing to give testimony that haven't already?

The following testimony was received at the beginning of the meeting:

Ms. Leslie Bruce: Good morning, I drove in from Hookipa where I've been swimming. My name is Leslie Ann Bruce. I moved to Hana in 1994. More recently I moved near the Hana Landfill. I'm on Waikaloa Peninsula where there are 12 fishponds. I used to be an archaeologist and when I worked for the Bishop Museum I registered Kekalo A, the taro of the A Clan as a National Historic Site and of highest importance to the culture of Maui. The other 11 fishponds we did not register because we only had firsthand information and file information on that one site and we were recording known sites for the Hawaii Historic Register.

I also used to be on the GPAC Committee and may still be if we meet again, although I'm testifying for them, I am testifying for myself today. When the persons in charge of the landfill and waste on Maui came and testified before the GPAC we were told it would be possible to move the Hana Landfill to Pulehu like they do in Lahaina so that the trash rubbish, cans of toxic waste and other things would be transported where there was lined dump that conformed with contemporary standards for dumps.

If you happen to be familiar with Elspeth Sterling's book, "Sites of Maui," she registered Olopawa which is the source of the cinders for the dump as one of the important places where Pele finished off her work on Maui making a cinder cone after she finished Haleakala Pele moved onto the slopes of Haleakala and Olopawa is a storied place and its cultural significance has never been carefully researched but now is more or less a hole in the ground as is Puu Hele a very important storied place and Puunene which you may know where it used to be a hole in the ground now, Puunene was used to pave Kahului Airport and Puu Hele was used to pave the Puunene Airport. I think it's very sad to lose storied places on Maui when we could move the rubbish from Hana to Pulehu where there is a conforming lined dump.

Since I purchased Kekalo A there has been constant evidence of degradation both in the ocean where there are also ocean fishponds and the land fishponds. I have not been able to study and analyze what is the total cause of the degradation. But the fish in the ocean which used to be plentiful when you swam there you felt you had entered an aquarium to almost not no fish now. Even the opai and the opihi are diminishing. How many more minutes do I have?

Mr. Starr: You can take another minute and then it's best if you finish up.

Ms. Bruce: Basically I would like the dump moved to Pulehu. Thank you.

Mr. Starr: Okay, thank you for your testimony. We do have a question for you. Commissioner Shibuya.

Mr. Shibuya: Thank you Leslie for coming and sharing your manao with us. Leslie on this National Historic Site as one of the fishponds. What's the name of that fishpond again?

Ms. Bruce: Ke - the, Kalo - taro, A. When you read the kumulipo one of the basic clans of Hawaii is A, there's A clan, there's the U clan and the O clan and so forth. The A clan still resides in Kaluanui. You can find decedents of the A clan it's spelled capital A.

Mr. Shibuya: And is this site next to the landfill and is it closest to the ocean?

Ms. Bruce: This site is on a very large archaeological site platform and it rises and falls with the tide. The water is brackish and there are oopu in it, there are opai in it and the people who fish in the area, I have a commercial fishpond, operators license in the past, put in ...(inaudible)... mullet, manini and there is a third thing, so the fishpond at the time was the only functioning fishpond on Maui.

Mr. Shibuya: How close is this to the landfill?

Ms. Bruce: I would say less than a quarter of a mile and we are downhill from the landfill which is on an elevated area and it's not clear exactly where the leachate is draining. There have been various studies but never a test well to indicate whether or not it's draining in our direction and it would be very expensive to put in the number of test wells but the degradation is clear.

Mr. Shibuya: Okay, thank you.

Mr. Starr: Members any other questions? Okay, thank you very much Ms Bruce. The next testified is Irene Bowie. Good morning Ms. Bowie.

Ms. Irene Bowie: Good morning Chair and Commission Members. I'm Irene Bowie, Executive Tomorrow of Maui Tomorrow Foundation and I'd also like to speak on the Hana Landfill. The Hana Landfill Master Plan Ground Water Evaluation Executive Summary looks at ground water quality only and it fails to consider the impacts to Hana's nearshore waters. In Section 5 of this report the underlying material of the Hana Landfill was described as predominately basaltic rock containing zones of highly permeable clinker rock and that the landfill "probably intersects with the sea floor a few hundred feet offshore."

This landfill was developed in 1969 just as linings for landfills were being recommended throughout the country as more environmentally sound practice. Hana Landfill sits 350 feet from the shore yet according to testimony in 2008 from the Department of Environmental Management, "offsite impacts to nearshore waters are not currently looked at." And according to the Department of Health's Clean Water Branch, no testing of the nearshore waters surrounding Hana Landfill has ever taken place.

There's a real possibility that this unlined landfill sitting on porous lava rock so close to shore has leaked toxic leachate into nearby waters for many years. It's widely known in the Hana community that oil, grease and other pollutants have long been dumped into the landfill. In 2006, the Department of Health listed permit violations including significant amounts of oil staining the ground

in an area of scrap vehicles, lead acid batteries placed in direct contact with the ground and asphalt stockpiles lacking best management practices.

In a 2008 conversation with Watson Okubo, who's the head of monitoring for the Clean Water Branch of the Department of Health he said that no permits should be given until monitoring has taken place and stressed that testing is needed to measure the extent of seepage that may have affected the near shore environment where it could affect the food chain raising concerns about public hearing. I emailed Watson yesterday and he emailed me back and stated that he still believes it's wise to do testing to determine if any tissues that are – if there's any tissues – issues, I'm sorry, that the public needs to be aware of. It needn't be a full blown sampling scheme he said but at least test some of the on shore, near shore organisms to see if there's a problem as the public needs to be warned and I quote him, "the risks are evident. It seems logical to me to find out. I would hate to see the people get sick and the County of Maui sued."

Maui Tomorrow asks this commission to require the establishment of a baseline water quality study of the water surrounding Hana Bay and adjoining springs and ponds that include ongoing monitoring in conjunction with the Department of Health, EPA, independent professional biologists, adjoining property owners and the Hana community. The testing should be done on animal tissues taken from opihi, crabs and sea urchins and analyzed for heavy metals and other contaminants. No permit should be issued without a condition that near shore waters be tested for seepage that could affect the health of the Hana community whose members fish and recreate in these waters everyday. Thank you.

Mr. Starr: Thank you Ms. Bowie. Question from Commissioner Shibuya.

Mr. Shibuya: Thank you Irene for testifying and sharing your manao with us. I just wanted to thank you also for sharing your manao at the State Transportation Committee last night. I just want to ask you about this no testing yet by the Department of Health. Is there any reason why Watson Okubo mentioned that they're not testing it?

Ms. Bowie: He said, it really, I mean when I first called them on this after one of the first meeting that this commission had they had to look back and see this. It's really kind of just an oversight. Nobody was looking. Everybody is looking at groundwater testing and I think this goes back to the Department of Environmental Management looking much more closely always at the Safe Drinking Water Act than the Clean Water Act, things that affect the ocean. So while they had wells placed to monitor ground water and now we found out even with that that we didn't have one in the right location to really catch anything it's just never been done and it seems more an oversight. The Department of Health is concerned about this issue.

Mr. Shibuya: Okay, the concern is not really verifying it. It seems like they're asking the public or you folks to come out and test the tissues of these animals or seaweed or whatever organisms and see if the content has these hazardous material is it not?

Ms. Bowie: What they said was it's the responsibility of the County of Maui to do this testing and they encouraged the public to, you know, demand this testing be done. Also, I've spoken with the EPA Region 9 recently and they're looking into this and we'll be talking to the Department of Health.



So what they said basically was ask this of your planning commission, ask for this to be a condition of permitting.

Mr. Shibuya: Okay, thank you.

Mr. Starr: Members any other questions? Commissioner Wakida.

Ms. Wakida: Yes, good morning Ms. Bowie. You list here pesticides and scrap vehicles and lead acid batteries, are these all items that have been illegally put in that landfill?

Ms. Bowie: There were violations over the years I understand and you know, I think that that in recent years there's been clean up of those things and best management practices being put in place but the most recent permit violations that I saw were in 2006 and the fact that this is unlined on lava which what's such a concern, so close to the ocean. It just seems to make sense that there would be near shore water testing also.

Ms. Wakida: But does the public, what I'm wondering is, does public have access to landfill where they can just come and dump their batteries?

Ms. Bowie: No, I think they've now – that they've got areas for things. That it's you know, definitely more organized than it was in the past but part of what this is is trying to take care of these permit violations. And what's been told to me by marine biologists and the Department of Health is just testing the water, the near shore water wouldn't necessarily show these contaminants that it needs to really be tissue testing that you know, currents could move this around and you might on any given day not find anything but the animals will retain these contaminants in their tissues and that's why they're saying opihi and crabs and things need to be tested.

Ms. Wakida: Thank you.

Mr. Starr: I have a question but first just to answer something. It is a public landfill, you know, we go there and dump our trash there and the public goes and drops a bag of whatever or box of whatever. So there is an opportunity. Could you explain the protocol? I understand you've done some research on what testing would tell us and if it does show that there's a plume as likely going into the ocean what would be remedies.

Ms. Bowie: Again, as far as what I've been told it's more than just the water testing that might show a plume or testing in Ms. Bruce's ponds, things like that, testing the water could show but what they really stressed was it needs to be tissue testing on animals that are collected so fish and crabs and opihi things like that. I don't really know when they find this what happens next it's just more to alert people you know fishermen especially if the amount of people that fish out in Hana and consume that fish regularly they need to be warned if there are contaminants. And I think the fact that there were so many you know from the ranch days also, all the things that were dumped in the landfill and cars and things that sat there for so long and the seepage coming down from all of those things.

Mr. Starr: Okay, thank you very much. Any other questions? Commissioner Freitas.

Mr. Freitas: I got a comment. My understanding is that all of the what do you call, chemicals that come in is contained in containers, the batteries are in containers, they have taken best management practices and they're – all of the cars have been cleaned up and basically what goes into the landfill is household and the trash from the hotel. There is no longer cars, there is no longer any of these things, they have corrected that. Am I right?

Ms. Bowie: I believe that is the case. However, I do think that just the responsibility of public safety would lead there to be a condition that there also be testing of these waters.

Mr. Starr: Thank you very much Ms. Bowie.

This concludes the testimony received at the beginning of the meeting.

Mr. Starr: Not seeing any, public testimony is now closed. Mr. Fasi, you have some manao to share?

Mr. Fasi: May I ask permission to give the recommendation from my chair here since I've got so many documents that I kind of have to keep together.

Mr. Starr: No, it's okay.

Mr. Fasi: Thank you.

Mr. Starr: As long as we can hear you.

Mr. Fasi: As I mentioned earlier during the break that I didn't make a formal recommendation document because we have been discussing these conditions for quite a while but I did pass out a letter of conditions in regards to the State Land Use Commission Special Use Permit and the County Special Use Permit and that's the document addressed to Mich Hirano and it's dated February 12, 2009. Those are the 20 conditions that have been approved by this body and what the department is recommending that we take verbatim these exact same conditions and just take out references to the County Special Use where it's "and the State Special Land Use Commission," where as in just insert, "Special Management Area Permit." The conditions remain the same.

It is a request of the department that the expiration date remain unchanged if you will and the expiration date is February of 2018. It makes it easier on the department to process the permit renewals all at once simultaneously. That pretty much concludes the department's statement on the conditions. I can start going into the official wording to recommend the conditions if there are no questions.

Mr. Starr: Yeah, Mr. Hopper has one but first, am I to assume that you're recommending approval of the SMA?

Mr. Fasi: That is correct, yes.

Mr. Starr: Mr. Hopper.

Mr. Hopper: Just to be clear. There's a State Special Use Permit and County Special Use Permit that has these exact same conditions on it right now, right?

Mr. Fasi: That is correct. However, the State Land Use Commission added three more additional conditions for a total of 23 and that basically talks about miconia removal.

Mr. Hopper: So you are recommending adopting these exact same verbatim conditions as a, as SMA Permit conditions and also make, and then making all of the necessary changes to make them SMA conditions?

Mr. Fasi: This is correct.

Mr. Hopper: Yeah, just for the – I did review the conditions. There's a bit more that I think you'd need to do than just state Special Use Permit versus SMA Permit. For example, there's references to enforcement sections which aren't applicable because there's a different enforcement section for this permit. The fine amounts for the enforcement are different. And the, for example, it states that you need to give, the department would need to get the permission of the State Land Use Commission to transfer the permit. That's not accurate. They would need to come to the planning commission. So I think I went through Paul's recommendation document and crossed out and made changes as I thought it would be adoptable. I think it is adoptable if that's what the commission wants, but just to let you know there need to be bit more in there. It's mostly on the first maybe seven or eight conditions where the changes need to be made. Most of the others are the same. As a reference, if you adopt these SMA conditions, they'll be enforced under the County SMA Law rather than through the State's laws with respect to the Special Use Permit. For example, the fine amounts can be higher for SMA condition violations versus violations of the State Permit. So it is kind of important that you look now to the SMA application and what specific conditions if you do approve the permit you would want to have on the permit. So just that as something to point out that I think is important.

Mr. Starr: Mr. Hopper, would Corp. Counsel feel comfortable if there were desire by the commission to follow the recommendation to have Corp. Counsel review after Planning makes those changes to make sure that they all fit the SMA instead of the Special Use Permit and all of that?

Mr. Hopper: I wouldn't have a problem doing that. With the conditions I've seen so far that won't be much of a problem. If you add additional conditions, we would need to look at that, but I wouldn't have a problem doing that if that's the recommendation or if that's the action.

Mr. Starr: And obviously if there additions, a desire to add additional conditions.

Mr. Hopper: Right. I think it's important the commission just understand exactly what conditions it's adopting I think was very important.

Mr. Starr: Okay, thank you. Mr. Fasi.

Mr. Fasi: Yeah, I just want to reiterate that I didn't mean to over, over underestimate the changes required. I concur with Corp. Counsel's recommendations and wholeheartedly. The Planning

Department of course will make the document relate to the proper SMA technical specifications in order to make this a legal document and those changes will indeed be made.

Mr. Starr: Okay, Members further questions, discussion or – not seeing any, possible action, what's your pleasure? We should have some action whether it be approval, deferral or denial. Commissioner Mardfin.

Mr. Mardfin: I'm going to make a motion but I also will make some follow amendments to the motion but I'll get this on the floor by making the motion to approve the SMA application?

Mr. Hiranaga: SMA permit.

Mr. Mardfin: The SMA Permit subject to the conditions already provided by the State Land Use Commission subject to my alterations by Corp. Counsel to bring that into compliance with our commission rules.

Mr. Starr: And that's with no additional conditions.

Mr. Mardfin: So far.

Mr. Starr: Is there a second?

Mr. Shibuya: I second it.

Mr. Starr: So we have a motion by Commissioner Mardfin. Seconded by Commissioner Shibuya. The motion is?

Ms. Aoki: I'm sorry I didn't get it all. To approve the SMA Permit subject to conditions already approved and the ...

Mr. Starr: Twenty-three.

Mr. Mardfin: There are 20 conditions I believe.

Mr. Fasi: There are 23 State Land Use Commission conditions.

Mr. Starr: Yeah, so 23.

Mr. Fasi: And 20 in the County Special Use.

Mr. Starr: What are the additional three Mr. Fasi? We don't have those.

Mr. Yoshida: I guess they're found on document SP08-402 which was attached in Paul's packet.

Mr. Starr: Paul.

Mr. Fasi: I can read them to you they're pretty, they're pretty straight forward.

Mr. Yoshida: ... the last ...(inaudible)...

Mr. Starr: Okay.

Mr. Fasi: Number 21 is, "that the applicant shall periodically monitor the property for the presence of miconia plants and eradicate any individuals found while they are still immature."

Mr. Starr: Okay.

Mr. Fasi: Number 22, "that the applicant shall file a boundary interpretation request with the LUC staff to determine the location of Ag and Conservation District boundaries relative to waste area number two as identified on the survey map dated September 8, 2007 within 30 days following the issuance of the D and O granting the applications. The boundary interpretation request shall be accompanied by a metes and bounds survey prepared by a licensed professional land surveyor." And the reason for that is condition number 23 and which reads, "that the application shall prohibited from utilizing any conservation district lands that may be present in waste area number two as determined by the boundary interpretation prepared for the LUC staff." In other words, they basically don't want conservation land being used for dumping and I don't think the Department of Environmental Management would do that anyway.

Mr. Starr: Mr. Fasi, is 22 and 23 are the relevant to the SMA?

Mr. Fasi: They are more relevant to the State Land Use Commission Chair that's an excellent question.

Mr. Mardfin: I would interpret those three as subject to or Corp. Counsel deciding what ...

Mr. Fasi: ... Let me say this Chair.

Mr. Starr: ... No, no, no. I, yeah, as the maker of the motion you should decide 20, 21 or 23 conditions. How about 21 that's a lucky number.

Mr. Mardfin: Planner Fasi wants to say something.

Mr. Fasi: Let me say this, even if the three additional conditions are not included in the SMA permit ...

Mr. Starr: Yeah.

Mr. Fasi: ... they're still bound to the three conditions because they still need their State Land Use Commission permit. So they don't have to be included in the Special Management Area Permit, they are still bound by it.

Mr. Starr: Okay, I'm just trying to get a motion.

Mr. Mardfin: So let the motion be the first 20 that we have in this February 12, 2009 memo.

Mr. Starr: Okay, and Commissioner Shibuya is that consistent with your second?

Mr. Shibuya: That's correct.

Mr. Starr: So I'll ask Director Aoki to read back the motion.

Ms. Aoki: I'm sorry, Mr. Mardfin, could you tell me when that letter is dated with the first 20? February 12?

Mr. Starr: Yeah.

Ms. Aoki: This is my attempt. Let me know.

Mr. Starr: That's fine.

Ms. Aoki: To approve the SMA Permit subject to conditions already approved in the State Land Use Commission Special Use Permit those conditions provided in letter dated September 12, 2009 and subject to Corporation Counsel's recommendation to revise these conditions to reflect SMA Law.

Mr. Hopper: Just as a note, I think these 20 conditions are only on the County of Maui permit. I don't think it's on the State Land Use Commission permit. Isn't the State Land Use Commission that has the three extras which are not recommending. So I think there was a mention of this State Special ...

Mr. Mardfin: It is County Special Use Permit.

Mr. Hopper: If you change State to County I think then, that's just a description of what the letter is I think it's more accurate.

Mr. Mardfin: Mr. Chairman?

Mr. Starr: Yeah.

Mr. Mardfin: I'd like to make an amendment.

Mr. Starr: Lets wait till we are really clear.

Ms. Aoki: I guess I would ask Commissioner Mardfin if he would like to restate his motion to say already approved in the County Special Use Permit?

Mr. Mardfin: Yes.

Mr. Starr: Okay, so is everyone clear what the motion is?

Ms. Aoki: And I'm sorry, instead of saying the first 20 conditions since there's only 20 conditions we would just leave it at the 20 conditions and eliminate the word, "first."

Mr. Starr: Good. Okay, Commissioner Mardfin.

Mr. Mardfin: I'd like to move to amend by adding an additional condition and that is, "that by 2014 a fourth well be dug and in use for testing at the approximate location as recommended by the consultant."

Mr. Starr: Yeah. Is there a second?

Mr. Shibuya: I second.

Mr. Starr: So we have a motion by Commissioner Mardfin, seconded by Commissioner Shibuya for condition 21 and that amendment is?

Ms. Aoki: Paul, were you able to get that?

Mr. Fasi: Yes. "That by 2014, the Department of Environmental Management install a forth well to be located as recommended by the consultant."

Mr. Mardfin: And that testing be, and that testing be done at the fourth well.

Mr. Fasi: And that the testing be done at the fourth well.

Mr. Mardfin: Mr. Chairman?

Mr. Starr: Yeah.

Mr. Mardfin: I picked 2014. They're going to put it in the 2012 budget that gives them two years to accomplish it.

Mr. Starr: Okay, so the amendment once again, read the amendment.

Ms. Aoki: Paul, can you read the amendment please?

Mr. Fasi: "That by the year 2014, the Department of Environmental Management will be installing a fourth well at the location as recommended by the consultant and that the testing shall also be done at the fourth well."

Mr. Starr: So discussion or possible second to your amendments to that amendment. Commissioner Hiranaga.

Mr. Hiranaga: I guess not being that familiar with County fiscal policies I do know the Mayor sends a proposed budget to the Council and the Council approves the budget. So I guess I would like the Department of Environmental Management to just comment on this amendment as to feasibility and

I don't know how long it takes to site a monitoring well and to construct a monitoring well. So I want it to be something that is practicable and reasonable and not just pull a number out of the sky, a date out of the sky.

Ms. Okuma: Yes, thank you for that question and that point. All of this would be need to be subject to funding and we do not – all we do is basically present our proposal within Administration and the Mayor presents her proposal to the Council. So the only thing we are in control of is what we submit internally within Administration. How far up that goes as far as approval that's out of our complete control. So I would suggest and request that whatever this condition is that you put the words, "subject to funding," because we don't control that part of the process.

The other recommendation is if we could be specific that we would be installing that groundwater monitoring well as recommended by the Browne and Caldwell Groundwater Evaluation Report dated August 2010. If we could be specific on that. And in terms of beginning to sample, if we could indicate that sampling will begin after completion of the well. I don't know how long it will take to complete the well.

So those are the three points I would like to make that this would all need to be subject to funding because we don't control within the process in terms of whether there's actually going to be approval. That's actually done by the County Council. And the second is if we can be specific that this is a recommendation pursuant to Browne and Caldwell Groundwater Evaluation Report dated August 2010. And the third ...(inaudible)... point is if this condition could indicate that we would begin sampling after completion of that fourth well, we would appreciate that.

Mr. Mardfin: I have no problem with the second and the third. The subject to funding part bothers me. I think it's subject to funding given that the Department of Environmental Management will use their best efforts to see that it be funded.

Ms. Okuma: We will use our best efforts to submit it as a request. I can't guarantee what will happen to that request, that's what I'm saying. So this is typical language to put in to indicate subject to funding. I will tell you that we will do our best. We will put it into the Fiscal Year 2012 as a request, it's only a request.

Mr. Mardfin: Subject to funding with the understanding that the Department of Environmental Management will do their best to see that it get funded.

Ms. Okuma: That's fine or if you want, "subject to County Council approval," because we do not have control over that.

Mr. Mardfin: I understand you don't have control. I want your best efforts that you will pursue it.

Ms. Okuma: And I'm indicated that we make the request in Fiscal Year 2012. We submit it as part of our package, as part of our process.

Mr. Starr: Commissioner Wakida.



Mr. Hirano: ...(inaudible)...

Ms. Okuma: Yes, yes, that we'll make our best, yes, so that is our effort. That will be our best effort is we do, we submit all requests as part of what we do every year. Every year at the beginning of the budget cycle.

Mr. Starr: Okay, Commissioner Wakida.

Ms. Wakida: Thank you. This question, maybe it goes to Ms. Aoki. Supposing this stayed as Commissioner Mardfin proposed and supposing that the well was not funded, what are the consequences?

Ms. Aoki: If the condition states that they are do something and they don't it they would be in violation of the SMA.

Ms. Wakida: And then what happens?

Ms. Aoki: They get fined.

Ms. Wakida: Or.

Ms. Aoki: They have to comply. I mean there's a gamut of things that could happen. As the Director for the Department of Planning, you know, I can also attest that, I mean, as we all know, we can put in and request at the beginning of our process but it's ultimately up to the County Council. So I would caution about putting in something as a requirement when they're subject to other entities that are gonna approve that funding. I think what the Director of Environmental Management is saying is that she will submit that as a request which is their due diligence to try to address the concerns of this body. But she can't make any guarantee.

Mr. Starr: Just to make a comment, you get, you know, more assurance with a gun and a smile than you do with a smile alone. There's no assurance that this will be the director at that time either. Commissioner Mardfin.

Mr. Mardfin: I guess I'm, the reason I wanted an assurance of best efforts is because it's one thing to put it in and you put it in and then with a wink and nod you say, yeah but if you don't do it, it's okay. I don't want to have that happen.

Ms. Aoki: Perhaps if the Director of Environmental Management will comfortable the condition could say that, the Department of Environmental Management will propose in their Fiscal Year 2012, a line item for this particular project and then it's subject to the County Council's approval. So you could still put ...

Mr. Mardfin: ... But will then defend it? I mean, if ...

Ms. Aoki: ... I would imagine they would if you're gonna go up there to try to defend. I mean, you're not going to put something in your budget that you're not going ....

Ms. Okuma: Let me tell, let me tell you that as part of our process and I've already said we will make the request. I mean, we will make that request. It will be part of our package of request in Fiscal Year 2012. You could put that in as far as the wording, and I'm sorry, I just kind of lost my, what was the last point?

Mr. Starr: Mr. Hopper will, wanted to comment.

Mr. Hopper: I just wanted to comment that typically you I don't think would get into requiring an agency to put something in their budget. The requirement would be what you're doing to mitigate the impact which would be installing the well. If you put a date and the department can't install the well because of funding issues it would be in violation, it could ask you for an amendment to the condition for extra time that's a possibility. That would have other problems potentially in that they would need to look at complying with their other state permits but, you know, typically I don't think I have seen language that said you will be required to put in your line item in your budget and deal with an agency's budget and the condition I think would be typically geared towards the impact which is you will install a well by this time and if there's an inability to comply I mean, you know, I think the fact of life is that it will be subject to Council approval and I think you're aware of that. So I would recommend against language stating you would need to make a line item request but I think language dealing with the well would be acceptable.

Mr. Mardfin: Then my motion is to take the second and third parts as the Director suggested but not have the statement about subject to funding.

Mr. Starr: I'm now confused.

Mr. Mardfin: Corp. Counsel has advised us that a phrase like subject to funding or best efforts is not appropriate, but we are trying to mitigate a potential damage to the ecosystem and the marine environment and we're doing it by as a mitigating measure have a fourth well drilled. The Director suggested two issues that, the second and third issue she raised are perfectly okay, but by Corp. Counsel's advice we should not have a statement about subject to funding in there.

Mr. Starr: Yeah, so how?

Mr. Hopper: I don't believe I said making a statement subject to funding would be a problem because that's going to be a fact anyway. The issue was requiring the department to propose something in their budget or requiring the department to make, you know, best efforts was a little different of an issue than saying subject to funding. I mean, that's going to be true, you know, regardless. So I mean, ...

Mr. Starr: Okay, lets wait, lets step back a little bit. Right now we have an amendment on the table. Yeah, to the amendment is that they be required to put this well in and to test the ground water. Now, am I, your desire is to make a second to your amendment, in other words, an amendment to the amendment. Then what are you interested in doing?

Mr. Mardfin: I have the amendment to have a fourth well and do testing at it. That's my basic amendment.

Mr. Starr: Okay, and you're not trying to change that amendment?

Mr. Mardfin: No.

Mr. Starr: Okay, commission – good, then the amendment, we'll leave the amendment as it stands and then, Commissioner Hiranaga has a question or comment.

Ms. Aoki: If I may, I guess I'm confused too because what I understood Commissioner Mardfin was that you wanted to address the three concerns. You including, you're okay with including the two which I'm not taking this as an amendment but as a condition because you stated it would be number 21 and the condition was the condition that Paul Fasi read, but also to now include the language that it identifies specifically the report and also that it, the sampling begin after completion.

Mr. Mardfin: That was accepted.

Ms. Aoki: So it sort of amending the condition number 21 that you proposed.

Mr. Mardfin: I took that as a friendly amendment to my wording to clarify the situation.

Ms. Aoki: Okay.

Mr. Mardfin: To clarify the situation.

Mr. Starr: Okay, please read, Paul please read the amendment as it stands for condition 21.

Mr. Fasi: That subject to funding ...

Mr. Mardfin: No.

Ms. Aoki: No.

Mr. Fasi: Okay, we're taking that out. Okay. That a fourth well will be installed at the location as recommended by the consultant, Browne and Caldwell in their Groundwater Evaluation Report dated August 2010 and begin sampling after the fourth well is installed.

Mr. Starr: Is that ...

Mr. Mardfin: That is correct.

Mr. Starr: ... consistent? Commissioner Shibuya.

Mr. Shibuya: Yes.

Mr. Starr: Okay, that is now our amendment on the table. Commissioner Hiranaga.

Mr. Hiranaga: So all references to a date have been deleted?

Mr. Mardfin: I believe the 2014 date should be in there.

Mr. Hiranaga: It wasn't.

Mr. Mardfin: My motion had 2014 in there.

Mr. Starr: Yeah, Paul, you left out the –

Ms. Aoki: That by 2014.

Mr. Fasi: Oh okay. That by Fiscal Year 2014 or calendar year.

Mr. Mardfin: I don't care.

Mr. Starr: How about New Years 2014.

Mr. Fasi: That by the year 2014 a fourth well will be installed at the location as recommended by the consultant, Browne and Caldwell, in their Groundwater Evaluation Report dated August 20, 2010 and begin sampling after the fourth well is installed.

Mr. Starr: Okay, any discussion? Commissioner Hiranaga.

Mr. Hiranaga: My understanding is the Department of Health is the overseeing agency for this landfill compliance requirement. So if they will get a copy of the SMA permit if it's approved is that correct?

Ms. Aoki: The Department of Health will get a copy of the SMA permit correct. Department of Environmental Management you need that in order to get your Department of Health.

Mr. Takamine: That is correct, right.

Mr. Hiranaga: So I would say rather than put a date in there, because they had no control of the funding if you just say Planning Commission recommends as condition blah, blah, that a new groundwater monitoring well shall be installed and testing shall commence upon completion. If that's a condition that needs to be done and it's in the SMA and if the DOH feels that they're not meeting that condition, they can then take action against the County for failure to meet that condition. But to put in a 2014 deadline to me is meaningless because they no control over funding. If the Council says we're not doing it, it's not going to happen. So I cannot agree to putting in this arbitrary date. I think it should just be kind of a condition that they put it in because we really can't tell them when to put it in.

Mr. Starr: Is that discussion or are you offering an amendment to the amendment?

Mr. Hiranaga: Discussion. You know we're trying to control something we don't have no control over. But we have the right to put in a condition that they need to comply with and the DOH will see that condition as part of the process for their compliance. So ...

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: I would like them to see that we wanted a date in there.

Mr. Starr: There's a difference of opinion. Okay we ready to vote on the amendment? Okay, anyone wishing to vote for the amendment, all in favor please raise a hand. All opposed?

**It was moved by Mr. Mardfin, seconded by Mr. Shibuya, then**

**VOTED: To Add the Following Condition: "That by the year 2014 a fourth well will be installed at the location as recommended by the consultant, Browne and Caldwell, in their Groundwater Evaluation Report dated August 20, 2010 and begin sampling after the fourth well is installed." (Assenting - W. Mardfin, W. Shibuya, J. Freitas, L. Sablas, P. Wakida) (Dissenting - K. Hiranaga, O. Tagorda) (Excused - D. Domingo)**

Ms. Aoki: Chair you have five yeas and two noes.

Mr. Starr: Okay, are there any additional amendments to be offered? Commissioner Mardfin.

Mr. Mardfin: I propose an additional amendment and I'm trying to get good wording for this, but essentially I want, "that testing along the ocean side and in Hana Bay for heavy metal concentrations and pesticides by collecting tissue samples from marine life in the area be commenced."

Mr. Starr: Okay, is there a second? Anyone wishing to offer a second that amendment?

Ms. Wakida: I'll second it.

Mr. Starr: Okay, we have Commissioner Mardfin has moved, Commissioner Wakida has seconded an additional amendment which would be for condition 22 and that shall read, you want to take or Paul?

Ms. Aoki: Paul did you get it all. I think I got some.

Mr. Fasi: I think I got it. Let me take a stab at it. "That testing and monitoring of tissue samples from marine life along the ocean fronting the landfill," and that's as far as I got.

Mr. Mardfin: And in Hana Bay, and in Hana Bay.

Mr. Fasi: Fronting the landfill and in Hana Bay.

Mr. Starr: For, you guys have ...

Ms. Aoki: For heavy metals.

Mr. Mardfin: For heavy metal concentrations and pesticides.

Mr. Fasi: Front the ocean – Along the ocean fronting the landfill and Hana Bay for heavy metals and pesticides.

Mr. Starr: Okay, Commissioner Mardfin.

Mr. Mardfin: I'd like to speak to my motion. The reason I made it is because I'm concerned about the testimony, the statements by Commissioner Freitas about all the kinds of things that were on the ground. I think, the somewhat uncertainty about the direction of the water and seems to me that we need a base study of tissues that are in the water that it might not be closest to the source of the pollution but it's certainly where it would have the most impact on people living in the area because people go after opihi, people go after limu, people go after fish, people swim in it, people canoe paddle in it and so I want to make sure that the health of these uses is preserved. It was also a recommendation by Maui Tomorrow in a letter that we received that this go on.

Mr. Starr: Commissioner Shibuya.

Mr. Shibuya: Just want to comment here that I did not second this motion because looking at doing testing in the Hana Bay is I think outside the scope of this investigation. If you did tissue sampling in that area surrounding the landfill then yes, I would support it, and I wholeheartedly support tissue sampling. However, going out on a witch hunt and I call it a witch hunt when you start going into and sampling the Hana Bay area. I think that's speculative and a little bit too expansive.

Mr. Starr: Commissioner Hiranaga.

Mr. Hiranaga: I'm not a hydrologist and so I have to rely on experts who are licensed and registered and they provide scientific data to allow us to make educated decisions. You may believe that the water is going west, you may believe the water is going northwest but their scientific data says it's going east or possibly northeast. They're willing to put another monitoring well there to help them gather additional data and they said that if that data indicates there may be a release then yes, we may want to do nearshore testing of tissue, but lets not jump to third base, lets do this step by step because it all cost money. My recollection is Hana Bay is a recreational, commercial State Harbor. So it's not a pristine bay. So there will be other sources of contamination. The further you get away from the potential source of contamination it reduces the likelihood that that is the direct result of this dump. So you go step by step and you go close and further and further until as warranted but to just out to Hana Bay, there's no basis for it. I can't see supporting that amendment.

Mr. Starr: Commissioner Mardfin then Commissioner Tagorda.

Mr. Mardfin: The basis that I was using for it I agree with you I tend to look at the science also. But now the science looks like it is going east to northeast. On the other hand, I think there are a lot of possibilities of lava tubes and other sorts of things that perhaps the wells are missing. And the reason I wanted it to include Hana Bay is it is rather close to it. There is a whole lot of human interaction in there. And it seems to me having more knowledge about what's in there and have the potential for harming people is a useful piece of data. It may or may not be due to the landfill.

But the, I believe it's it's the proximity of the critters and the tissues to human use of the area makes it an important effort to monitor.

Mr. Starr: Commissioner Tagorda.

Mr. Tagorda: Thank you Mr. Chair. I think we're getting out of scope and I believe hundred percent on Commissioner Hiranaga's comment that without cost analysis on all this conditions that my fellow commissioners are putting on, putting into this SMA permit application you gotta hear them. They are in violations, the Department of Health for \$25,000 a day and someone I heard that oh it takes eight days to have the \$200,000 on a well and then somebody trying to put in position on when they should put the well. They like to put the well tomorrow if they had the money. Okay. So I don't know, I know this conversation are given, discussions that we are futile without this box that the department had nowhere we can go any place. We can put it on, but you can subject them to you gotta do it. It's a monetary constraint on their part. They are willing to do it but like I said, I heard them loud and clear, they cannot even pay the fine for many, many years of \$25,000 a day so you know.

Mr. Starr: Commissioner Mardfin is there a desire to modify your wording as per Commissioner Shibuya or not?

Mr. Mardfin: Not now, lets have a vote on it and then I'll make a, if it fails I'll make a more limited motion.

Mr. Starr: Okay, we're ready to vote on the amendment? Okay, all in favor of the amendment and that amendment reads one more time.

Mr. Fasi: The testing and monitoring of tissue samples from marine life along the ocean fronting the landfill and Hana Bay for heavy metals and pesticides.

Mr. Starr: Okay, all in favor please raise your hand. All opposed.

**It was moved by Mr. Mardfin, seconded by Ms. Wakida, and**

**The Motion to Add the Following Condition: "That testing and monitoring of tissue samples from marine life along the ocean fronting the landfill and Hana Bay for heavy metals and pesticides," Failed.**

**(Assenting - W. Mardfin)**

**(Dissenting - K. Hiranaga, J. Freitas, O. Tagorda, W. Shibuya, L. Sablas,  
P. Wakida)**

**(Excused - D. Domingo)**

Ms. Aoki: Chair you have one yea and six noes.

Mr. Starr: So amendment fails. Commissioner Mardfin.

Mr. Mardfin: I move the same amendment with the deletion of the words, "and Hana Bay."

Mr. Starr: Is there a second? No second. Amendment dies for lack of a second. Okay, are there any further amendments? No ...

Mr. Tagorda: Call for the question.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: I'm pissed. I want you understand I'm going to vote against giving them the permit because I believe the critter testing should be done. I just want you to understand why I'm going to vote no on the main motion even though I moved it.

Mr. Starr: Commissioner Shibuya.

Mr. Shibuya: With that comment, I'm going to say that I am voting for it because after we do the testing with the fourth water test well then we can if it comes out positive then yes, I can see us moving towards tissue testing but until then I don't think we should presume that we automatically jump to conclusion and have a condition to go ahead and tissue test.

Mr. Starr: Commissioner Hiranaga.

Mr. Hiranaga: Could either the Director or Corporation Counsel explain to me the ramifications if this SMA permit is denied?

Mr. Starr: Okay, and there's no further amendments regarding the soil testing as was offered by the applicant.

Mr. Freitas: Yes, I would like to ...

Mr. Hiranaga: I had a question.

Mr. Freitas: Oh, I'm sorry.

Mr. Starr: I'm sorry, I didn't realize.

Mr. Hiranaga: I wanted someone to explain to me the ramifications to the Department of Environmental Management if this SMA application is denied.

Mr. Starr: Okay, Mr. Hopper.

Mr. Hopper: Well they would not have a permit to conduct the use in the area specifically that would mean with the Department of Health and things, I think the Department of Environmental Management would be in a better position to explain that. For legal purposes they wouldn't have met, you would have found that they couldn't meet the standard under 205A. They could appeal your decision or they could, you know, if the appeal's upheld then they wouldn't have the right to operate and they would have to have – what that means for their, what it means in the land use context is simply they can't operate. What it would mean for the department at large and its



operations, I can't say, that's for the department to ...

Mr. Starr: Yeah, please enlighten us and begin that with letting us know when was the last time we had a permit to operate this.

Ms. Okuma: We're not exactly positive, we think at about the late 1990's, but without this SMA permit we would not be able to get our Department of Health Operating Permit and again, by not having the permit we are in noncompliance and we haven't had a permit since we believe since the late 1990's. So we've been proceeding along this path for the last couple of years getting each of our permits in line so that we could ultimately be in compliance and apply for our Department of Health permit.

Mr. Starr: Okay, Commissioner Hiranaga.

Mr. Hiranaga: So because you're making this good faith effort to come into compliance, the Department of Health has been holding the daily fines in abeyance?

Ms. Okuma: Yes. I mean, they've told us we are noncompliant. We told us we are in violation.

Mr. Hiranaga: You've been cited.

Ms. Okuma: We've gotten letters that we are in violation. I don't know that you call that a citation, but you're absolutely right. We have kept them informed all along the way. They see that we're making efforts. Good faith efforts and so this is the reason why they haven't come down on us. They're giving us the opportunity to go through our process.

Mr. Starr: Okay, Commissioner Freitas.

Mr. Freitas: I'd like to make a comment and then a motion.

Mr. Starr: Yeah, go ahead.

Mr. Freitas: I have been to Hana Landfill many, many times when I was kid we did work in there. That Hana Landfill is very well run landfill. It is very clean, it's very neat. It's probably the best landfill in Maui County. With that, I'd like to, my concern is the oil and all of the fluids that I know was there because I worked on that thing and I'd like to have some soil samples done when funding is available.

Mr. Starr: Is there a second?

Mr. Shibuya: I'll second it.

Mr. Starr: So it's amendment number, condition number 22, that is Mr. Fasi?

Mr. Fasi: That the Department of Environmental Management shall conduct soil sample studies upon availability of funding.

Mr. Starr: I believe that's of a specific area. Jack, could you define that?

Mr. Freitas: I'm sorry?

Mr. Starr: Could you define the area where you want it done?

Mr. Freitas: Yes, I'd like to. The area where all of the white goods, all of the automobiles, all of the batteries and oils and fluids was kept. It's makai side of the road.

Mr. Starr: What's the proper name for that place Tracy or Cheryl?

Ms. Okuma: I think if we refer to it as the areas where we did metals removal project we know where that occurred. That's the area you're talking about, right?

Mr. Freitas: That's it.

Ms. Okuma: Okay.

Mr. Starr: Okay. Let me get it read back please, Paul, what's the amendment?

Mr. Fasi: That the subject area shall be the former metal holding area, scrap metal holding area.

Ms. Okuma: Where we had the metals removal project.

Mr. Fasi: The subject area shall be the former scrap metal holding area and metals removal project.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: Could you show me on the map up there where that area is? No, I actually would prefer – okay. And if the groundwater were going east and northeast of that neither HL-2 nor HL-3 nor a new well would detect that is that correct?

Mr. Starr: Ray.

Mr. Matasci: I'm sorry, could you repeat the question?

Mr. Mardfin: Yes, I want, I asked where the oil and the antifreeze and all the rest were and if it's right there and if you're correct that the water is going east and northeast then that would not be picked up with HL-2, it wouldn't be picked up with HL-3 and it wouldn't be picked up with HL-4, and so it could be going right into the ocean and we'd never know it. All we'd know is that the surface soil was contaminated. We wouldn't know what was happening underneath.

Mr. Matasci: There's that possibility. I think that the next step would be first to sample the soil. And get an assessment of what the conditions are there now. And figure out what the concentrations might be and what might be in that soil.

Mr. Mardfin: And if there were noxious things in there then would it be appropriate to do tissue sampling in the ocean?

Mr. Matasci: I think the next step would be to remediate that site and I think that you'd have to make a decision depending on what you find, what the concentrations were, what the depths were to determine what in addition to remediation might be done including potentially on downstream monitoring.

Mr. Mardfin: Thank you.

Mr. Starr: I have a question. I'd like you to show where previous landfill cells were from the earliest days that you know about. Could you, someone walk up to the map and kind of outline where the different cells were?

Ms. Aoki: Go to the mike. Tracy can you go to the mike please?

Mr. Takamine: I believe the previous cells areas was, were in this outline right in this area here.

Mr. Starr: Were there ever any active cells makai of the road?

Mr. Takamine: Not on this side as far as I know. It's just the scrap metal area and composting.

Mr. Starr: Thank you.

Mr. Mardfin: Were batteries out there too? Where were the batteries?

Mr. Takamine: The batteries, again, with the vehicles it was just in this general area here.

Mr. Mardfin: Thank you.

Mr. Starr: Okay. So we have a motion, and a motion to amendment, amendment for condition number 2, we ready to vote on that?

Ms. Aoki: ...(inaudible)...

Mr. Starr: Yeah, 22 condition 22. All in favor please raise your hand. All opposed.

**It was moved by Mr. Freitas, seconded by Mr. Shibuya, then**

**VOTED: To Add the Following Condition: "That the Department of Environmental Management shall conduct soil sample studies upon availability of funding. The subject area shall be the former scrap metal holding area and metals removal project."  
(Assenting - J.Freitas, W. Shibuya, K. Hiranaga, O. Tagorda, W. Mardfin, L. Sablas, P. Wakida)  
(Excused - D. Domingo)**

Ms. Aoki: The Chair the vote's unanimous to accept.

Mr. Starr: Okay. And are there any further amendments to be offered? Mr. Hopper please.

Mr. Hopper: Just, Paul did you say, I think we didn't have a specific date like an expiration date for the SMA permit. In the standard conditions there's a date until February 28, 2018. Was that the same that the department is recommending for the SMA permit?

Mr. Fasi: That is correct.

Mr. Hopper: Okay, just wanted to confirm that.

Mr. Starr: Yeah, he did mention it earlier.

Mr. Hopper: Okay, sorry.

Mr. Starr: Okay, we're going to vote on the main motion with the 22 conditions as amended. Ready to vote? All in favor please raise your hand. All opposed. Okay, Director.

**It was moved by Mr. Mardfin, seconded by Mr. Shibuya, then**

**VOTED: To Approve the Special Management Area Use Permit Subject to the 22 Conditions, as Amended.**  
**(Assenting - K. Shibuya, J. Freitas, O. Tagorda, W. Shibuya, L. Sablas, P. Wakida)**  
**(Dissenting - W. Mardfin)**  
**(Excused - D. Domingo)**

Ms. Aoki: Chair you have six yeas and one no.

Mr. Starr: Please note that the two Hana residents did not vote for this.

Mr. Hirano: Thank you very much Commissioners.

Mr. Starr: Okay, Director.

Ms. Aoki: Chair your next item is acceptance of the Action Minutes of the August 10, 2010 meeting and May 11, 2010 meeting.

**F. ACCEPTANCE OF THE ACTION MINUTES OF THE AUGUST 10, 2010 MEETING AND MAY 11, 2010 MEETING**

Mr. Starr: Is there anyone have any corrections or motion regarding those?

Mr. Mardfin: Mr. Chair, this is the Action Minutes of August 10<sup>th</sup>. Do we, this is just a question, we had a motion to defer and it failed. Are failed motions not included in action minutes?

Ms. Aoki: Only the final vote that's taken that's approved is included in the action minutes.

Mr. Mardfin: So motions that fail doesn't get recorded, but the motion ...

Ms. Takayama-Corden: Whatever the final action is.

Ms. Aoki: What the final is of the ...

Mr. Starr: I believe that if it's followed by a motion to act in one way or another then ...

Mr. Mardfin: Okay, I just wanted clarification.

Mr. Starr: ... it wipes it off the slate. I mean if we want to change our process we could, but I think that that's fine.

Mr. Mardfin: I just wanted to know.

Mr. Starr: So regarding Item F, the two minutes does anyone want to accept them? Commissioner Mardfin.

Mr. Mardfin: I move acceptance.

Mr. Starr: Is there a second?

Mr. Shibuya: Second.

Mr. Starr: Okay moved by Commissioner Mardfin, seconded by Commissioner Shibuya. Director the motion is.

Ms. Aoki: The motion is to accept the Action Minutes of August 10, 2010.

Mr. Starr: Okay, all in favor please raise a hand. All opposed.

Ms. Aoki: Unanimous to accept the minutes, the action minutes.

**It was moved by Mr. Mardfin, seconded by Mr. Shibuya, then**

**VOTED: To Accept the Action Minutes of August 10, 2010 and the Regular Minutes of May 11, 2010.  
(Assenting - W. Mardfin, W. Shibuya, K. Hiranaga, J. Freitas, O. Tagorda,  
L. Sablas, P. Wakida)  
(Excused - D. Domingo)**

Mr. Starr: Okay, Director.

Ms. Aoki: Chair, I'd entertain a motion to accept the full minutes of the May 11, 2010 meeting.

Mr. Starr: Did you do both?

Ms. Aoki: That was included in your previous?

Mr. Starr: I thought it was.

Mr. Mardfin: Whatever you like.

Mr. Shibuya: I thought it was.

Ms. Aoki: You thought it was. Okay, I'm sorry. All right.

Mr. Starr: G-1.

Ms. Aoki: Chair, the next item on the agenda is the Director's Report. I will ask Mr. Yoshida to discuss, I don't believe we have any Planning Commission Projects or Issues. So we'll move onto Item 2 if that's okay.

Mr. Starr: Yeah, we actually have two future agendas to discuss so, hey Chris, I just wanted you to hear these two items. You may think they're useful or not. Mr. Yoshida.

## **G. DIRECTOR'S REPORT**

### **1. Planning Commission Projects/Issues**

### **2. Discussion of Future Maui Planning Commission Agendas**

#### **a. September 14, 2010 meeting agenda items**

Mr. Yoshida: Yes Mr. Chairman, Members of Commissioner, I don't know if there are any Commission Projects and Issues you want to discuss.

We had as far as the future agendas we had circulated a possible agenda items for your September 14<sup>th</sup> meeting realizing that this is the one, one of the few times that we have a three-week break between meetings normally it's two weeks. But between this meeting and the September 14<sup>th</sup> meeting there's three weeks. We have two public hearing items and I guess the draft letter of support for the NOAA Grant that Jim Buika will be drafting.

Mr. Starr: We also had a request from several commissioners to do site inspections of Central Maui and you had suggested that a good date would be probably the afternoon of the 14<sup>th</sup>, and this would be the medical center, this would be the ...

Mr. Yoshida: Maui Memorial Park.

Mr. Starr: .... cemetery and the new school.

Mr. Yoshida: The new school up at Kehalani.

Mr. Starr: And if Mr. Yoshida can come up with anything else he wants us to see so the idea would be for us to do that, to do those several items in the morning. They're fairly. We ought to be able to handle them in the morning and then at one o'clock to do our site inspection if the commission desires to proceed with this Mr. Yoshida can plan it out for us. Everyone happy with that? Commissioner Wakida.

Mr. Wakida: You said the site inspections for the medical center, what were the other two?

Mr. Starr: The cemetery expansion by the pond, what do you call it.

Mr. Yoshida: Maui Memorial Park expansion.

Mr. Starr: Maui Memorial Park.

Ms. Wakida: And a school.

Mr. Starr: Yeah.

Ms. Wakida: Since I'm new can I get a timeline of some a little history to take with me?

Mr. Starr: Mr. Yoshida will get that for you.

Mr. Yoshida: The commission reviewed the draft EA for the Maui Medical Plaza at Kanaha.

Ms. Wakida: No, I know that, yeah.

Mr. Yoshida: The cemetery came up at your I believe it was your May meeting and then it was deferred pending comments from the Maui/Lanai Island Burial Council. They were planning to do a site inspection in June but they didn't actually conduct it until July. So we're waiting for the comments from the Maui/Lanai Island Burial Council for this County Special Use Permit and Special Accessory Use Permit out on their expansion site on Waiinu Road kind of across from the existing Maui Memorial Park.

Mr. Starr: He'll give you some paper on that.

Mr. Yoshida: And then State because of the expanding population in Central Maui is planning to construct a new second elementary school for Wailuku at the Kehalani Project District and that needs a Phase 2 Project District Approval which we believe will come before the commission before the end of this year.

Mr. Starr: Is everybody happy with that? Commissioner Hiranaga.

Mr. Hiranaga: Just for quorum purposes I will not be attending that site visit because I'm quite familiar with most of those areas.

Mr. Starr: Okay, you're still welcome to join us if you get free. Mr. Yoshida, we'll proceed with that. Then for the following meeting though we don't have too much finalized I believe Mr. Yoshida and Ms. Cua are working on a program in the afternoon. It's going to be another fairly short meeting in the morning. In the afternoon, we looking to have an informational workshop on the permitting and entitlement process and Public Works, DSA will be presenting on what happens when you ask for a permit, where it goes, we're trying to get Fire, we're trying to Water, Planning will be presenting as far as what happens when someone comes in and asks about the entitlement process, there'll be an opportunity for public to give testimony. I know there's a lot of people who wanted to put their two cents in about how they perceive the permit and approval process. So this is an opportunity. I don't think there's any action we can really take on it, but it is an opportunity for us and the public to be educated and ask questions. I'd like to know if that's acceptable to everyone.

There was agreement amongst the members.

Mr. Starr: Okay, and you know, we can all spread the word about that because I know there's a lot of people in the community who are really interested in learning about the entitlement and the permit process and a lot people want to say how it should be done better let them come in and have their three minutes.

Okay, thank you everyone. Next meeting date September 14th, morning here, afternoon site inspection. Till then be well. Good work today, it was a long day. Thank you all.

**H. NEXT MEETING DATE: September 14, 2010**

**I. ADJOURNMENT**

The meeting was adjourned at 4:23 p.m.

Submitted by,

CAROLYN J. TAKAYAMA-CORDEN  
Secretary to Boards and Commissions II



**RECORD OF ATTENDANCE**

**Present**

Jonathan Starr, Chairperson  
Donna Domingo (excused at 10:35 a.m.)  
Jack Freitas  
Kent Hiranaga  
Ward Mardfin (in attendance @ 9:27 a.m.)  
Lori Sablas (in attendance @ 9:15 a.m.)  
Warren Shibuya  
Orlando Tagorda  
Penny Wakida

**Others**

Kathleen Aoki, Planning Department  
Clayton Yoshida, Planning Department  
James Giroux, Department of the Corporation Counsel (9:00 a.m. - 12:00 p.m.)  
Mike Hopper, Department of the Corporation Counsel (1:00 p.m. - 4:23 p.m.)  
Mike Miyamoto, Department of Public Works