POLICY COMMITTEE
Council of the County of Maui

MINUTES

December 2, 2008

Council Chamber, 8th Floor

CONVENE: 1:35 p.m.

PRESENT: Councilmember Danny A. Mateo, Chair
Councilmember G. Riki Hokama, Vice-Chair (In 1:44 p.m.; Out 7:16 p.m.)
Councilmember Michelle Anderson, Member
Councilmember Gladys C. Baisa, Member (Out 5:25 p.m.)
Councilmember Jo Anne Johnson, Member (Out 7:11 p.m.)
Councilmember Bill Kauakea Medeiros, Member
Councilmember Michael J. Molina, Member
Councilmember Joseph Pontanilla, Member (In 1:39 p.m.)
Councilmember Michael P. Victorino, Member

STAFF: Gayle Revels, Legislative Analyst (Item Nos. 58 and 59)
Kirstin Hamman, Legislative Attorney (Item No. 5(9), 57, 26)
Camille Sakamoto, Committee Secretary

ADMIN.: Charles Hirata, Captain, Department of Police (Item No. 58)
Lori Tsuhako, Director, Department of Housing and Human Concerns (Item No. 59)
Milton M. Arakawa, Director, Department of Public Works (Item No. 57)
Cary Yamashita, Chief, Engineering Division, Department of Public Works
Walter Havekorst, Land Agent, Engineering Division, Department of Public Works (Item No. 57)
Kimberly A. Sloper, Deputy Corporation Counsel, Department of the Corporation Counsel (Item Nos. 58 and 59)
Jane E. Lovell, Chief, Litigation Section, Department of the Corporation Counsel (Item No. 5(9))
Edward S. Kushi Jr., Deputy Corporation Counsel, Department of the Corporation Counsel (substituting for Deputy David Galazin, Item No. 57)

OTHERS: Chantal Ratte, Executive Director, Ka Lima O Maui (Item No. 58)
Ke‘eauumoku Kapu, Kuleana Kuikahi, LLC (Item No. 57)
Wesley Nohara, Chairman, West Maui Soil and Water Conservation District (Item No. 57)
Uilani Kapu, Kuleana Kuikahi, LLC (Item No. 57)
Rory Frampton, Representative, Makila Land Company (Item No. 57)
Kaipo Kekona (Item No. 57)
Peter McKenney (Item No. 57)
Ed Lindsey (Item No. 57)
Yolanda Dizon (Item No. 57)
Napahi Dizon (Item No. 57)
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Peter Martin (Item No. 57)
John Aquino (Item No. 57)

Ranae Ganske-Cerizo, District Conservationist, Natural Resources Conservation Service, United States Department of Agriculture
Elskin Allan, Civil Engineer, Natural Resources Conservation Service, United States Department of Agriculture
John Rapacz
Eight (8) additional unidentified attendees

PRESS: Akaku: Maui Community Television, Inc.
Ilima Loomis, The Maui News

CHAIR MATEO: . . .(gavel). . . Policy Committee meeting for December 2nd, 2008, will come to order. For the record, the Members present with us this afternoon, we have Members Anderson, Baisa, Johnson, Medeiros, Molina, and Victorino. Soon to be joining us we have Member Pontanilla and Council Chair Hokama. Members, we’re going to just get right into our meeting as soon as I also introduce from the Department of the Corporation Counsel, Ms. Sloper. And we also have with us this afternoon our Committee Staff, both Ms. Revels and Ms. Sakamoto.

We have a rather ambitious agenda this afternoon, so prior to getting into some of these items, Members, we’re going to start with public testimony. We do have a few individuals that have signed up to testify with us this afternoon. And just to set the ground rules for the public testimony, we ask that when you come down to the podium you please introduce yourselves, let us know if you represent a group or organization. You will be allowed three minutes to testify with one minute to conclude. There will be no additional time provided other than the three minutes to testify and that one minute to conclude. We’re going to start with Chantal Ratte and Chantal will be testifying on Item No. 59.

. . .BEGIN PUBLIC TESTIMONY. . .

MS. RATTE: Good afternoon, Council Chair Mateo and Council Members. Thank you for the opportunity to allow me to testify in regards to our request. I am Chantal Ratte, the Executive Director with Ka Lima O Maui and our application is mainly to extend our current lease, Tax Map Key 3-8-46 with the County of Maui. The current lease expires in 2024, and we’re requesting that our lease be modified to reflect a 50 year lease, therefore expiring around 2059. The reason for the extension request is to allow Ka Lima O Maui to begin planning for a construction project that would include a program admin building, a garage to store all of our grounds equipment, but most importantly residential units for the population we serve. And those would be 100 percent affordable housing units for the people we serve who are adults with disability and/or economically disadvantaged. A
50 year lease would allow us to begin conversations with big funders that require a long-term lease before they commit any of their support towards the capital campaign.

As most of you know, we’ve been in existence since 1955, serving a serious need in our community, employment for people with disabilities. Our mission of enhancing lives through self-reliance has been accomplished through, mainly through employment programs and adult daycare programs. So this, this new area that we’re embarking on or we’re proposing to embark on, providing housing, affordable housing for our consumers is merely an extension of our mission of enhancing lives through self-reliance. We serve many individuals with disabilities that could live very well independently with minimum supervision and support from our staff. We serve over 200 individuals per year. We employ over 40 of them through our many grounds and custodial services.

The second component of our request was to revise the payment schedule of a dollar a year for the lease...I’m sorry, bringing our lease to a dollar a year versus the current payment schedule that we have. We realize that these are difficult economic times for both the County and pretty much everybody in the community. So we wouldn’t be opposed to renegotiating and discussing this. Obviously the important issue for us is the extension of our lease. I humbly ask that this Committee approve our lease extension and forward it to full Council. Thank you.

CHAIR MATEO: Thank you. Members, any questions for the testifier? Thank you very much. The next individual to testify is Mr. Kapu, Ke‘eaumoku. And Mr. Kapu will be followed by Wesley Nohara.

MR. KAPU: E aloha mai, ladies and gentlemen of the Council. Ke‘eaumoku Kapu from Lahaina. First of all, I would just like to say that—and I am speaking on behalf of the Item 57, Lahaina Watershed Control Project, Flood Control Project. It seems that I guess we’re not looking at how this project would benefit other projects such as the Friends of Mokuula. I see that three years ago I came in front of the Council to talk about ways of helping 501(c)(3) non-profit organization as the Friends of Mokuula within their project, because I also talked about looking at Hawaii’s history a hundred years ago and how the flood plains of Lahaina and Mokuula, that one little site area known as Mokuhunia fishpond would benefit as a sediment basin for that area. I talked about using that traditional value based upon the contemporary value of spending foolish money to create concrete canals to divert water away from the town when you have a project that has been pending and, well, basically lacking in finance based upon the war that is going on at this point where the Corps of Engineers had stopped $14 million for the Friends of Mokuula to continue their work. I’m also here to remind the Council that I am a native Hawaiian, and I live in the Kauaula Valley, mauka of this project area, and I am concerned about the access mauka, whether or not that the flood project will cut off our access for the kuleanas that live in the valley. My reasons here, as to coming today, basically were...in coercion with people that I’ve been dealing with for a long time, I would say within nine years, and my coming here had a lot to do with threat, coercion, deceit based upon allowing testimony to stop you from doing this eminent domain acquisition of this real
property within the area by my neighbors, West Maui Land Company; that the kuleanas up mauka is totally against this acquisition. I am here to tell you that our kuleana is here against the acquisition of all parties, especially West Maui Land Company. I question the titles that this acquisition will basically occur, and the titles have a lot to do with the Lunalilo Estates, the time when the provisional government sold those lands over to Isenberg and Hona(?) and now transferred title from Isenberg and Hona(?) to Pioneer Mill to West Maui Land Company. And when I talk about coercion and threat, and deceit it’s like get one carrot dangling in front of my face --

MS. REVELS: Three minutes.

MR. KAPU: --saying that we’re going leave you alone up in the mauka, support us in this so we can provide other development within the lower area, yeah, to supply homes not for our families but for gated-communities. I am totally appalled based upon the reasons as to why I’ve come here. I have been split in half based upon the decisions that I need to make, and I am here to tell you that I will stay the course based upon the benefit of the Friends of Mokuula, the benefit of the kuleana families that live mauka, and I will not be oppressed by my land. . . new land neighbors known as West Maui Land Company. And when I talk about coercion and deceit, they was hoping that I would come over here to convince you not, not to take these lands under eminent domain because there is a plan that is pending.

MS. REVELS: Four minutes.

MR. KAPU: I do not like to be placed up against the wall, up against all odds for the benefit of my future generations, and I will not tolerate these kinds of threats that are coming from my neighbors. So I give you guys something to think about. Thank you.

CHAIR MATEO: Thank you, Mr. Kapu. Members, questions for the testifier? Ms. Johnson?

COUNCILMEMBER JOHNSON: Yes, Ke`eaumoku, because, you know, you kind of gave two different concerns—one was the course about Mokuhunia and sufficient water and flowing water to keep that project actually going. Is that something that is not presently included in the plan that is before us today under the Flood Control Project, or are there components that would benefit that project if this does move forward?

MR. KAPU: I, I have a hard time understanding the County’s policies when they talk about flood waters that will be entering Mokuhunia fish pond and how these so-called flood waters would also exit into the ocean which may create an environmental effect. So I think that’s one of the, the key problems as to how Mokuula is going to be looked at in the future generations as being an important site. We’re looking at two things over here. We’re looking at “contemporary” versus “traditional”. How can we blend these things, these two things together to alleviate not just. . .the costs, Federal monies, State monies, County monies to, to help supplement a non-profit, 501(c)(3) non-profit? And I know you guys had Mokuula on your agenda for a while. I’m still, still really adamant within
myself to, to believe that this project can actually work. I think one of the major problems is the EPA, Environmental Protection Agency, as to these waters, these flood waters that would enter into this fish pond. I don’t want, we don’t want to see Mokuula turn into a big giant swimming pool with chlorinated water, then all of a sudden the flood plains come and fill up Mokuhunia, then we get Clorox going into the ocean as well. So the policies on the County’s behalf based upon the, the problems of how to alleviate the flood control, how to blend Mokuula within that same division to help with the flooding in Lahaina town needs to be a little bit more seriously looked at. And I think that question can come from a lot of the, the kupuna of Lahaina town on how that may help alleviate the problem and the flood control.

COUNCILMEMBER JOHNSON: And, and, and I think that you make really good points about, you know, how is the whole thing going to operate as a system. The second question I have is in regard to, because I’m a little bit unclear, the, I don’t believe, from what I’ve been advised by West Maui Land or Makila Land, they don’t the eminent domain to go forward. So are you saying that you agree with that position that they have stated, that you don’t want this to go forward, and you just want the project to stop altogether, or am I not hearing you correctly?

MR. KAPU: I, I’m totally against any, any project that involves eminent domain especially with properties within the adjacent area that once belonged to the Lunaililo Estates from mauka all the way to makai down Puamana. The question is the Supreme Court ruling from the ceded lands issue. Now if the provisional government at that time sold these lands over, then there’s a question whether or not those titles are clouded and were clouded. And the second part for me is my concern was how is it going to affect our family’s access mauka? I, I look at the plans on the Wainee Village side, yeah, and it’s going to totally cut off, we’re worried about the bypass going to be an issue. At least we have an open door communication with the State, but every time we have these small little projects coming in, then we want to make sure that these concerns are addressed that the kuleanas access mauka will not be cut off. For the Makila portion, my concern, and my concern over here is not to benefit West Maui Land Company. My concern is to, to draw the question whether or not these titles within the area are legitimate. Now, if the titles are legitimate, and you’re going to accept the fact that this eminent domain coming from West Maui Land Company’s behalf, not looking at the core problem as pertaining to whether or not that Lunaililo Estates could have been transferred over because of the ceded lands issue in the Supreme Court, then that’s another big question. My reasons for coming here is to remind everybody that we live in a complex society and we cannot leave every book unturned. I do not favor the fact that West Maui Land Company is constantly twisting my arm, yeah, to have me come here, my manao that I’m sharing today has a lot to do with our future generations tomorrow, but I will not tolerate the fact that West Maui Land Company comes and helps, asks the family, the kuleanas of Kauaula to come and shoot down this project on this eminent domain. You need to do what you need to do and whatever happens from that side, we want to make sure that everybody will benefit from this. I hope I answered your question.
COUNCILMEMBER JOHNSON: Yes, and I think that I have a better understanding that you're coming here, basically, to express two concerns— one is about your access rights; and then also whether, if compensation is to be paid, who should it be paid to; and even if we have a right to take lands by eminent domain, that we may not know who the rightful owner is.

MR. KAPU: Yes, exactly.

COUNCILMEMBER JOHNSON: Thank you.

MR. KAPU: Thank you.

CHAIR MATEO: Thank you, Ms. Johnson. Members, additional questions? Ms. Anderson?

COUNCILMEMBER ANDERSON: Thank you. Thank you, Mr. Kapu, for coming. You saw the maps that we received showing where the drainage easement parcels are and, and the access easement parcels?

MR. KAPU: Uh-huh.

COUNCILMEMBER ANDERSON: So this access easement would that facilitate your access, change it dramatically?

MR. KAPU: I, I think main thing we stay within the borders of the old alanui, wherever that original alanui was mauka, then we wouldn't have problems in the future. Once you realter or obstruct the old alanui mauka—like the government roads—then we may have a problem in the future pertaining to access for kuleana rights.

COUNCILMEMBER ANDERSON: And so, do you know if this realignment of the watershed control project does disrupt the...

MR. KAPU: There's an area on the Launiupoko or the Puunoa side that is questionable and that, right now, is pending. . .I would say pending in litigation in court based upon. . .adverse possession by West Maui Land Company and the families that live mauka for the, the road that they've always used are now the divider line for a development—that we slowly see the road will be disappearing. Now, if there is a possibility where if, whatever happens. . .if there would be some kind of conditions set with the kuleanas on an, on an MOA mauka of the access roads to not be taken away for life, the alanuis, the government roads on the condition—because we right now are in discussion with the State on working on some memorandum of agreement on the Kahoma side for the families not to get cut off because of the bypass. I, I think that would sort of alleviate some of the problems that the families have mauka on, on being forced to use an alternate road because of obstruction.
COUNCILMEMBER ANDERSON: Okay, and...

...I'm just asking, I don't know, but it seems to me that...water for Mokuleia would have...would have been fed from the mountains...north of this project. So are you saying that the waters are all being diverted down to where this project area is or does it have any...

MR. KAPU: Well, Pioneer Mill, with the flood control project they did with the old ditches and mounds that they built in the, in the mauka areas to try to focus a lot of the waters to go down to one or couple, couple sediment areas makai right across Honoapiilani Highway, I think it's right next to where the aquatic center is. If you notice where they have the event, Taste of Lahaina, well, this is about the time when you drive by it's a duck pond. I think the drainage system in that area, which is an old drainage system that leads to Canal Street, needs to be looked at. And how that drainage system and, you know, looking at how Mokuula's plans would be set in I think that, that it would be really beneficial to have a discussion. I don't know how that would be on a, on a committee to have a discussion with the Friends of Mokuula and a lot of the kupuna in the area and to help alleviate this situation and not spend all these millions of dollars trying to fix one band-aid or put one band-aid on the solution.

COUNCILMEMBER ANDERSON: So do you know if Friends of Mokuula have already worked out where their water source should be coming from?

MR. KAPU: Well, let's, let's just say they're being forced by the County on a, on a meter system on some conditions based upon where the water is going to come from, what type of water, I guess classification of what kind of water can be in this, this area, and it seems like it's madness to me saying that we live in the National Historic registered area, and if Mokuula was the sediment basin of that time back then, isn't there possibly a solution where the, the contemporary versus traditional management can actually work to not spend all this money trying to create something that may not work? I don't know.

COUNCILMEMBER ANDERSON: Or they just go back to the way it was naturally, originally.

MR. KAPU: Yeah. Yeah.

COUNCILMEMBER ANDERSON: Okay. So your feeling is that this realignment ...

...could threaten your access and you're not certain?

MR. KAPU: Could threaten our access while at the same time, now, once the flood control project gets set in, if it does, I've seen the plans and there's green ways, and concrete basins, and Kauaula will be, will be affected heavily. I seen the plans that was put in on how big this sediment basin is going to be right at the bottom of Kauaula River and how that is going to alleviate majority of the problem, but then there's a continual canal that goes all the way to Launiupoko. I see we living mauka are going to go through some
major problems based upon where the water flows and how it’s going to ruin our access not just the flood control project as being a problem, but the waters that come down from the mountains on how is it going to actually affect our landscape when we going mauka, makai, when we going home, and when we coming back to town. I, I cannot see the future, but I’m living the present, and this is the rainy season, and this morning went rain, and I didn’t think I was going to make it here today. Yeah, so, I live in that kind of environment, I understand that kind of environment, and just everything to us is, if we think this is going to be a solution for us in the future, then fine. But if we think that the traditions of our past is the, THE solution, then I’m gonna, I’m gonna definitely back that and favor that 100 percent. Because there is no guarantees. I mean the SMA, or the EIS or, you know, all those things were set in, I still question all those things inside there.

COUNCILMEMBER ANDERSON: And so did --

MR. KAPU: I cannot see the future.

COUNCILMEMBER ANDERSON: --so did anybody from the Public Works Department or their consulting firm contact you regarding access?

MR. KAPU: Not as of yet, but. . .I’ve, I’ve had discussions with the entities that came forward that was doing the project before, the culture inventory assessment, and I, I gave a little bit inside there, but these, these are the kind of, the more crucial things that I, I want to make sure we all understand here today.

COUNCILMEMBER ANDERSON: Thank you, Mr. Kapu.

MR. KAPU: Thank you.

CHAIR MATEO: Thank you, Ms. Anderson. Members, additional questions for the testifier? Seeing none, thank you very much, Mr. Kapu.

MR. KAPU: Mahalo.

CHAIR MATEO: Wesley Nohara. And Mr. Nohara will be followed by Uilani Kapu.

MR. NOHARA: Aloha, Chair Mateo and Members of the Maui County Council. My name is Wes Nohara. I’m the Chairman of the West Maui Soil and Water Conservation District. I’m here today to ask for your support for the condemnation acquisition of a certain parcel of land which is needed for the construction of the Lahaina Flood Control Project, also known as the Lahaina Watershed Project.

The Lahaina Watershed Project is now going on 28 years since it was first proposed to NRCS, or Soil Conservation, by the West Maui Soil and Water Conservation District. This project was given high priority because of its high impact for public safety, property damages, and environmental benefits. The Lahaina Watershed is a sibling project to the
Honolua Watershed which we began in the early 1960s and was completed in 1997, some 37 years. However, through Buddy Nobriga’s leadership we were able to bring nearly $15 million in Federal funds, plus County and private match. The return on these investments were huge; through protection of life and property, environmental, and water quality, and economic benefits.

These projects involved countless government and public review processes. We had mail-outs, workshops, public meetings, site inspections. We had public protests about the original design. We changed the designs. The EA lapsed, we lost Federal funding in the process to the Big Island, we acquired $175,000 and built a temporary flood control measure to protect Lahaina town. . .and then, excuse me . . .

. . . and then we built two phases of that temporary flood control project to protect Lahaina, that Lahaina area just to buy time. We redid the design incorporating public and government comments, coordinating with the bypass highway, and completed a new EA. We got Federal funding back through Buddy’s lobbying with Senator Inouye. We tried to reach an understanding with the new landowners to, to assist the County with land acquisition. Now, here we are 28 years later to have more requests to change the design and/or to stop the project. It is my understanding that NRCS will not change the design again.

We cannot get, if we cannot get the lands or approval to proceed because of the design, the project will die. The monies we worked so hard to secure will not be there for us forever.

We are at a point now where we need to decide. We believe this project is in the public’s best interest.

MS. REVELS: Three minutes.

MR. NOHARA: We held public meetings where the community said we are not working hard enough or fast enough, and we’re not doing enough for them. Buddy Nobriga retired from West Maui Soil and Water Conservation District over, after 50 years of dedicated service. In his exit he said he finally had it. He said you folks would have to finish the Lahaina Flood Control Project. The frustration of not having the teamwork, cooperation, and partnership that we experienced with Colin Cameron in the Honolua Watershed was beyond his comprehension. It is almost like we are not the, like we’re the enemies or the bad guys and not getting true support from some of the people. So it comes down to this—is this project worthy of, of your action for the benefit of all of Lahaina? And if it isn’t, who’s going to tell the public? The floods will come. Since 1879 we had 26 major floods in Lahaina. That averaged out one flood in every five years. The average cost for flood damages is about $700,000 a year. The largest flood occurred in 1960 with 21.7 inches of rain that came down in Kahoma. Thirty-six homes and businesses were flooded. Front Street and Honoapiilani Highway overtopped and the roads were closed.
MS. REVELS: Four minutes.

MR. NOHARA: Damages were estimated at $320,000 in 1960. Today, the cost will probably shatter 5 to 10 million dollars. Is it worth it? The West Maui Soil and Water Conservation supports this. We dedicate our services, our time, our energies as volunteers to support this, and we ask for your support as well. Thank you.

CHAIR MATEO: Thank you, Mr. Nohara. Members, questions for the testifier? Ms. Johnson?

COUNCILMEMBER JOHNSON: Thank you very much for coming today, Wes. With regard to the funding because I know that’s been a concern for a long period of time, if this should not go forward, then what actually will happen? The money will just lapse or it will be allocated to other projects and this will...

MR. NOHARA: The funding through NRCS is called “Public Law 566”, and it is a small watershed, works on dams and flooding projects like these. It is a nationwide, and, and we get so much allocated for Hawaii. And Maui and West Maui vies for our share, but we have to be ready to implement. We are ready. If we don’t implement, those monies will go away. It won’t be with us.

COUNCILMEMBER JOHNSON: Okay, and, and are we assured, because I know sometimes like with a STIP, you know, the transportation funds, it’s like all of a sudden there’s some technicality, and then somebody jumps in front of you and there goes your money anyway . . .(laughter). . .

MR. NOHARA: The, the first two phases the money is right there waiting for us.

COUNCILMEMBER JOHNSON: Okay.

MR. NOHARA: We need land acquisition to proceed.

COUNCILMEMBER JOHNSON: And it’s specifically tied and committed for this particular project? And that would be for, for what--the land acquisition, or construction, or...

MR. NOHARA: The PL 566 funding, I think, is for the, actually the, the actual construction.

COUNCILMEMBER JOHNSON: Okay.

MR. NOHARA: Land acquisition is the County’s responsibility--

COUNCILMEMBER JOHNSON: Okay.

MR. NOHARA: --along with permitting.

COUNCILMEMBER JOHNSON: All right. Thank you very much.
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MR. NOHARA: We do have, for the Council's information, representation from NRCS for technical support if you have any questions.

COUNCILMEMBER JOHNSON: Thank you very much.

CHAIR MATEO: Ms. Anderson?

COUNCILMEMBER ANDERSON: Thank you, Chair. Thank you for being here, Mr. Nohara. Could you please, like, correct me, if I'm wrong, or verify if I'm right? It, it seems to me, and this is just on my memory, that originally the flood control project was to outlet at Kauaula Stream across the existing Puamana Channel.

MR. NOHARA: The original design was a one outlet right through Puamana.

COUNCILMEMBER ANDERSON: And that people at Puamana objected to that, and so then it was . . . (end of tape, Side IA). . . the, the diversion was extended, the diversion basin or channel was extended down to a new outlet at Launiupoko.

MR. NOHARA: Right. Halfway between Puamana and Launiupoko.

COUNCILMEMBER ANDERSON: Halfway between. And, and that the controversy now is that the landowner on which this extension lies doesn't want to cooperate. And so, in order to make this extension happen, we've got to condemn the land. Is that basically...

MR. NOHARA: I believe the landowner isn't saying they're not willing to cooperate. They don't support the land acquisition through condemnation.

COUNCILMEMBER ANDERSON: Oh, because...

MR. NOHARA: But I would rather have them testify on that, their behalf.

COUNCILMEMBER ANDERSON: Okay. I'll wait for them to come up. Hopefully they do. So just from your long experience with this, would the flood control project be diminished in any way as far as its safety features by having the outlet go across the highway at Puamana?

MR. NOHARA: To the, to the original design?

COUNCILMEMBER ANDERSON: Yeah.

MR. NOHARA: The original design can work. I believe that was our original proposal. It would have involved, as I recall, we would have to redo the concrete channel, probably raise the sides of it higher to handle the higher flows, and redo a bridge through Puamana. My understanding was Puamana didn't want all of that flow going through their channel
and they, in fact, asked us to go back and change the design when the EIS or EA lapsed. And thus we had to go redesign it, go for a new EA, and that's what the new plan is before us now.

COUNCILMEMBER ANDERSON: So do you know how many CFMs that the channelization of the flood control project brings to this outlet as opposed to what is naturally occurring from Kauaula Stream?

MR. NOHARA: Well, I could ask NRCS to tell you what the capacity is. My understanding it was built for 100-year, 24-hour storm. I'm not sure what the CFS is for that storm.

COUNCILMEMBER ANDERSON: Yeah, because I mean if they're complaining about increased flow, I think we should know really how much that increased flow would amount to.

MR. NOHARA: Well, it's designed, and if I'm correct, Ranae, is a 100-year, 24-hour storm?

MS. GANSKE-CERIZO, FROM THE AUDIENCE: ... (Inaudible) ...

CHAIR MATEO: Ms. Anderson, later when the Department comes up --

COUNCILMEMBER ANDERSON: Right.

CHAIR MATEO: --if the resource individual will still be with us, we'll gladly ask her to provide responses, but at this time --

MR. NOHARA: Okay.

CHAIR MATEO: --I would just like to get through with testimony.

MR. NOHARA: Okay.

COUNCILMEMBER ANDERSON: Yeah, thank you. So just one other question, Mr. Nohara. You said that the original EA lapsed.

MR. NOHARA: Yes.

COUNCILMEMBER ANDERSON: Could you explain that?

MR. NOHARA: Well, I believe that, you know, we had a time period to implement the project and because we didn't it, it in fact lapsed. And so, we had to redo the whole design.

COUNCILMEMBER ANDERSON: And the EA?

MR. NOHARA: And the EA.
COUNCILMEMBER ANDERSON: And the EA, was it Federally, a Federal EA?

MR. NOHARA: We, all of that was done, I believe, through NRCS.

COUNCILMEMBER ANDERSON: Yeah. Well, that’s very interesting because this Council has seen environmental assessments and environmental impact statements that are 20, 30 years old and nobody’s lapsing them. Thank you, Mr. Nohara.

CHAIR MATEO: Thank you, Ms. Anderson. Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman, and, Mr. Nohara, thank you for being here. And I know you’ve been heavily involved in all of the flood control systems throughout West Maui. Tell me as, as the system goes from the inlet basin along Lahainaluna Road and crosses laterally along the slopes down to Kauaula Stream, is there a guarantee that this flood control is going to stop the flooding that used to occur between the blocks of Prison Street from the highway down to the ocean? Because that was the most heavily flooded area and damage; the Luakini Street area and the Wainee Street between Prison and Dickenson. So how does this system mitigate that from occurring?

MR. NOHARA: Well, like I said earlier, the design of this system is for a 100-year, 24-hour storm. So it, it bases on the intensity and over a period of time how much water and over what period of time, and there’s actual calculations up to 100-year storm and that’s what it’s designed to carry. You know, if, if it was to exceed that it could overtop at certain areas. So to say that there will never be flooding down below? One can never guarantee that because if you have a storm greater than the capacity of that designed system—but, like I said, we have a temporary flood control system in now. I don’t know what it’s rated; maybe up to a 10-year, 24-hour storm or something like that. But, you know, you still could have flooding, but thank goodness we have those systems in place because if you hadn’t it would be way worse.

COUNCILMEMBER MEDEIROS: And tell me would this system, would the waters that used to feed the Mokuhunia fishpond still be available for the restoration of Mokuula?

MR. NOHARA: The waters, the storm waters that enter the channel I, I believe there is no outlet to go to the area of the old fish pond. It’s two outlets. One is through Puamana and the other one is the new channel outlet half within Puamana and Launiupoko. Whatever waters, storm waters does fall below the diversion will continue to flow through its normal route which could enter those areas. Again, I don’t know what the diversion or the culvert systems below Honoapiilani Highway is designed to take that water. Whether it goes to the old fish pond area or not? I'm not sure. I know there's a drainage ditch that runs parallel to that Malu-ululo-o-olele ballpark area. And so, I know that it is designed to carry some water.
COUNCILMEMBER MEDEIROS: Okay, and, and then, I also want to know. . .you, you expressed that the original plan was from the inlet basin along Lahainaluna Road coming down to Kauaula Stream. What is the additional cost for the new plan beyond Kauaula Stream?

MR. NOHARA: So the first, that, that’s actually the first two phases that we’re proposing to do.

COUNCILMEMBER MEDEIROS: So I’m asking about the cost from Kauaula Stream to the outlet between Puamana and Launiupoko, that phase.

MR. NOHARA: I have the information. I think it runs several, couple of million dollars or so, but I can get that information.

COUNCILMEMBER MEDEIROS: And the total plan--which I, I see you expressed it as Phase I and II?

MR. NOHARA: Yes.

COUNCILMEMBER MEDEIROS: What is the cost of the total plan for Phase I and II?

MR. NOHARA: Well, I just heard Milton mention that the Federal monies that we’re trying to get is 14 million.

COUNCILMEMBER MEDEIROS: Okay.

MR. NOHARA: But that does not include the land acquisition and permitting by the County of Maui. That’s just the Federal portion.

COUNCILMEMBER MEDEIROS: Okay. So if the plan didn’t go through as designed as the new plan, and the plan would stop at Kauaula and discharge out of the Puamana Channel, then that would be you said about two million difference, I mean less?

MR. NOHARA: At least.

COUNCILMEMBER MEDEIROS: Yeah.

MR. NOHARA: I can’t remember the exact number, but it’s probably between two and three million, right around there.

COUNCILMEMBER MEDEIROS: I see.

MR. NOHARA: I know that we went through several revisions because of delays and the construction costs has rise as, as a result.
COUNCILMEMBER MEDEIROS: Okay. Okay. Thank you, Mr. Nohara. Mahalo, Mr. Chairman.

CHAIR MATEO: Thank you, Mr. Medeiros. Mr. Molina?

COUNCILMEMBER MOLINA: Thank you, Chair. Good afternoon, Mr. Nohara, and thank you for giving us the history about this ‘cause I think it will help clear up a lot of things for us. And I got to admit, this is a tough one. And it’s quite complex, a lot more complex than I originally thought. So just kind of cutting through the chase, if this proposal is stopped in its tracks today--well, let me first start, how long did it take you folks to get to this point? Because I know you mentioned it’s since the folks at Puamana had asked for this, you know, way back when to...(inaudible)... 

MR. NOHARA: The original submission to the Soil Conservation for this project was 28 years ago.

COUNCILMEMBER MOLINA: So it’s taken 28 years to get to this point?

MR. NOHARA: Yes.

COUNCILMEMBER MOLINA: So if we stop this in its tracks today and reconsider another design, then what happens now? Federal monies are all...(inaudible)... 

MR. NOHARA: I don’t know. The money..., my understanding is Buddy got it through Senator Inouye, and I’m not sure how much longer we have Senator Inouye. So I don’t, I don’t want to make promises that we’ll ever get the monies back for a long time.

COUNCILMEMBER MOLINA: Uh-huh. So is it in your estimation that basically you turn down Federal funding today, and then you come, you know, years later ask for more Federal funding. . .if something, the action or inaction that happens here today could have an impact on the County getting funding for . . .(inaudible). . . 

MR. NOHARA: I would imagine so, with the national as well as local economic climate, I think monies are going to be tough to come by.

COUNCILMEMBER MOLINA: Okay. Thank you. Thank you, Chair.

CHAIR MATEO: Thank you, Mr. Molina. Members, additional questions? Seeing none, thank you very much. Our next testifier is Uilani Kapu. And Uilani is followed by Rory Frampton.

MS. KAPU: Aloha, Council. Uilani Kapu, President of Kuleana Kuikahi, but as a kuleana resident of Kauaula Valley also. I am here in representation of all the families that could not be here testifying on behalf of our access rights. We want to make sure that we take care of our, our access rights, and we’re not cut off. We want our traditional easements
that we’re using today and no others. I also want to speak on behalf of, it’s sad that it came down to this, and it took so long, Lahaina has been screaming, and I think more Lahaina people would have been here if they heard about this because it’s been around for years and has been redesigned many times. Lahaina Bypass had a beautiful picture of it in which I don’t think it will look like that, but maybe in some way we could probably work together with it.

But I just want to, for my children, they spoke out in several occasions at meetings in Lahaina of using what is there instead of spending more monies and creating more concrete. We’d like to see open valleys, open spaces, more green than concrete in a lot of areas. Lahaina is, is a very concreted place. And we spoke out on behalf of the people that own these lands within these areas should be held responsible to their areas and maintenance also, not just the County and State, but the County and State has always got the slap for it. Maybe there’s an avenue of holding the landowners responsible instead of coming up where the County’s going to have to cough up all these monies just to go in and condemn these properties that, like you said, it’s going to cost two to 3 million. Is that what it’s going to cost the County to acquire these lands to have this project go ahead? Or should you look into the developments within the areas and hold them responsible of their projects, and what they’re creating uplands, and how it’s going to affect our flood project on the bottom.

We’re in times today that money is hard to be passed around to a lot of things and good projects. We need to start doing smart thinking on, all these landowners are getting away with a lot of things. They should be held responsible for things that they leave back, and do not --

MS. REVELS: Three minutes.

MS. KAPU: --maintain, and do not take care of. They just leave their opala and move on. And I’m speaking on behalf of Pioneer Mill. They have left a lot of opala back that they should be held responsible for in maintaining. I know you folks don’t have that, that power to, to tell them and to stipulate it to them, but maybe in projects that are coming up you could somehow talk to your Corporate Counsel, make sure that you could put it into the permit process for them to start maintaining and doing their due diligence to the community that they have come into and wanted to start ripping things apart, and putting concrete, and roads. Holding them responsible to things like that instead of the County and State always having to pick-up everybody’s slack. We don’t have that..., taxpayers have grumbled a lot about how much taxes we have to pay. We should hold the developers responsible.

MS. REVELS: Four minutes.

MS. KAPU: And that is just my thing. You folks should look into who owns the lands and hold them responsible in some way. And I’m waiting for West Maui Land Company to come up and share why they don’t want to give up that parcel and let everybody know what
they have in mind and how it would affect the properties from up mauka and how it will affect this project. But I mahalo all of you for taking your time out and listening to us. And...

CHAIR MATEO: Thank you, Ms. Kapu.

MS. KAPU: Thank you.

CHAIR MATEO: Members, questions for the testifier? Ms. Johnson?

COUNCILMEMBER JOHNSON: Thank you very much, Uilani--

MS. KAPU: Aloha.

COUNCILMEMBER JOHNSON: --for coming. With regard to changes—whether to grading or other projects such as. . like the roadways which, of course, sometimes channelize water—are there, to your knowledge, adverse impacts to the area already as a result of the development that’s taken place or is it not, to your understanding, that there has been any adverse impacts, but there may be down at the end where this project would begin?

MS. KAPU: Our ocean has been a big sign of a lot of impacts due to projects of mauka. Every time it rains you see it red. More of the families that use the access in Puamana area can talk on behalf of that because my access is on the other side, but we do see a lot of runoffs when we do visit the families and go and take that route to their homes. We do see a lot of mud on the roads when they have heavy rains. We do have families that live within the areas of Launiupoko that have been affected by a lot of runoffs, a lot of boulders in their properties because of heavy rains and that’s because of the owners above them that are not responsible holding back their, their rocks, and their dirt, and them bringing in dirt that shouldn’t be brought in to make their houses higher than the others, but that’s what they’re doing, and it’s affecting people that live downside.

COUNCILMEMBER JOHNSON: And, and so, the other point that you’re making too is that if there are adverse impacts to either this project that we’re looking at or other properties in the immediate vicinity or public facilities that those impacts should not be shunted on the public, but they should be taken care of by the landowners?

MS. KAPU: Yes, definitely, because, you know, I’ve, I’ve been at meetings that the community just came out and screamed at you guys because you folks haven’t done your job, but it’s not your job, it’s the people that own those lands, all these developers. They’re the ones that should be yelled at because they’re not doing due diligent to their community on allowing all of their stuff to come down on the community.

COUNCILMEMBER JOHNSON: Thank you very much, Ui.

CHAIR MATEO: Thank you, Ms. Johnson.
MS. KAPU: Mahalo.

CHAIR MATEO: Ms. Anderson?

COUNCILMEMBER ANDERSON: Thank you.

MS. KAPU: Aloha.

COUNCILMEMBER ANDERSON: Aloha. Thank you for being here, Ms. Kapu. So let me get this straight in my mind, you’re access to your mauka property is Lahaina side of Kauaula Stream?

MS. KAPU: Yes.

COUNCILMEMBER ANDERSON: And it’s not along the Puamana access --

MS. KAPU: No.

COUNCILMEMBER ANDERSON: --it’s more Lahaina side?

MS. KAPU: Yes. That’s why we’re going to be affected big time because we have Wainee project coming up, we have Lahaina bypass, and then we have this flood project.

COUNCILMEMBER ANDERSON: Yeah, and then, and, and, of course, your access comes off the highway; right?

MS. KAPU: It’s behind the aquatic center.

COUNCILMEMBER ANDERSON: Behind the aquatic center.

MS. KAPU: Yes.

COUNCILMEMBER ANDERSON: Okay. So if this project goes through with their proposed diversion it looks to me like they’re going to change the access all the way down to Launiupoko between Launiupoko and Puamana.

MS. KAPU: Not for us.

COUNCILMEMBER ANDERSON: You’re sure? Because the drainage channel is going to go right along that area unless they’re going to provide a bridge or something.

MS. KAPU: Well, that’s the problem we’re having is because nobody’s, everybody knows we live there, but through the course of time these projects have changed and that’s why when Ke’eaumoku was up here I wanted to know what year you’re speaking of in this
project because it’s changed over course, and we’ve always testified that the kuleanas mauka need to be provided access.

COUNCILMEMBER ANDERSON: Right, and that’s why I’m bringing...

MS. KAPU: And we never had meetings with them --

COUNCILMEMBER ANDERSON: Okay.

MS. KAPU: --in regards to the flood project.

COUNCILMEMBER ANDERSON: Well, that’s why I’m bringing it up because these are the current maps that they’re putting in front of us, and it looks to me like the drainage channel goes all the way from Lahainaluna Road to Puamana without any kind of a break. So I think that I’m going to confer with her after she’s done and show her this map because I think she needs to see it if she hasn’t seen what they plan to do in her area.

MS. KAPU: Well, mahalo, and that’s the reason why we came out because we need to start, we need to make sure that everybody’s aware, and we wanted it on record so nobody can say, oh, we didn’t know about you.

COUNCILMEMBER ANDERSON: Right, and I, and I think it’s pretty sad that, it’s not like people don’t know about the Kapu’s and that they aren’t very active in their community. So they would have been easily able to be found and contacted about this --

MS. KAPU: Yes.

COUNCILMEMBER ANDERSON: --and, and approached about their access. Thank you, Chair.

CHAIR MATEO: Thank you, Ms. Anderson. Members, additional questions? Thank you very much, Ms. Kapu.

MS. KAPU: Mahalo.

CHAIR MATEO: Rory Frampton, to be followed by Kaipo Kekona.

MR. FRAMPTON: Good afternoon, Members of the Council. I’m Rory Frampton. I’m a land use planner, and I work for Makila Land Company. And I’d just follow up on the question asked by Michelle Anderson, and it relates to a point brought by Ke’eaukumoku Kapu earlier about how the Kapus found out about the meeting. I called them and emailed them to let them know that it was coming up. They have expressed concerns about this project before that I was aware of. There wasn’t any coercion for them to show up here today. I simply notified them that this was coming up. I was interested in whether or not they were going to appear. And so, I did make contact with
them. I’ve been in contact with them on a number of issues since I’ve been retained as a planner over two and a half years ago. But I’m here . . .(cleared throat). . . excuse me, speaking on behalf of the landowner, and I just wanted to give a quick perspective. You know, we, well, first of all, this project, as most of you know, it’s, and I, and I handed out testimony, and it shows the project map. And the problem waters occur near Lahainaluna Road. They come from waters up on the hill from Kamehameha School lands. It’s not developed area where these waters originate. They’re well, well mauka. The plan originally, as was mentioned earlier, is to take those waters from the Dickenson Street area, all the way to Kauaula Stream. In 1988, the Puamana people objected to having that water go through the channel. So since 1988, they’ve been working on these alternative plans to divert not only the storm waters, but the base flow of Kauaula Stream, another 3,600 feet down towards Launiupoko with a new outlet. So the primary waters of Kauaula Stream as well as the flood waters from the, from the new basin would be deposited in this new ocean outlet. It’s the tail-end of that project that crosses over Makila land, and it’s the tail-end of that project that, frankly, we have a philosophical problem with. The County did come to us in March of ’06 with a proposal to, to buy the lands. The, the cost difference between what we thought the land was worth and what the County thought the land was worth was so great that we suggested that the County pursue condemnation. We thought of it as a friendly condemnation. We weren’t certainly going to object to it, but it’s, it’s certainly a public project that needs to take place. There’s flooding in Lahaina, we all know that. We didn’t like the way it was designed and there was a price difference in the land. We suggested that the condemnation take place in March of 2006, spring of 2006. It took two and half years to get before you. So in the meantime rather than just, you know, say “we object”, we actually made an offer to the County. We offered up to $500,000 to do redesign and repermitting so that the flows could flow down their natural drainageway, which would be the Kauaula Stream. But I guess the . . .so the storm waters could go through the natural outlet at Kauaula Stream. The amount of water we’re talking about, roughly ballpark, the total flows from Kauaula is roughly, roughly 8,000 CFS, cubic feet per second.

MS. REVELS: Three minutes.

MR. FRAMPTON: The additional flow is about another 2,000 CFS. So the total project would be about 10,000 CFS from the highway down to the ocean. And I sent you photos of the storm channel outlet. And that we, we did a feasibility analysis with an engineer, and there would have to be improvements made to that channel, as Wes noted earlier. I’ll, I’ll try to wrap up.

You know, we, personally I have a lot of respect for Buddy Nobriga and Wes Nohara. They’ve done countless projects in West Maui through the West Maui Soil Conservation District that has led to improved…well, decreased flood damage and improved ocean water quality, and their projects are numerous and like I said, I have the utmost admiration for them. It’s regrettable that this project has gone through the delays that it has; however, some, including me personally, feel that it would be even more regrettable if this project went through under its current configuration. We stand here ready to help
the County in whichever way they proceed, but we do have strong concerns about the, the design as currently proposed.

CHAIR MATEO: Thank you.

MR. FRAMPTON: Oh, and…

CHAIR MATEO: Go ahead.

MR. FRAMPTON: Sorry. There was some other points…

MS. REVELS: Four minutes.

MR. FRAMPTON: Just to respond to a question that was brought up by a testifier about what our plans for the lands are in that area. We’ve always set aside that land for this drainage project ’cause it’s been on the books forever. It’s never been planned for any alternative use other than a coastal park. So it’s always had some, it will be in some type of public use. We just would hope that it would be--as an entry to Lahaina, that it would be a green open space coastal related park of some sort rather than a drainage channel which we feel is unnecessary if the water was just allowed to flow down the natural channel.

CHAIR MATEO: Thank you, Mr. Frampton. Members, questions for the testifier? Ms. Anderson?

COUNCILMEMBER ANDERSON: Thank you, Chair. Thank you, Mr. Frampton, for being here and giving that testimony and also for these wonderful maps. So you said that Kauaula is 8,000 CFSs, which is. . .capacity --

MR. FRAMPTON: Cubic feet per second.

COUNCILMEMBER ANDERSON: Cubic feet per second.

MR. FRAMPTON: That’s the flow rate, yes.

COUNCILMEMBER ANDERSON: Right. So would that flow rate be indicative of a 100-year storm?

MR. FRAMPTON: That’s my understanding, that those numbers came from the EIS, and their, their design flood which is --

COUNCILMEMBER ANDERSON: For the hundred.

MR. FRAMPTON: --a 100-year storm. They calculated the existing flows of the stream --

COUNCILMEMBER ANDERSON: Right.
MR. FRAMPTON: --would be roughly, order of --

COUNCILMEMBER ANDERSON: Right.

MR. FRAMPTON: --magnitude roughly 8,000 CFS, with the flood waters adding an additional 2,000 CFS.

COUNCILMEMBER ANDERSON: Two thousand. So in any given hundred years or give or take a few years, there is an expectation that there could be 8,000 cubic feet per second of flow going down Kauaula through Puamana as it’s currently designed.

MR. FRAMPTON: That’s correct, but that wasn’t, that’s, if you look at the photos --


MR. FRAMPTON: -- it’s an old design and the...

CHAIR MATEO: Let her ask the question please, Mr. Frampton.

COUNCILMEMBER ANDERSON: Okay. So all we are now doing with this flood control project is, you know, and it, unfortunately we don’t, we haven’t had our, our presentation yet, but it just looks to me like from the inlet basin that is going to be at the top of Lahainaluna Road, from there on to Kauaula Stream, there is some sedimentation basins and grass-lined channels that would allow that additional 2,000 cubic feet per second to be added to the 8,000. So the total amount in any given 100-year storm would be 10,000 cubic feet per second going through Kauaula and Puamana channel; is that right?

MR. FRAMPTON: That’s, that’s if it were to be all directed down the stream.

COUNCILMEMBER ANDERSON: Right, and that’s...

MR. FRAMPTON: The way it’s designed right now, those two sources of water would go into a sediment basin --


MR. FRAMPTON: --and there’s two outlets. One outlet, the primary outlet, the lower outlet would have all the waters go further down the coast to the new sediment basin. The second outlet, which is a couple feet higher, would let the overflow waters go down the stream bed. So the primary flows would be redirected to the new outlet and the old, the secondary or the overflow waters would go down the historic stream bed.

COUNCILMEMBER ANDERSON: The Puamana channel.
MR. FRAMPTON: Yes.

COUNCILMEMBER ANDERSON: And the overflows would be anything over 10,000 cubic feet per second?

MR. FRAMPTON: No, I believe it’s a portion of the 10,000.

COUNCILMEMBER ANDERSON: Okay. So...

...you know, I mean I don’t know that 2,000 cubic feet per second is that much of an increase over the historic flows that they’ve had going through here. And my concern, and I don’t know if you can answer this, Rory, or not, if...you’ve looked at the EA or...

...my concern is that when you look at the way this debris basin is built and these grass-lined diversion channels...it seems to me like we are inhibiting Kauaula Stream from being a dynamic stream that could benefit from a connection to the ocean as a perennial stream to encourage stream life. And, and if we divert all this down to a highway culvert are we taking away the ability of the stream to, to act in its natural function for propagation of stream life?

MR. FRAMPTON: The short answer is “yes”. The, you know, the, the, the, they’re taking the stream water, as I mentioned earlier, the base stream flows from the stream will be redirected down this channel...(end of tape, Side 1B)...they cross under the bridge, and they go through, out the, what they go through now is already a modified channel. So it is modified to a certain extent. You know, I went to a recent Army Corps of Engineers workshop and the Army Corps of Engineers has done, like, a complete 180 degree turn in terms of how they approach these kind of projects now days. In fact, rather than doing concrete line channels they’re actually ripping channels out on the mainland and doing them in a more naturalized manner, precisely on the basis of what you, the ecological principals. And they’ve actually found that over the long-term that designing in a more holistic, with, with an ecological approach actually makes more sense, dollars and cents, than it does to do the concrete lining. So the short answer is, yes, it would alter the natural flows from Kauaula Stream. And that was my understanding what some of the major concerns were at a recent conference that we had in South Maui, I mean south Lahaina that Lahaina Bypass Now sponsored. And one of the major objections that were raised by a number of people, including some native Hawaiians, were the, indeed the impacts to the native aquatic stream life.

COUNCILMEMBER ANDERSON: So, I mean, and I’m just saying this just for my own background knowledge, not that I’ve studied this or anything, and I--my concern, Mr. Chair, is that, you know, we need the flood control. I don’t see this extra stretch as being any kind of advantageous...addition to anybody really but Puamana, and Puamana channel has existed all these years for the purpose of, you know, being the stream mouth for Kauaula Stream. And if we shut that off, except for extreme storms when there’s overflow, then are we cutting off the stream life mauka of the stream? Will there be no
opae or no stream life for the communities who live mauka and depend on that stream life for sustenance? Thank you, Mr. Frampton.

CHAIR MATEO: Thank you, Ms. Anderson. Members, additional questions? Seeing none, Mr. Frampton, thank you very much.

MR. FRAMPTON: Thank you.

CHAIR MATEO: Kaipo Kekona? And Kaipo will be followed by Peter McKenney.

MR. KEKONA: Aloha, County Council Members. My name is Kaipo Kekona. I sit on the County’s GPAC. Today I testify on behalf of myself. . . .(sigh). . . I’m going to ask you guys to please follow along with me. I’ve got a lot things on my mind. I want to try and get it all out. If you stand at Kauaula River on the bottom, on Honoapiilani Highway, Lahainaluna is the highest ridge, Kauaula is the lowest point. So anything that rain falls is going to tell you everything is going to flow towards Kauaula, if you have a massive flood. So what I’m going to give to you now is what I see existing today. If you bring in, you get Honoapiilani Highway and Lahainaluna ridge--that gives you an L shape. What they call that, whatever, 45 degree with the flood project and the bypass is going to be existing above that. When the bypass comes in, it’s going to be pavement, obviously, that will cause more water flow, so I hope people keep that into consideration. There’s also numerous projects that are being planned out and plotted through that will be mauka of the division, of the flood project that will also increase impact of flooding. So I’d like you guys to keep that in mind.

We also have numerous, I can, I can actually point them out, illegal intrusions on the stream of Kauaula that are potentially building hazardous materials to come down if there is a big flood that will also enter the, that, you know, that flood project that they’re gonna, coming up with here. My also concern is they mentioned that there’s 8,000 cubic square feet of water coming, that’s the base ground out of Kauaula, if you have a massive flood. So what I’m going to give to you now is what I see existing today. If you bring in, you get Honoapiilani Highway and Lahainaluna ridge--that gives you an L shape. What they call that, whatever, 45 degree with the flood project and the bypass is going to be existing above that. When the bypass comes in, it’s going to be pavement, obviously, that will cause more water flow, so I hope people keep that into consideration. There’s also numerous projects that are being planned out and plotted through that will be mauka of the division, of the flood project that will also increase impact of flooding. So I’d like you guys to keep that in mind.

Any...
that district, the water only gets better. I've dived there. I've been raised in Lahaina all my life.

MS. REVELS: Three minutes.

MR. KEKONA: I've also been in..., oh, that was fast. I've also been in Hilo when they had that 100-year storm which brought more water than we could possibly imagine in Lahaina. And that was crazy. They got streams way bigger that can't even handle the amount of water that, that they deal with. So that's also a concern for me is that with all of this in place and all of the upcoming projects coming in... will this, will this flood project even benefit us or just create a big even hazard? You know, if that thing blocks up, and we got all of this sludge building up into this things, what are we going to do?

I also have an interest on the, on the southern end of Kauaula on a property. I'm a Lunalilo descendent to a property there. It's not currently owned by any intrusion or whatever you want to, quiet title or anything like that. It's considered, they call it an exemption to their projects.

MS. REVELS: Four minutes.

MR. KEKONA: But I have, I also have an interest in that access on that end which really right now isn't too accessible as it is. I've worked with NRCS on the Big Island in flood projects also. In Waimea District they get really crazy falls, and it comes right through the whole neighborhood. They got this whole drainage system, it's pretty crazy. But I got all kinds of different experience, I'm young, I got all kinds of things running through my head. I don't really know how to deal with it, and I hope you guys can make a better decision because I don't agree with the whole flooding project on its own. We got greenways all over the place, you know, from, existing from the canefields. You got, if you work your way down--how they're talking about that duck pond, there's one there. Right across that, they got the old Cabanilla house, the only family that's going to be totally impacted by the widening of Honoapiilani Highway.

CHAIR MATEO: Mr. Kekona--

MR. KEKONA: They have a reservoir right in the back there as well.

CHAIR MATEO: --thank you very much. Members, questions for Mr. Kekona? Ms. Anderson?

COUNCILMEMBER ANDERSON: Yeah, thank you, Chair. Thank you for being here, Mr. Kekona. You said that Kauaula Stream is dry. So it’s all, it’s dry all the time except when there’s a real heavy rain?

MR. KEKONA: As far a river to the ocean, makai to --
COUNCILMEMBER ANDERSON: Yeah. Yeah.

MR. KEKONA: --or mauka to makai? Yeah. We, we need an excessively, a large…

COUNCILMEMBER ANDERSON: So are they diverting the water way up?

MR. KEKONA: Oh, yeah, way, way up, way before you reach, I would say, 15,000 feet elevation.

COUNCILMEMBER ANDERSON: And who’s…

MR. KEKONA: We have no water. There’s a big siphon pipe that comes down at about, I would say what, 1,000 foot elevation. And that has this little pour out of an eight-inch pipe that, that lets out a little bit of water for some of the guys that, the kuleanas that live on the bottom to support their taro farming, but that’s all.

COUNCILMEMBER ANDERSON: And who takes the rest of the water?

MR. KEKONA: I guess, I believe it just gets channeled over to Launiupoko’s area for agricultural lots. . .I would say.

COUNCILMEMBER ANDERSON: For the, for the Launiupoko landowners?

MR. KEKONA: Yeah, it fills up reservoirs along the way, and it builds up for their agricultural, water, and I believe it’s…

COUNCILMEMBER ANDERSON: Has anyone ever filed a petition for in-stream flow?

MR. KEKONA: I believe a few of the kuleana members in Kauaula is on top of that. If I’m not mistaken, they’ve already been along that process, the Palakiko(?) ohana is the main people that may, more so depend on the river flow because of their taro patches that they have.

COUNCILMEMBER ANDERSON: Yeah, thank you. Thank you, Chair.

CHAIR MATEO: Thank you, Ms. Anderson. Members, additional questions? Thank you, Mr. Kekona.

MR. KEKONA: Thank you.

CHAIR MATEO: Peter McKenney will be followed by Ed Lindsey.

MR. McKENNEY: Aloha, Council Members and Chairman Mateo. I wanted to just briefly mention a couple of things I’ve worked on over the years in Lahaina here, so that you have some idea of where I’m coming from. I’ve been on the Wainee Citizens Task Force
for Wainee Village affordable housing. That project probably won’t happen until this flood control goes in. I’ve also worked on the Bypass Now, and with Rory Frampton worked on the alternate roads system, so I have some idea of the impact of the flood control system as it’s designed, particularly the sediment basin as far as taking away some exciting possibilities of getting roads through to the Puamana to Pali Park. I was also on the Mayor’s Task Force for the Puamana to Pali Parkway. We live on the ocean. My wife—right by Puamana. And my wife owns a rental property on Wainee Street between Dickenson and Prison for which we have insured with flood insurance.

I wanted…one of the problems with this thing, and I want to also say Wes Nohara, one of my heroes, he was out there with a bulldozer pushing the berms up to protect the town before the last big flood, and he has put 28 years in on this thing, and he knows this land more than I can in ten lifetimes. But having said that, I wonder if you’ve thought about what 8,000 cubic feet a second is? I just figured it out, and I’ve been known to make mathematical blunders so, but I think I’m right. Is that 20 feet, a cube?...20 feet by 20 feet by 20 feet every second. Now this water has to go somewhere, and it’s going to go into the ocean. And the way this thing is designed, you have all the water coming down the mountain, all of, all the way up unimpeded, down over lands which used to be cultivated and furrowed, going into this one system, and you’re dumping this huge amount of ocean, of sediment water into the ocean, whether it dumps in front of our house or it dumps down by “Guardrails”. That’s what we’re talking about here, and I think you have to really think about what this is, what we should want. Now Ke‘eaumoku Kapu testified at one of the EIS things, we should be looking mauka. There’s a ditch up there that used to carry a lot of the water to keep it from coming down into town. That ditch is now full of dirt. It hasn’t been maintained. There’s a pipe that goes underneath it. That could be a mitigating thing that would keep the water from coming all the way down. There are reservoirs up there that are not being used. They could be restored. There are ways to mitigate this problem that haven’t been addressed by this, by this project. Whether some extra funds could go to this? I don’t know. I know we have a flooding problem. I’ve seen it. I’ve experienced it. I’ve been damaged by it. But I also love that ocean, and I’m concerned about the reefs. So all I can say is good luck in your deliberations, and I hope some of this stuff I’ve added can help you. Aloha.

CHAIR MATEO: Thank you, Mr. Kenney [sic], McKenney. Go ahead, Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you. Thank you, Mr. McKenney. Fast question.

CHAIR MATEO: Question, Mr. McKenney.

COUNCILMEMBER PONTANILLA: Right here. Just a fast question. When Pioneer Mill was in operation did Lahaina town get flooded often? Because you mentioned of those ditch systems which is no longer there, I just was wondering if, if you would know.
MR. McKENNEY: Wes can tell you better than I, but I think he mentioned in his testimony there’s something like a flood every five years, which certainly would have gone back to the time of, of sugar cane. I think it’s a question of the amount of water that comes down and that’s what concerns me. Is that if we can reduce the amount of water coming down the hill that would be good. The other thing, while cane was there this land was more porous. Now it’s kind of hardened over with, with the drought. It also used to be contoured, and I know Wes has helped us with, working with Kamehameha Schools to contour their lands which they last did about eight years ago, to my knowledge. And the ditch, that’s the big one. We have other ditches up there, at a fraction of the cost of what we’re talking about here. Can the impact of this sediment basin...that sediment basin is larger than two football fields of concrete at the entrance to Lahaina.

COUNCILMEMBER PONTANILLA: Yeah.

MR. McKENNEY: Where’s the trade-off? I’m, I’m glad I don’t have to make the decision. If I had a vote I’d say “no”. But thankfully I don’t have to do that, you folks do.

COUNCILMEMBER PONTANILLA: Thank you. Thank you, Chairman.

CHAIR MATEO: Thank you, Mr. Pontanilla. Ms. Anderson?

COUNCILMEMBER ANDERSON: Mr. Kenney [sic], are you saying that this sediment basin between Puamana and Launiupoko is as big as two football fields?

MR. McKenney: That’s what I’m, that’s my understanding. Bigger than two football fields.

COUNCILMEMBER ANDERSON: Right along the road in concrete?

MR. McKENNEY: Uh-huh.

COUNCILMEMBER ANDERSON: . . . Why can’t it be grass? All right. Thanks.

CHAIR MATEO: Thank you, Ms. Anderson. Members, additional questions? Thank you very much, Mr. McKenney. Ed Lindsey? And Mr. Lindsey will be followed by Yolanda Dizon.

MR. LINDSEY: Aloha, Mr. Chairman and Council Members. Happy holidays to all, one and all. I hate coming down here.


MR. LINDSEY: . . .(laughter). . . Not, not because. . . not because of you folks, but because of the issues that are coming in and, and has to be resolved. I love everybody here . . .(laughter). . . Even though I don’t agree with you sometimes. It’s okay. You know, being a lifetime resident of Lahaina, first let me say that Wes Nohara is “the man” when it comes to any kind of soil erosion thing. He’s the man. We’ve had problems in Honokowai, I give him a call, and it’s done. Anytime I see a stream that’s ran, and it’s red, the stones on the stream are red, then I know we got runoffs that shouldn’t be running off, and I give Wes a call, and it’s done. And the, and for the most part the streams, the rocks in the streams are clean. That’s what we need to maintain—clean rocks on the streams, and that includes Kauaula Stream.

I’m against the acquisition of those lands. Number one, you taking the water and you’re channelizing it to another place where it doesn’t belong. It does not belong there. And it’s unfortunate everything is tied. All the money is tied together. Well, you have to do this or you don’t get the money, and it’s unfortunate. That’s a bad plan. And I’m sure everybody tried to put their heart and soul in it. The first plan was the best plan and those were the plans that my parents supported. And we have had, I gave testimony on this thing over in Lahaina, and I’d like to validate what Peter McKenney has said.

You know, the infrastructure from Pioneer Mill are still intact. The ditches are all covered over because of lack of care. The lands are running flat now, so you’re going to have water running straight down. They need to be contour plowed, and they need to have more earth and dam set up over there. The reservoirs are still intact. Water can be running through the reservoirs, through the ditches, and with the contour plowing it would allow the water to percolate back down into the aquifer. And heaven knows we sure need the water today.

So what they’re doing and the impact of the water bypassing this natural outflow and going to some place where it doesn’t belong, what has been done to study, do a baseline study on the ocean over in that area? I for one have seen a cowry shell that I have never seen before until recently when I went down the beach to check it out and that’s in the Launiupoko area.

MS. REVELS: Three minutes.

MR. LINDSEY: And then to go on and to support the acquisition of this magnitude, I would rather see the money to acquire lands on Molokai and the watershed there to help the Molokai people rather than spending the money, needlessly, on this acquisition. Where the natural flow for eons, prehistorically, pre-Columbian way was through Kauaula Stream. So with that I really, I really feel that you should reconsider, but of course you have to take everything to consideration, with the funding and where all that kind of thing is going to go. That’s why I hate coming here. Aloha.

CHAIR MATEO: Thank you, Mr. Lindsey. Members, questions for the testifier? Thank you very much, Mr. Lindsey. Yolanda Dizon, followed by Napahi Dizon.
MS. DIZON: . . . Aloha, my name is Yolanda Dizon. I feel like him, I hate coming over here, too. Nothing personal, but what’s on the agenda today is very, very important to us, Kanaka Maoli. I’m totally against the stealing of the kupuna aina under the illegal jurisdiction of this government. I remember when Puunoa subdivision was going down, and they talked about, you know, the basin, which is already there now. What I don’t understand is, and correct me if I’m wrong, 34 acres eminent domain; is that what it is 34 acres? Between, I’m just trying to get it, you said between Launiupoko and Puamana or..., is that true? Yeah. Yeah. Like Mr. Lindsey said the ditches are still intact from Pioneer Mill. It seems like every time when something passes through the County the sad thing is, nothing personal, it’s just that the studies, finances, money spent, and then woops we made a mistake, shouldn’t have done that. Let’s go back to the drawing board. But, oh, too late we spent all the money already. Please think about this very carefully.

You know, there’s a lot of development that’s coming up from Lahainaluna Road all the way out to Ukumehame. The supposedly landowners who are doing all this development should be taken, take some responsibility for, for this. I’m totally against it, totally. You know, that’s my tutus out there. They’ve already been desecrated by the big sugar canes, and then now the second development canes, and then now it’s going to be decided by the County Council that it’s okay for them to take it away again. I mean steal the lands again. And then, you know, the question in everybody’s head is, like, well what nobody doing nothing with ‘em. Our people can’t do anything with it because in the jurisdiction, under the United States Government, our people cannot go back and talk to our aina, because even though if we can prove our lineage, our ties, our blood to the original owners, we get knocked down with the adverse possession . . . (inaudible). . . . So Pioneer Mill outrageously stole those lands and none of our people can get back on there. When we go to courts we lose, automatic.

MS. REVELS: Three minutes.

MS. DIZON: So all I’m saying is that please. . . don’t let this be a whopping mistake that the future generation going have to pay for later on. Thank you.

CHAIR MATEO: Thank you. Members, questions to the testifier? Seeing none, thank you very much. Napahi?

MR. DIZON: . . . Aloha, Councilmen and women. I come here for the kuleana as a spokesman for my moopunas, which is grandchildren. To condemn the land to build this thing is condemning my kupuna. But what about my moopuna? You have condemned not only the land, but the name of my kupuna. The cry is louder than this room. But I not here to show violence. I’m here to make you realize that when you condemn this land you condemn my, my moopuna and my, my grandparents. Their name stand from the time Lahaina was a kingdom. Now to condemn the land to build, build this flood zone when there’s other ways that it should have been looked at, like the ditches from Pioneer Mill
or Mokuula. Mokuula once took all the water. Most of the flood went through Mokuula until they closed it down and say that mosquito, so they closed it down.

Every time I look at my moopuna, I cry because a lot of things been taken away from us. But to condemn my moopuna and my kupuna of the land that they have inherit through their birthright, it’s a damn shame you guys want to do that to us. There is another way. But do you know as a Kanaka Maoli if you pass this you have condemned not only my, my moopuna or my kupuna, you condemn me too. So please think about it. It is the most serious thing of our lives. We are the people of this land. We have many generation, we have many ethnic groups, but like I said this is Hawaii nei. I don’t think so it’s right that you guys find another way by condemning our tutu lands for a flood zone. So we pule for all of you so that you, you may come up with a better idea. Please. Mahalo.

CHAIR MATEO: Thank you, Mr. Dizon. Members, questions? Seeing none, thank you very much. Members, Mr. Dizon was the last individual signed up to testify this afternoon. The Chair will allow anyone in the gallery wanting to testify please come down and do so now, and when you’re complete please step up to the Secretary and fill out the required form. If there is anybody else wanting to testify, please line up on the side here because I will not announce or call for additional testimony. Thank you. Please recognize yourself.

MR. MARTIN: Yes, my name is Peter Martin. Good afternoon Chair and Council Members. I, I wanted, I was hoping this difficult decision was, had a good chance for a public hearing, and I have to say we were not trying to, in any way, you know, be obstructionists in this thing. It just was hard for us and especially with Buddy Nobriga and Wes Nohara. I think, you know, he mentioned Colin Cameron. That was my first job here 40 years ago, and I have a lot of respect...almost 40 years ago. I have a lot of respect for him and the problem was my feelings for driving into Lahaina and wanting it to be like, I think you’ve all seen now, this difficult decision. And Wes and Buddy tried to do the best solution they could in, in a difficult thing, and worked very hard, got the money. And I have to say now if, whichever direction it goes we would be very supportive either way and not, you know, if the condemnation process we can get faster another way. I just wanted it to be a fair, by elected representatives, make this decision. And my personal feeling, and that’s why I opposed it, and, and I listened to these, Buddy Nobriga and Wes put on these things, I think they were 15, 20 years ago in Lahaina. I’ve also watched my friends down in what they call the ghetto on Luakini Street get flooded out and other people get flooded out. So I, I want the flood control project to go through. I just have a hard time with that diversion, but I, I understand. I would say, I, I can see arguments on both sides. Just me driving into Lahaina, it just didn’t feel right. And that’s about all we had to say. I, I represent, as President of Kauaula Land, some of the land it goes through and, of course, Rory works for Makila Land which it also goes through some of our land. Thank you.
CHAIR MATEO: Thank you, Mr. Martin. Members, questions for the testifier? Thank you very much.

COUNCILMEMBER ANDERSON: Chair?

CHAIR MATEO: Oh, I’m sorry, go ahead Ms. Anderson.

COUNCILMEMBER ANDERSON: Thank you, Chair. Mr. Martin, thanks for being here. So Makila Land Company is not your company?

MR. MARTIN: Yes, it ...(end of tape, Side 2A)... they might not, I’m President of the company --

COUNCILMEMBER ANDERSON: Okay.

MR. MARTIN: --so I don’t, I have stockholders too.

COUNCILMEMBER ANDERSON: Right. Right. Right. But the, the letter is from Mr. Frampton, but it also represents your feelings?

MR. MARTIN: Yes.

COUNCILMEMBER ANDERSON: Okay. And so, when you said driving into Lahaina you didn’t want to see it, were you talking about the channel going along the roadway?

MR. MARTIN: Yeah, I’m not sure if the fence is gone. I, I have always had problems with Kahoma Stream. I actually have problems with that Weinberg...I, I grew up in Lahaina 40 years ago like you folks did. I love it. It’s so beautiful. I was hoping to keep the entrance as attractive as possible. I’m not, I’m sure with landscaping maybe, but I remember, I don’t know if the fence is still there, and I think that first channel, I’d have to study it, is, is concrete. I, I think, I forgot that the other channel is concrete, but it’s pretty far away the first, the one you mentioned, the two-acre one.

COUNCILMEMBER ANDERSON: You mean the sediment basin?

MR. MARTIN: Yeah, there’s two sediment basins.

COUNCILMEMBER ANDERSON: No, it’s right...

MR. MARTIN: That one’s really close to the road.

COUNCILMEMBER ANDERSON: Right.

MR. MARTIN: I think it has concrete sides. I don’t know.
COUNCILMEMBER ANDERSON: Okay. We’ll get more information on that. Thank you, Mr. Martin.

MR. MARTIN: You’re welcome.

CHAIR MATEO: Additional questions, Members? Thank you, Mr. Martin.

. . . Good afternoon, please introduce yourself.

MR. AQUINO: My name is John Aquino, and aloha to you all. I stay kind of pump up about this. I just want to make a couple points. It’s all about common sense, which people are losing with integrity and losing it. We need to bring all that back. You know, it’s madness out there over development. It’s crazy. You guys got to take the bull by the horn and stand up for integrity and common sense. It’s like we have no common sense left in this world. You know, being a Kanaka Maoli, we have close ties to the . . . Mother Nature, Makea(?). You know, every time you poke the ground we feel it in our heart. Any time you steal the water, steal the land we feel it in our heart. Being a Kanaka Maoli, if you are a Kanaka Maoli you feel that. You know, we are spiritual people. You know, but the bottom line is it’s all about common sense. Wes Nohara said himself that the exit to Puamana is workable, so why not go there instead of make a new ditch going through Launiupoko and Puamana. It doesn’t make sense at all. It’s all about common sense, you know. You don’t have to have a bachelor degree or be a rocket scientist to figure that out, or be a Council Member. You need to bring back the common sense otherwise we’re going to lose everything. Think about your moopuna. What you guys have in the future for them. You guys keep going the way you guys are there going be nothing for them. They going live in block houses, ghettos. You guys got to save the agriculture space, the land, the open space. Need to preserve the culture, the sites. You should think about it.

That’s one point I’d like to make, but my strongest point is the Puamana exit.

MS. REVELS: Three minutes.

MR. AQUINO: Kauaula Stream, water exit from the stream going into the ocean through Puamana was there for hundreds, and hundreds, and hundreds, and thousands of years. And why, why mess it up when you got something good going on over there. But again I just want to, in case you guys didn’t hear it Puamana is workable. The man himself said. So why spend all that money? You know, it’s just wasting money. I think they just want the money, you know. That’s all.

CHAIR MATEO: Thank you very much. Members, questions for the testifier?

COUNCILMEMBER ANDERSON: Chair?

CHAIR MATEO: Ms. Anderson?
COUNCILMEMBER ANDERSON: Mr. Aquino?

MR. AQUINO: Yes.

COUNCILMEMBER ANDERSON: You enter, you access your kuleana the same place where the Dizons...

MR. AQUINO: Yes.

COUNCILMEMBER ANDERSON: Okay. Thank you.

CHAIR MATEO: Okay. Mr. Aquino, if you can also fill out the, the form right in front here with the Secretary? Members, this was our last testifier for this afternoon. With no objections, the Chair is going to close public testimony at this time.

COUNCIL MEMBERS: No objections.

...END OF PUBLIC TESTIMONY...

CHAIR MATEO: Members, I’m well aware of the time. We are going to take our afternoon break. We will, we’ve, we haven’t even started the agenda yet, so I’m going to take a ten-minute recess right now, and we are going to try to rock and roll as much as we can with some of the items. Some of the items should go quite quickly, and then there are those that will take the bulk of our time. This Committee will stand in recess. ...(gavel)... RECESS: 3:15 p.m.

RECONVENE: 3:30 p.m.

CHAIR MATEO: ...(gavel)... The Policy Committee Meeting for December 3, 2008 will reconvene.

ITEM NO. 58: DONATION TO DEPARTMENT OF POLICE (ONSITE 200 RADAR SPEED DOLLY, ROTARY CLUB OF LAHAINA SUNRISE) (C.C. No. 08-265)

CHAIR MATEO: Members, we’re going to start with our first item on the agenda, it’s Policy 58. Policy 58, it’s a donation to the Department of Police, Onsite 200 Radar Speed Dolly from the Rotary Club of Lahaina Sunrise. The Chief of Police, via County Communication No. 08-265, transmitted a proposed resolution entitled: Authorizing the acceptance of donation from the Rotary Club of Lahaina Sunrise, a non-profit organization to the County of Maui, Department of the Police, pursuant to Chapter 3.56, Maui County Code. The resolution authorizes the acceptance of a brand new Onsite 200 Radar Speed Dolly approximately valued at $4,000 from the Rotary Club of Lahaina...
Sunrise to the Department of Police. Also with us this afternoon is... from the Department of the Police, soon to enter the Chamber is, we have Captain Charles Hirata. And he will be joining us in a few minutes. So, Members, as soon as Mr. Hirata, Captain...

COUNCILMEMBER JOHNSON: ...(inaudible)... 

CHAIR MATEO: ...Ms. Johnson?.

COUNCILMEMBER JOHNSON: Yes, Mr. Chair. Yes, I, I just, before, Captain Hirata was just, you know, making a call. Anyway, I wanted to thank the Lahaina Sunrise Rotary because they have worked really hard on this particular issue, and they’ve actually been trying ...(laughter)... for quite some time, but unfortunately so many times when you get donations of this sort, some of the procedures and, of course, the time that are allocated by our Police Department and, of course, their secretarial staff, and of course our Corporation Counsel, it’s just not always an easy thing to get the whole entire resolution and everything drafted. But I know that Captain Hirata has been working very hard on this, and he’s just joined us.

The need for this is really, really great in West Maui because I think, as many of you know, the frustrations when you come off the Pali, and along the Pali ...(laughter)... sometimes people get a little, I guess, lead footed when they’re exiting and entering the Lahaina area. So I think this will be very important from a public safety perspective. I totally support it, and I want to thank the contributors, and I just want to thank the community for providing this for us.

CHAIR MATEO: Thank you, Ms. Johnson. Members, from the Department, Captain Hirata. And, Captain, if you can just provide us comment on the donation in terms of briefly describing the equipment that’s being donated and it’s, it’s purpose?

MR. HIRATA: Good afternoon, Mr. Chair and Members. The speed dolly that’s being donated is a, is a rather nice piece of equipment, and, and it’s really applicable to Lahaina because it’s...we, we used to, we still use a speed trailer, but it’s a rather wide device. The speed dolly is a lot narrower and in, especially areas like Front Street, we don’t have much of a shoulder, and we, we needed something that could be set up on a narrow shoulder so that people can be made aware of their speed. You know, for the most part, most people, most people who speed, if they were given some type of notice that you shouldn’t be doing that would probably slow down. And that’s exactly what this device does—it serves those people who want to comply with the law, it gives them an opportunity to be made aware of their speed, and they can voluntarily reduce their speed. Of course, every once in a while we still need to do enforcement for those who would ignore this type of sign. But for the most part it, it has been shown time and time again, in different areas as well as in the mainland, that it does reduce speeding. And we do, we do a survey every several years and every, every time we do this survey the number one complaint from citizens is speeding in their neighborhoods—number one. So it’s a quality of life issue.
that we would like to address. And this equipment gives us an opportunity to address those concerns of the citizens. And there’s another thing that this device does as well which, which isn’t well known is that there’s a, there’s an ability to track the speeds, the average speeds as well as do speed studies with it, too. So we can show how much a reduction of speeding is, is taking place in certain neighborhoods based on this device.

CHAIR MATEO: Thank you, Captain. Members, additional questions or information from Captain Hirata? Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Captain Hirata, I wanted to ask you is there any history on these speed recording devices that’s either on the trailer or a dolly that you described having any safety problems with traffic? Because I know as far as signs and stuff that go on the shoulder of highways the signs are break-away basis that, yeah, the car will get some damage but, you know, it won’t be something like hitting a tree. So I’m wondering in the history of using these things on the shoulder of the road have there been any accidents that people have run into these devices?

MR. HIRATA: We’ve never had any incidents, and I think we’ve had this even when I was in traffic. So it’s been over ten years that we’ve had them, and we’ve never had any incidents. Its, because, because they’re so interactive people take notice of them and if, when they’re approaching them it does turn on and gives them the speed. It makes them more aware and more cautious as well. So I think it, it makes them more aware of their situation and probably leads not to cause collisions.

COUNCILMEMBER MEDEIROS: Okay. Yeah, I agree. I agree. The benefit of that device is tremendously a benefit to the community and to enforcement. I just wanted to know if there was a history of any accidents being caused from vehicles running into it on the shoulder, but since we don’t have any in Maui County that’s good to hear. Mahalo, Mr. Chairman.

CHAIR MATEO: Thank you, Mr. Medeiros. Members, additional questions for, for the Captain? Go ahead, Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you. Hey, Captain Hirata, how many of these radar speed dolly’s do we have?

MR. HIRATA: I believe this is the second one.

COUNCILMEMBER PONTANILLA: The second one?

MR. HIRATA: Yes. They have one in Hana. And just to address some of the safety concerns about striking it, one of the things about the speed dolly is that they can be secured to a telephone pole with a cable. So I guess if you crash into the speed dolly, you also crashing into the telephone pole as well...(laughter)... So that, that would be...from a safety issue, you would be hitting the telephone pole anyway.
COUNCILMEMBER PONTANILLA: Yeah.

MR. HIRATA: But, yeah, this is our second one. I believe a couple other communities are looking at them. Lihikai School, I believe, had one that's permanently mounted.

COUNCILMEMBER PONTANILLA: Yeah, that's the one I see every day.

MR. HIRATA: . . . (Inaudible). . . to do that.

COUNCILMEMBER PONTANILLA: Yeah. Thank you. Thank you, Chairman.

CHAIR MATEO: Thank you, Mr. Pontanilla. Members, additional questions for the Department? If there is no more questions, Members, the Chair recommends the adoption of the proposed resolution entitled: Authorizing acceptance of donation from the Rotary Club of Lahaina Sunrise, a non-profit organization to the County of Maui, Department of Police pursuant to Chapter 3.56 of the Maui County Code, as well as the filing of Communication No. 08-265.

COUNCILMEMBER JOHNSON: So moved.

COUNCILMEMBER MEDEIROS: Second.

CHAIR MATEO: It's been moved by Ms. Johnson, second by Mr. Medeiros. Additional discussion? Before the Chair calls for the vote, once again the Chair would also like to recognize and commend the Rotary Club Lahaina Sunrise for their most generous donation to the Department. Members, call for the question. All those in favor, signify by saying "aye".

COUNCILMEMBERS: Aye.

CHAIR MATEO: Those opposed? Motion is carried. We have eight "ayes"; one excused, Mr. Victorino.
VOTE: AYES: Councilmembers Anderson, Baisa, Johnson, Medeiros, Molina, Pontanilla, Vice-Chair Hokama, and Chair Mateo.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Victorino.

MOTION CARRIED.

ACTION: Recommending ADOPTION of resolution and FILING of communication.

CHAIR MATEO: Members, we’re going to move on to the next item on our agenda, that’s Policy Item 59.

ITEM NO. 59: GRANT OF LEASE TO KA LIMA O MAUI, LTD. (C.C. No. 08-266)

CHAIR MATEO: POL-59 is a grant of lease to Ka Lima O Maui, Limited. Members, what’s before this Committee this afternoon is a proposed resolution transmitted by the Director of Housing and Human Concerns authorizing a grant of license of County real property to Ka Lima O Maui, Limited. The purpose of the resolution is to authorize a grant of a 50-year lease of property of approximately two acres at 95 Mahalani Street, in Wailuku for a nominal fee. In addition, Members, you will note that copy of both the lease, dated October 17, 2008; and a copy of the grant agreement had also been attached to this Communication for Committee’s review. With us this afternoon is the Director of Housing and Human Concerns, Director Tsuhako, and I will ask the Director to provide us with additional information or comments on this specific request and to respond to the Committee Members questions. Ms. Tsuhako?

MS. TSUHAKO: Thank you, Chair Mateo. Good afternoon, Members. Thank you for having me today. The lease that’s before you for consideration was forwarded by the Department, of course, and I just want to provide you a little bit of background. The Department handles leases of real property and over the last two years we found that some of those leases have been expired for a while. We tried really hard to address the backlog and update the leases of County property. Agencies who lease County property or who occupy County property have wanted to make improvements or, you know, to provide the services that they do to the community, and they found that without a valid lease they’re not able to do that. There’s liability for the County as well as for the community agencies. So given this backlog. . .the Department has tried to dedicate a staff member to address that backlog and try to move through leases that were pending. The Ka Lima request was actually a request for additional, for an additional lease to
allow for the agencies to, agency to secure financing. Due to..., anyway the Ka Lima lease was processed by the staff member assigned to the task and an error was made in the way the Department processed that lease. And because of the error the lease was forwarded to the Mayor’s office and, before the Council was able to consider approving this or not. And so, I apologize for the procedural error made by the Department, and assure you that it was not any disrespect to this body that that procedure, the proper procedure was not followed. So there, there is a signature, I think, by the Managing Director on the proposed lease agreement that was not done intentionally.

Ka Lima O Maui came to the Department to ask for a lease extension so that they could use the property to provide additional services for their mentally challenged clients. The Department supported that request and, and since then we have been, we have heard that the current lease perhaps does not address the agency’s desire to build such a residential facility on that property. There’s issues with zoning. The Department is willing to work with the proposed grantee to work out those arrangements and to make amendments to the lease, proposed lease to specify those conditions.

CHAIR MATEO: Thank you, Ms. Tsuhako. Ms. Tsuhako, the Chair would like to follow up on some of your points that you’ve made in your explanation of the, the lease agreement, and perhaps Corporation Counsel can help us understand. The lease agreement and, the lease agreement with its signatures, as affixed, is this executed?

MS. SLOPER: Chair Mateo, the documents are, I guess, fully executed, but as required by the County Code in Chapter 3.36, the Council needs to authorize the grant because this is a grant of real property at less than fair market value. So the Council, as a body, needs to authorize the grant by resolution.

CHAIR MATEO: So with, with the, with the existing agreement based on the terms and the understanding that the Director had already explained to the, to the Members, what does it mean if this body says, no, we’re not going to support this?

MS. SLOPER: If this body decides not to approve or authorize the proposed lease that was attached to the proposed resolution at this time, there is a current lease that Ka Lima O Maui is under. So that lease would still be in effect.

CHAIR MATEO: Okay. So that, that lease that expires in 2024, with 16 years remaining in that existing lease, then that still is in place?

MS. SLOPER: Yes.

CHAIR MATEO: Okay, and, Madam Director, can you, can you tell me the significance in your, in I guess the GRC’s review when they looked at the application request in terms of a nominal fee? The nominal fee for this particular facility, currently the way it works right now, in the year 2008 their yearly or annual payment is $180.42. Every year thereafter, that amount is increased by 5 percent. So in 2009, the expected amount that
they would pay for this property will be $189.45, and it keeps escalating 5 percent every year. Can you tell me what the significance or the importance was in reverting everything back to a dollar a year for a property at fair market value, at almost the $89,307 value a year, which breaks down to almost 7,440 somewhat dollars a month?

MS. TSUHAKO: Thank you for your question, Mr. Chair. My understanding, after speaking with the grantee, is that the request for a nominal fee on the lease rent was made to the Grants Review Committee based on precedent that was set with the granting of other properties to other non-profits in the community. The request was made on that basis—to be in, to be consistent with other leases of real property that had been granted by the County.

CHAIR MATEO: Okay. Okay. Well, I still have a hard time in looking at that particular change. And the GRC’s recommendation was 35 years? Is, that wasn’t taken into consideration, the 35-year request plus what was already still existing on their current lease?

MS. SLOPER: If I may?

CHAIR MATEO: Pardon?

MS. SLOPER: If I may?

CHAIR MATEO: Oh, please, yeah.

MS. SLOPER: Yes, the Grants Review Committee when they were approached or when they were given the presentation by Ka Lima, by the grantee, they were requested to add the 35 years on to, or as an extension to the current lease which expires in 2024. So it’s where the discrepancy is, on their, their sheet that says 35 years and the proposed lease which has the 50-year term.

CHAIR MATEO: Okay. Members, the floor is open. Mr. Molina?

COUNCILMEMBER MOLINA: Thank you, Chair. Just a follow-up request with regards to the list of the other properties that have I guess been, precedent has been set at a dollar a year. Maybe through your Staff, if we could request that information from the Housing Department to give us a list of these organizations that are leasing County properties for that nominal fee, Mr. Chairman?

CHAIR MATEO: Thank you, Mr. Molina.

COUNCILMEMBER MOLINA: Thank you.

CHAIR MATEO: Thank you.
COUNCILMEMBER PONTANILLA: Chair.

CHAIR MATEO: Mr. Pontanilla, followed by Ms. Johnson.

COUNCILMEMBER PONTANILLA: Thank you. So what we have here is a request for a 50-year lease so that they could do their capital improvement project and the yearly charge would be dollar a year; is that right?

MS. TSUHAKO: That’s correct.

COUNCILMEMBER PONTANILLA: Thank you.

CHAIR MATEO: . . . Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: Oh, yeah, I’m sorry, Chairman. Thanks.

CHAIR MATEO: Okay. Thank you. Ms. Johnson?

COUNCILMEMBER JOHNSON: Yes, and this would be to the Director. Because we’re looking and, of course, I read the paper like everyone else, we’re looking at asking our non-profits who are grant recipients to look at cutbacks with the, I guess the, in, in essence if you’re looking at the dollar a year compared to what they may have been paying we would not, we would be then I guess looking at this as kokua in terms of our grant; right? You know, because if, if money is just changing hands--Ka Lima is a grant recipient; are they not?

MS. TSUHAKO: They are.

COUNCILMEMBER JOHNSON: Okay. So if you looked at what they didn’t have to pay us, it’s almost like we’re . . . (laughter) . . . you know, we’re trading money in other words. If they were paying us $1,000 a year, for example, but then we give them enough money to pay all their expenses, including their rental back to us, it seems kind of silly to do anything other than a dollar a year . . . (laughter) . . .

MS. TSUHAKO: Well, I, I can see your point, Councilmember Johnson. In, in the Ka Lima’s Executive Director’s testimony earlier today, she said that she would, my understanding is that she said that she would be willing to discuss a higher lease rent . . . maybe at the amount that she pays now. But, you’re right, we do, we do grant that agency money. I don’t know specifically if that money is being used to offset the, the lease rent that she’s paying on the existing lease right now.

COUNCILMEMBER JOHNSON: Well, I, I, I know that--and I, and I’m assuming that the contract still exists in parks, that Ka Lima does do work in our parks. We’re very dependent on them for, I believe it’s our South Maui parks. So they do perform public service. So, I mean, Mr. Chair, my point in saying that it’s like, it’s just money changing
hands. So if their grant amount is reduced by whatever the amount they’re paying in rent, because all the non-profits are being asked to reduce their overall, I guess, grant request to us I see no problem with that part of it. The, the other thing I was going to ask you is that because Ka Lima does have their individuals going out and performing, I guess, work for perhaps other community projects that would all go back into their non-profit status; is that correct, to help support their agency for their operational expenses?

MS. TSUHAKO: Are you talking about the, the wages that are earned by the Ka Lima clients?

COUNCILMEMBER JOHNSON: Well, not necessarily the wages, but I, I guess, well, maybe it is a portion of the wages because when they get a contract, let’s say they get it with XYZ Company, for doing maintenance in a particular area, I’m assuming a portion of that is paid out in wages, but then others would be, like, administrative expenses. That that would be one of the ways that they also by having, let’s say a larger facility or what not, so, so that they would be better able to sustain themselves financially.

MS. TSUHAKO: I, I would assume that would be so. I think Ms. Ratte is still here and perhaps she could respond more accurately to your question than I could.

COUNCILMEMBER JOHNSON: Okay. Thank you very much, Mr. Chair, and if other Members want to know, I can ask her privately, but I think that one of my things is, is there the potential for any of our non-profits to better sustain themselves. And if they find that by having the longer lease and bringing in outside capital so that the value alone of the property that we’re giving them should be able to be used for matching--so that’s kind of where I’m coming from, that if they can use that to sustain themselves and not be quite as dependent on the County for grant funding I, I think that would be very helpful. So if at some point, if . . . the Executive Director would want to address that, I think it would be helpful for us to know that. Thank you.

CHAIR MATEO: Thank you, Ms. Johnson. Ms. Baisa, followed by Mr. Pontanilla.

COUNCILMEMBER BAISA: Thank you very much, Chair. I’d like to add some information to the mix. Of course, I am a huge supporter of Ka Lima. I’ve watched their agency for many, many years, and they provide a service that not very many people can do. In fact, I don’t know how many other agencies even come close to what they do in helping a segment of our community that really needs that kind of support and this would be a sad community if we didn’t have Ka Lima. Unfortunately, the thing about the dollar or whatever it is that we would collect, some nominal amount, I want to also share that I’m a Member of the board of the J. Walter Cameron Center and like every other non-profit, J. Walter Cameron Center is having a difficult time because the agency has reached its point where its buildings are beginning to need extensive repair and maintenance. And that’s running into millions of dollars, not into small change. And so, I believe that the agencies at Cameron Center have been recently notified—not all, but most, because they were not paying their fair share—that they will have their rates increased. And I just checked with Ms. Ratte while we had a little lull here, and they are one of the agencies
that will be paying more in assessment fees to be at Cameron Center. So they already are getting whacked by a little bit more having to pay, you know, for room and space.

And so, I'm sure every little bit that they can ...(end of tape, Side 2B)... it's not so much about the dollar that I'm concerned about because even, you know, if they pay $200, it's still nominal a year. I'm more concerned about the length of the lease. You know, having gone through this myself when I was trying to get the MEO building built and to get capital improvement money, it was important to the donors and the funders and the lenders that we had a long term lease. And so, I think it's a very wise idea. And we would certainly help them with their availability of getting capital support if we were to give them the longer lease. So I just wanted to share that. Thank you.

CHAIR MATEO: Thank you, Ms. Baisa. Mr. Pontanilla, followed by Mr. Hokama.

COUNCILMEMBER PONTANILLA: Thank you. I, I think Member Baisa, you know, comments in regards to a longer term lease would support the organization in, in getting some funding from the banks to do capital improvements. I believe that will help. We've had other organizations that had asked for long lease just to, so that they could, you know, go to the banks and, and get funding. And just a note that Ka Lima O Maui provides the County of Maui with manpower help in regards to the parks, like Member Johnson had asked, Public Works in the landfill area. They do janitorial services at, at the police station. So, you know, I know the type of clients that they have and these are the type of clients that we should support. And, and, you know, having a building of their own that they can call home, you know, would benefit the organization, Chairman. Thank you.

CHAIR MATEO: Thank you, Mr. Pontanilla. Mr. Hokama, Chairman.

VICE-CHAIR HOKAMA: Chairman, Ms. Anderson was before me --

CHAIR MATEO: Excuse me.

VICE-CHAIR HOKAMA: --so I would be happy to relinquish the floor to her first.

CHAIR MATEO: Thank you. Ms. Anderson?

COUNCILMEMBER ANDERSON: Thank you, Chair Hokama.

... I'm a little confused now after hearing Ms. Baisa. So I guess I'll just make an assumption, and you can tell me if I'm right. They have an office at J. Walter Cameron, and then they have their facilities building at this other location?

COUNCILMEMBER BAISA: They are at J. Walter Cameron Center.

... What...if I might?
COUNCILMEMBER ANDERSON: Then, then why, then--

COUNCILMEMBER BAISA: May I explain?

COUNCILMEMBER ANDERSON: --yeah, explain please.

COUNCILMEMBER BAISA: Yeah.

CHAIR MATEO: Ms. Baisa?

COUNCILMEMBER BAISA: That space at J. Walter Cameron Center is rather limited. There are, there is a waiting list for agencies hoping to get in and get out of the Marketplace because you know the rents are much, much higher in the Marketplace. So there is limited space, and I do not believe that Ka Lima could expand their programs and do the kind of things they are talking about expanding into, like creating work opportunities or more training or whatever in the limited facilities they have at Cameron Center. I think this will be a completely separate facility.

COUNCILMEMBER ANDERSON: Well, then I’m confused. If they have an existing lease, it must be existing on some building at Mahealani [sic] Street.

COUNCILMEMBER BAISA: Yes.

CHAIR MATEO: If the, is... 

COUNCILMEMBER BAISA: Can I explain?

COUNCILMEMBER ANDERSON: Yeah.

CHAIR MATEO: Yeah.

COUNCILMEMBER BAISA: May I? MEO also has a lease from the County--although we, we were given that opportunity by Cameron Center because they had the whole lease, and they carved out a piece for MEO. So I would assume it’s the same kind of situation.

CHAIR MATEO: Director Tsuhako, can you provide additional information, please?

MS. TSUHAKO: I’m looking over at Ms. Ratte because perhaps she’s better ...(laughter)... articulating this than I am. My understanding, Member Anderson, is that the land that the Cameron Center sits on--

COUNCILMEMBER ANDERSON: Oh.

MS. TSUHAKO: --is County owned--
UNIDENTIFIED SPEAKER: Yes.

MS. TSUHAKO: --and that Ka Lima has the ability, with this lease, to use additional space within that County-owned parcel to do the programming that they’re suggesting.

COUNCILMEMBER ANDERSON: I see. Thank you for that. I didn’t realize that Cameron Center was on County-owned land.

COUNCILMEMBER BAISA: Yes, it is.

COUNCILMEMBER ANDERSON: So then... didn’t I hear you say, Director Tsuhako, that they wanted, they’ve got 16 years on their lease right now, and they want another--

UNIDENTIFIED SPEAKER: They have 24.

COUNCILMEMBER ANDERSON: --they have 24, well, the lease is for 24 years right now. But I thought I heard...

CHAIR MATEO: The remaining 16 years--

COUNCILMEMBER ANDERSON: Yeah, 16 years is remaining.

CHAIR MATEO: --on the existing lease.

COUNCILMEMBER ANDERSON: So they want another 35 years. So they’ll have 50 years total?

UNIDENTIFIED SPEAKER: Yeah.

COUNCILMEMBER ANDERSON: . . . Give or take a year. And didn’t I hear you say, Director Tsuhako, that they wanted to put in permanent. . . housing for their clients?

COUNCILMEMBER BAISA: Uh-huh.

MS. TSUHAKO: That was one of the--

COUNCILMEMBER BAISA: Uh-huh.

MS. TSUHAKO: That was one of the hopes that the agency would be able to develop, further their programming by offering affordable rental units for their clients who are able to live independently and, you know, not necessarily with their own families.

COUNCILMEMBER ANDERSON: So and, and that’s what this extension of the lease is, is hoping to help accomplish in getting financing?
MS. TSUHAKO: Yes.

COUNCILMEMBER ANDERSON: Which they don’t have financing yet?

MS. TSUHAKO: No.

COUNCILMEMBER ANDERSON: And so, shouldn’t there be something in these agreements that talks about housing...because there’s nothing in here that I can see that talks about housing. It talks about...

...Uh...“which lease will allow the Grantee to use the premises for the purpose of enhancing lives through self-reliance for adults with disabilities who are economically disadvantaged by providing vocational programs and adult day health programs.” So I’m thinking that, you know, this grant agreement does not provide for housing, and I’m thinking that maybe you should, maybe we should amend this, Mr. Chair, so that that is an...an included use.

CHAIR MATEO: Yeah. Well, you know, let, let...you know, I agree with you, and that’s one of the, the areas that we cited with the, the Director. And, Members, at this time while we continue the discussion, the Chair will just tell you that my initial intent really at this point was to file this because they need to do their, they need to do their adjustments as the agreements that’s already been executed. It is not consistent with the actual request of the application to do housing. The way they, the way the documents exists right now, it is, they’re not permitted to do housing on the property--and that is one of their key requests that they have before us. Hence, their request for 50 years and the dollar a year. This is, this is incomplete because it is not, you know, it wasn’t added into the documents prior to the Department having it all signed off on. And the Chair would have preferred this coming in clean so we can just approve it, and move it on, and let them go on their merry way, and do what they need to do. But we need to do it correctly. And this is not done correctly at this particular point. So the Chair is not married to my position--

COUNCILMEMBER BAISA: ...(laughter)... 

CHAIR MATEO: And it is up to the body, you know, to do your own conclusions. And, Ms. Anderson, you had the floor and the Chair will return to, to you.

COUNCILMEMBER ANDERSON: Thank you. I’ll yield to Chair Hokama.

CHAIR MATEO: Thank you, Ms. Anderson. Mr. Hokama?

UNIDENTIFIED SPEAKER: ...(inaudible)... 

VICE-CHAIR HOKAMA: Chairman, I think you were reading my mind. I have some concerns with the way it’s been proposed to the Committee this afternoon, Mr. Chairman. One,
because I had hoped the Department would have tried to reduce or eliminate subleasing from master leases. You know, I can tell you from my experience of managing operations that dealt with master leases and subleases, okay, it gets very messy particularly when a sublessee defaults. Because the master lessee is still not the property owner. . .the County of Maui is still the property owner. So if there's issues of default, then who takes the responsibility to take care of those financial requirements? Is it then Cameron Center is going to hold the financial responsibility? Does it come back to the County? Who owns, then, the potential asset that has not been paid for through default? I think these are the kinds of things that we need to have very clearly spelled out because if you look on the agreement on Page 5, under funding of improvements, it states that the lessee shall be solely responsible for the funding of its improvements. But do I believe they won't come to the County and ask for a CIP appropriation?

. . . I think the Department needs to be able to explain to the Committee and the full Council, is this part of a comprehensive program regarding independent living for a component of our community and that Ka Lima is to address this specific segment of our community that they’re responsible for and that how the Department wishes to address this type of housing and why this is the right location for this housing? We have not had comment or communications explaining the direction and goals of the Department. I think one of the things that, for me, is definitely of issue is again. . .how this executed document has received execution. And I heard the Director’s comments in her opening statement, but I’m still not satisfied with that type of explanation. Second, Mr. Chairman, I think Ms. Anderson brought up a good point regarding the improvements. The zoning is Residential R-3, community plan is Public/Quasi-Public. So, therefore, unless I’m missing something, they cannot get building permits. They’re not within compliance of entitlements and community plan designations. So who’s going to take care of that? They’re going to ask for one waiver from the Council? What is this project? What is the density? What is the cost? We need to know what is the full responsibility of the potential default if this doesn’t work, and who will bear the responsibility to pay. You know, today the, finally the U.S. Government acknowledged we are in official recession, global recession, minimum 18 months for the world to get out of this financial mess. You know, for me it’s a very critical time that we make sure of our pools and what we are expecting in financial support or granting is very clear so we can be accountable to the taxpayers of this County.

. . . I pose a lot of questions, Mr. Chairman. I don’t know if the Director wishes to answer this afternoon, but I believe that filing is a very real option for this Committee. Thank you.

CHAIR MATEO: Thank you, Mr. Hokama. Madam Director, would you like to respond to some of those issues before the Chair recognizes Ms. Anderson?

MS. TSUHAKO: Thank you, Mr. Chair. Thank you, Mr. Hokama.
...I, I agree with you that...that part of the discussion about this lease should include an overall community plan for what Ka Lima wants to do. And the Department, at this time, honestly doesn’t, doesn’t, is not able to answer your questions. So you, you raise a very valid point, and it’s something that I’m willing to work with the, the grantee on developing further to answer the questions that you bring up. And I’m not at all opposed to that or at all defensive about doing that. So, thank you.

CHAIR MATEO: Thank you, Madam Director. Ms. Anderson?

COUNCILMEMBER ANDERSON: Thank you. Could I just ask, Chair Hokama? He said the zoning was what in the community plan designation?

VICE-CHAIR HOKAMA: Mr. Chairman, if I can respond to the question?

CHAIR MATEO: Mr. Hokama?

VICE-CHAIR HOKAMA: Thank you. For all the Committee Members, my understanding from what we have been able to verify is that zoning is R-3; community plan is Public/Quasi-Public.

COUNCILMEMBER ANDERSON: Okay. Thank you. Um...

...which, you know, brings up the question of how these buildings were all built with that inconsistency...(laughter)...on the record now, but that’s for another discussion. But...

...yeah...(laughter)...that’s going to be a problem. So, and I think that, you know, maybe what they might want to look at is changing the zoning to Public/Quasi-Public and see if there isn’t something in that zoning category that would allow public housing. But, you know, because there’s these problems right now with this, rather than trying to amend the agreement, and given the concerns that Chair Hokama brought up, you know, they can’t get funding, Mr. Chair, and we’ve had this problem in the past with Iao Theatre.

CHAIR MATEO: Uh-huh.

COUNCILMEMBER ANDERSON: Unless they have a long-term lease. And no lender is going to even speak with them unless they have a 50-year lease.

COUNCILMEMBER BAISA: Right.

COUNCILMEMBER ANDERSON: So I’m thinking that, and, you know, I don’t know, this is something for the Department and you folks to work out that, you know, you could probably go ahead and update all these records or these agreements, and go ahead and, you know, give them an updated lease, and then you’d have to work out the zoning
situation—but at least there would be a commitment. Now, I don’t know if this body wants to give Ka Lima a 50-year lease unless they can do the housing—because that’s really the purpose of this. But the other way to do it would be for the Council to sign a resolution saying that they support this, that they intend to give them a 50-year lease should they be able to get the funding. And then they could take that to the lender. That’s just another way of going about it. . .because it may take some time to straighten out the zoning inconsistency. Thank you, Chair.

CHAIR MATEO: Thank you, Ms. Anderson. Ms. Johnson?

COUNCILMEMBER JOHNSON: Yeah, I’m, you know, I totally understand what’s going on because I, but I was aware because there was a conversation many moons ago about the possibility of doing some type of housing on this particular property, and I don’t know whether it was in a private meeting or in a previous discussion that we had with Ka Lima during some of our budget hearings about their plans. But, anyway, I think maybe peripherally we were aware of it, but had nothing really concrete presented to us. But being that, even just one aspect of this lease that I think would be fair is just reducing it to the dollar. I mean, for me personally, we’re asking these guys, you know, they’re going to be asking us for grant money and, you know, to reduce a dollar almost everybody, every non-profit that I know, they pay just a dollar because it’s, it’s on County property. Boys and Girls Club does it. Any number of groups pay that amount of money. I think to be consistent, I would be supportive of trying to move this forward just for that reason alone. I don’t know if at first reading there could be some type of an amendment added into this just saying that, giving an indication that at some point in time, you know, there will be additional lease amendments that would be coming forward to this lease, but I know we have amended other leases in the past, too. It, it is messy. I agree with Chair Hokama. Yeah, it’s sure not the way we like to do things. But I’m just looking at the survival of non-profits and anything we can do to try to promote and make it a little bit more easy for them out in the marketplace. Whatever revenues they can bring in, I say go for it because it may not be there too much longer.

CHAIR MATEO: Uh-huh. No, and, and, Ms. Johnson, your point is well taken. But please be assured that each one of us also share the same concerns for not this non-profit alone, but for the multiple, you know, non-profits that this County funds in the tune of over $37 million a year plus. So, yeah, we all are concerned about all of the non-profits’ survival. Members, if there’s no objections, the Chair would like to ask—Ms. Ratte, if you could please come up to the podium and, you know, the Chair would like to get some information from you regarding your projected timetable, where are you at this point in terms of securing funding for your proposed project?

MS. RATTE: Okay. Well, we haven’t been able to secure much funding because, you know, as, as most of you realize we need the long-term lease before we do so. We have made, you know, we have met with several County officials as far as from the Planning and Zoning Departments. We are aware of the zoning issue. Our thought of process was the first stepping stone was let’s get our lease extended because, you know, it takes a lot of
resources, money, and time to plan a construction site. So we wanted to make sure that this was secured, and then we would move forward. We have drawn conceptual plans for the housing. And I just want to clarify something, if I may, that was a little bit of a confusion earlier. The Cameron Center lease is completely separate from this lease, from the County, we’re talking about two locations. And Ka Lima operates out of two locations right now. We lease from the Cameron Center where our admin and program offices are; and the, the lease in front of you we operate a Medicaid waiver program which is an adult day care program. This is where, the lease that’s in front of you is where our plant nursery used to be--

COUNCILMEMBER BAISA: Yes.

MS. RATTE: --right below the hospital, the two-acre site. So it is not solely for the purpose of residential that we want to extend our lease and get funding, but it’s to consolidate all of Ka Lima’s operation on that site--build an admin program building, a garage, and also, if possible, the residential units for, for our consumers.

CHAIR MATEO: Thank you. Members, the, the Chair will open the floor for what questions you may have regarding their proposed plan. Go ahead, Ms. Johnson.

COUNCILMEMBER JOHNSON: Yes, earlier I think you heard my comments about sustainability and, in terms of your expansion and consolidation, and I think that, you know, in terms of your financial, I guess health, if you will, is this going to help you at least, I suppose you wouldn’t have to pay rent anymore on Cameron Center, but how will it help you to actually move this forward if, if we were able to get you this long-term lease?

MS. RATTE: Well, the rent itself, you know, we’re faced with a 25 percent rent increase in less than a year. So that alone has hit us pretty hard. As far as, you know, if, if Ka Lima is able to consolidate its operation all into, under one house, it is. . .it is our hope that we can become more efficient, offer more of our services, serve more clients. That all comes with, with the package. If we can afford, if we can offer housing to some of our clients, that’s. . .that’s a big, that’s a big service that we can provide for them.

COUNCILMEMBER JOHNSON: Thank you very much.

CHAIR MATEO: Thank you, Ms. Johnson. Mr. Hokama?

VICE-CHAIR HOKAMA: Thank you. I’m glad you came forward. Thank you so much.


VICE-CHAIR HOKAMA: Where are your clients currently living for, for the. . .(inaudible). . .
MS. RATTE: Some of them live with families, some of them live with care home providers...some of them live on their own right now, also. But we, I can’t tell you how many times it comes up...that they have housing issues.

VICE-CHAIR HOKAMA: Uh-huh. Are they able to qualify for Section 8 support from the Federal government?

MS. RATTE: Some of them, yes.

VICE-CHAIR HOKAMA: Some of them?

MS. RATTE: Yep.

VICE-CHAIR HOKAMA: Okay. That’s good. Has our departments been assisting you in letting you know that for certain things to happen—particularly building projects—the requirements that would need to be put into order prior to even getting building permits and moving to construction or, or they have not made the agency or yourself aware of the amount of steps that would be required to make the change?

MS. RATTE: I’m sorry I missed the first part of your question. Which body were you referring to?

VICE-CHAIR HOKAMA: Has our departments assisted your agency in making you aware of the requirements that would be needed to be completed and approved prior to you being able to build something specifically?

MS. RATTE: Yes. Yes, we’ve met with Department of Housing and Human Concerns. I have a few meetings documented with the previous Director; but mostly with the Planning, Clayton, Mr. Cerizo. So we have met...

VICE-CHAIR HOKAMA: Mr. Yoshida?

MS. RATTE: Yes.

VICE-CHAIR HOKAMA: Okay. If you can, if you know your numbers at this time can you just tell us generally what is the total projection of your project and what would be the housing component number versus your admin building number? Like you know if your whole project is going to take $20 million...4 million for admin purposes, another 10, 12 million for housing requirements and infrastructure development—do you have that kind of sense of, so we can understand the magnitude and how this fits into a potential 50-year lease agreement?

MS. RATTE: Well, I know the numbers have changed since we started talking about...

VICE-CHAIR HOKAMA: Well, just tell us what your, how you’re planning --
MS. RATTE: Well, I’m looking at Tim here . . . (laughter) . . .

VICE-CHAIR HOKAMA: --the numbers you’re planning on.

MS. RATTE: I would say the overall project, and maybe Tim can correct me if I’m wrong, but I would have to estimate at this point around $5 million.

VICE-CHAIR HOKAMA: Five million dollars. Including the housing component for your --

MS. RATTE: Yes.

VICE-CHAIR HOKAMA: --for your clients?

MS. RATTE: Yes.

VICE-CHAIR HOKAMA: And how many units you were looking at, Ms. Ratte, for the housing component?

MS. RATTE: That was with the projection of eight units.

. . . It would be two separate buildings, four single . . . one, one-bedroom apartments.

VICE-CHAIR HOKAMA: Okay, and that would be independent living or assisted-living type of program?

MS. RATTE: It would be independent living. We’re also discussing, after, you know, I’ve had some discussion with Lokahi Pacific and what not and . . . possibly having one staff in one of the units.

VICE-CHAIR HOKAMA: Uh-huh.

. . . Hearing the direct, the direction the Mayor is considering have you already then revised those numbers or is that your revised numbers of what the agency would like to put forward regarding your project?

MS. RATTE: . . . I’m not sure what . . .

VICE-CHAIR HOKAMA: The Mayor has made indications that she would hopefully like to see agencies, such as yours, come in with the adjustment of minus 10 percent.

MS. RATTE: Correct.
VICE-CHAIR HOKAMA: So is this numbers you’re sharing with us this afternoon already the adjusted project numbers or that is your, your hope of the full program that you would wish to accomplish?

MS. RATTE: As far as the capital project?

VICE-CHAIR HOKAMA: Yes.

MS. RATTE: No, those numbers have not been adjusted and that was, I mean I know we’re looking internally at our budget --

VICE-CHAIR HOKAMA: Uh-huh.

MS. RATTE: --for next year adjusting for a 10 percent, and we’re facing that reality.

VICE-CHAIR HOKAMA: Okay. I thank you very much for your responses. Thank you, Mr. Chair.

CHAIR MATEO: Thank you, Mr. Hokama. Members, additional questions for the, for the testifier? Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Yes, I wanted to know because it’s been brought up that the 50-year lease would help you secure funding, otherwise they wouldn’t even consider it. But the process to change, say, your zoning, community plan amendment, have you discussed any of that with a consultant on how long that the process takes? And the reason I ask that is by the time you finish your process, how many years are left on your lease and where will your financial institutions that you’re looking at--say you have 35 years left when you’re done all your process--will they consider a loan for you with 35 years left or do they expect you to have a 50-year lease at the time you apply for your financing?

MS. RATTE: That’s a good question. We have met with some consultants as far as the time frame, so we are aware that the change of zoning and what not can easily take up to two years, if lucky . . .(laughter). . . As far as the funders, I, I believe that they would look at, well, okay, you got a 50-year lease when you started this process --

COUNCILMEMBER MEDEIROS: Yeah.

MS. RATTE: --and I have to believe that would be acceptable to them.

COUNCILMEMBER MEDEIROS: Okay, and it wouldn’t matter --

MS. RATTE: Because I know at least...
COUNCILMEMBER MEDEIROS: --how much you had left on your lease when you applied directly for the funding?

MS. RATTE: Right.

COUNCILMEMBER MEDEIROS: Okay. Thank you. Mahalo, Mr. Chairman.

CHAIR MATEO: Thank you, Mr. Medeiros. Members, additional questions for, for the representative?

COUNCILMEMBER ANDERSON: Chair?

CHAIR MATEO: Go ahead, Ms. Anderson.

COUNCILMEMBER ANDERSON: Yeah, you know, I'd just like to say that...well, I wrote it down here somewhere, but I guess the community plan designation is Public/Quasi-Public, and all those buildings in that area probably should be zoned Public/Quasi-Public rather than R-3. So, basically, all that's needed is a Change in Zoning, not a community plan amendment, and that should be a fairly easy thing to do. There's no environmental assessment needed. And should one of the Council Members--and specifically the Member of this district--sponsor the Change in Zoning, it could be fairly fast-tracked.

MS. RATTE: Oh, that's great news... (laughter)...

COUNCILMEMBER ANDERSON: Thank you, Chair.

CHAIR MATEO: Thank you. Members, additional questions? Thank you, thank you very much.

MS. RATTE: Sure.

CHAIR MATEO: Members, questions for the Department or for Corporation Counsel? Go ahead, Mr. Molina.

COUNCILMEMBER MOLINA: Mr. Chairman, yeah, no question for Corporation Counsel more in response to your recommendation. First of all, thank you for having the discussion. We, you know, upon the revelation of the existing contract versus, you know, the proposal, I can totally support your request for filing to allow the Director to work with the, the applicant to provide a, a proposal that has more specifics in it. We don't have a copy of the existing contract to compare with what's being requested, and upon the issue of the, the housing as well. So, for me, I feel more comfortable with just basically taking this back to the drawing board and allow Director Tsuhako to work with the applicant and present something to the Committee for the next term to consider. So, you know, it doesn't mean that we don't support Ka Lima O Maui. First of all, I
appreciate what Director Ratte has done and Ka Lima O Maui has done for us over the
years. So it has nothing to do with that. And, you know, many of us who are here have
supported Ka Lima O Maui’s request for funding. So, but just in relation to this proposal
just so all the I’s are dotted and the T’s are crossed and so forth, Mr. Chairman, I think
maybe it might be better for all just to have this filed at this point, and then have a new
proposal presented to us for the next term, Mr. Chair. Thank you.

CHAIR MATEO: Thank you, Mr. Molina. Members, additional questions or comments?

. . . Mr. Victorino, I see you...anything?

COUNCILMEMBER VICTORINO: No, everybody, everybody seems to be talking for me, so I
have no problem.

CHAIR MATEO: Okay.

COUNCILMEMBER VICTORINO: I’m fine with everything.

CHAIR MATEO: Thank you, Mr. Victorino.

COUNCILMEMBER VICTORINO: No problems.

CHAIR MATEO: Members, if there’s no additional discussion, again, the Chair’s
recommendation is to file this particular item.

COUNCILMEMBER ANDERSON: So moved.

COUNCILMEMBER VICTORINO: So moved.

CHAIR MATEO: It’s been moved by Ms. Anderson, second by Mr. Victorino. Members,
additional discussion? Mr. Pontanilla, go ahead.

COUNCILMEMBER PONTANILLA: Thank you. Just a question to the Director in regards to
working with Ka Lima O Maui. I don’t know your timeframe but, you know, the sooner
the better, before budget. . .that would help.

MS. TSUHAKO: Yes, I will do that. Thank you.

COUNCILMEMBER PONTANILLA: Thank you.

CHAIR MATEO: Go ahead, Ms. Johnson.

COUNCILMEMBER JOHNSON: Mr. Chair, just on general principals. I’m going to be voting
no, and I know it doesn’t mean anything--
CHAIR MATEO: ...(laughter)...

COUNCILMEMBER JOHNSON: --but, you know, there’s always got to be one contrarian in the crowd.

CHAIR MATEO: Okay. Thank you very much.

COUNCILMEMBER BAISA: Chair?

CHAIR MATEO: Go ahead, Ms. Baisa.

COUNCILMEMBER BAISA: Chair, I’ll be supporting your recommendation. I, you know, really would like to see this move along because I ...(end of tape, Side 3A)... important group of people, but I do understand the legalities, and the paperwork, and the things that need to be fixed up. I’d like us to have a proposal, maybe with some new numbers and a contract that, and a resolution that, you know, spell out everything. And then, of course, I would like to add my please let’s do it forthwith because people’s lives depend on it. Thank you, Chair.

CHAIR MATEO: Thank you, Ms. Baisa, points well made. Additional comments?

... Members, thank you very much. The motion on the floor is to file this particular item. The Chair will call for the question. All those in favor, signify by saying “aye”.

COUNCILMEMBERS: Aye.

CHAIR MATEO: Those opposed?

COUNCILMEMBER JOHNSON: No.

CHAIR MATEO: Thank you. Members, eight “ayes”; one “no”, Member Johnson.
VOTE:  AYES:  Councilmembers Anderson, Baisa, Medeiros, Molina, Pontanilla, Victorino, Vice-Chair Hokama, and Chair Mateo.

NOES:  Councilmember Johnson.

ABSTAIN:  None.

ABSENT:  None.

EXC.:  None.

MOTION CARRIED.

ACTION:  Recommending FILING of communication.

CHAIR MATEO:  Members, we’re going to move on to the next item on our agenda, and that’s Policy No. 5(9). We also will have a changing of the guards as well. Ms. Tshako, thank you very much for joining us this afternoon. Ka Lima, thank you very much for joining us this afternoon.

ITEM NO. 5(9): SPECIAL COUNSEL AUTHORIZATION (MOLOKAI PROPERTIES, LTD., FORMERLY KNOWN AS MOLOKAI RANCH, LTD., VS. DEPARTMENT OF HEALTH, STATE OF HAWAII, ET AL., CIVIL NO. 08-1-1877-08 EEH; COUNTY OF MAUI VS. MOLOKAI PROPERTIES, LTD., FORMERLY KNOWN AS MOLOKAI RANCH, LTD., CIVIL NO. 08-1-0493(1); AND COUNTY OF MAUI VS. STATE OF HAWAII, DEPARTMENT OF HEALTH, CIVIL NOS. 08-1-0533(1) AND 08-1-0534(1) (C.C. No. 07-12)

CHAIR MATEO:  We’re going to ask Deputy Corporation Counsel Jane Lovell to join us in the front at this point. Members, Policy Item 5(9), Special Counsel Authorization (Molokai Properties, Limited, formerly known as Molokai Ranch Limited versus Department of Health, State of Hawaii, et al., Civil No. 08-1-1877-08; County of Maui versus Molokai Properties, Limited, formerly known as Molokai Ranch Limited, et al., Civil No. 08-1-0493(1); and County of Maui versus State of Hawaii, Department of Health, Civil Nos. 08-1-0533(1) and 08-1-0534(1)). Members, we are in receipt of communication dated November 13, 2008 from the Department of the Corporation Counsel, requesting the consideration of a proposed attached resolution entitled: Authorizing additional compensation of special counsel Bronster Hoshibata, a law corporation, with respect to legal claims relating to water and wastewater utility services on Molokai. Members, the purpose of the proposed resolution is to authorize $200,000 in additional compensation for Bronster Hoshibata, a law corporation, as special counsel in the case for a total compensation of $300,000. With us this afternoon, Members, is our Deputy Corporation Counsel Ms. Jane Lovell. And Ms. Lovell will provide us additional comments on this particular request, and she also will be able to respond to members questions. Ms. Lovell?
MS. LOVELL: Thank you, Chair, Council Members. When we first came down to the Council to request authorization to hire Bronster Hoshibata that was in, a request was dated July 14th, the Council action was August 8th. Since that time, the two matters that were in litigation in July have mushroomed to the large number of matters that you see before you today. And I had prepared a handout—which I don’t know if Ms. Sakamoto has, has distributed...yes. That handout shows three different things. First, is a list of all of the matters that are in, currently in litigation regarding water and wastewater utility services. There is also a list of all of the lawyers who are opposing the County’s position in one arena or another. And, finally, there is a list of deadlines that are coming up. So all I can, can say is that while our Department and my colleagues and I have worked very hard on these matters—particularly my colleague Ed Kushi has been a tremendous resource, Brian Moto the Corporation Counsel has personally worked very hard on these matters, our legal assistant Sharon O’Shaughnessy. Nonetheless we would find ourselves overwhelmed were it not for the assistance and the expertise brought to bear by the Bronster law firm. Ms. Bronster, as you know, is a former attorney general of the State of Hawaii, and as such she has not only a great depth of knowledge about how State agencies work and so forth, but her contacts within the Attorney General’s Department have proved very useful. As this litigation goes on, there may also be international law components given that the owner of the Molokai Ranch property is, is a corporation traded on the Hong Kong stock exchange. So for all of these reasons, we find ourselves having to return to, to ask for further money. I do strongly believe that the position that the County finds itself in now is a stronger one than it was even just a few months ago. You may recall that a few months ago, we were within weeks, a few weeks of seeing all of West Molokai without, without very essential services. And the County was looking at the possibility of a very large bill that it was going to have to bear if the, the State was able to fob these responsibilities off on the County. We now find ourselves in a, still in a perilous position, but a somewhat better position. The, the Ranch and the Utilities have agreed to continue operating at least through February. They have hinted they will continue to operate longer than that. The State, which was taking a very adverse posture to the County, has been rather quiet recently. So we don’t know what they will eventually do, but for the moment, at least, we are not in full-scale warfare with each other. Part of that I attribute to Ms. Bronster’s diplomacy. And so, I think going forwards the public can be assured that their tax dollars are being used wisely and in a spirited defense which we hope, by the way, to get back eventually from the Ranch because our civil lawsuit that’s on file with the Second Circuit asks for our attorney’s fees and expenses. We don’t know how that’s going to come out, but we are working very hard towards that goal.

CHAIR MATEO: Thank you, Ms. Lovell. Members, the floor open for questions for Ms. Lovell. We’ll start with Mr. Hokama and work our way right on down if there’s questions, Members.

VICE-CHAIR HOKAMA: Thank you, Chairman. Ms. Lovell, thank you for that opening briefing. On Page 2 of the handout from you this afternoon, I would note that you have listed for us, I believe, seven different attorneys that we are in “disagreement with”, if I
MS. LOVELL: Yes, Chair Mateo and Chair Hokama. Mr. Bohlen is at the Attorney General’s Office. He’s a Deputy Attorney General. But was Mr. Bohlen who led the charge and is still directly adverse to the County in the Department of Health matters. And you may recall that the State, in its infinite wisdom, decided to issue notices of violation to the County and, and on 24 hour’s notice we had to go to Honolulu and put on an entire case—witnesses, the whole thing. We could not have done that without the help, I, I should also acknowledge of Jeff Eng and Dave Taylor who were just troopers throughout that whole thing. But Mr. Bohlen and his colleague Bill Cooper are the Deputies Attorney General who are opposing counsel to the County in the two matters arising out of the Department of Health which are now on appeal in the Second Circuit. So they are, even though they represent the State of Hawaii, they are opposing counsel. Mr. Milks represents a group of citizens in Molokai. And I, I must say his position is somewhat adverse to the County and somewhat favorable to the County. The, the citizens who engaged him to intervene in the Public Utilities Commission matters were very desirous of the County taking over the utilities. And so, that is the position, the legal position that Mr. Milks took before the Public Utilities Commission. So in that respect, he is adverse. Now, so far, he has not been able to acquire party status for his clients, and so I’m not really sure where he stands at the moment.

VICE-CHAIR HOKAMA: So they’re intervening in the case or they’re trying to get, you know, for the, the Committee to, they have not been recognized by the court as having standing in the case?

MS. LOVELL: Well, actually, Chair Hokama, what, what happened was the parties represented by Mr. Milks tried to intervene in the two Public Utilities Commission actions only. They have not sought to intervene in any of the other actions—the Department of Health, or the Second Circuit Court, or the First Circuit Court. They were initially denied intervenor status. I don’t know whether that ruling by the Public Utilities Commission will hold. I don’t know if they’ll have another opportunity as those cases go forward. At the moment, they’re kind of out, but at any moment I would expect they may, you know, wish to come, you know, or at least try to come back in.

VICE-CHAIR HOKAMA: Okay. Well, thank you for that explanation. So I assume, then for the Committee’s understanding this afternoon, the other five private attorneys from various law firms are those representing the, the Utility property owner?

MS. LOVELL: Yes, they, they have separate lawyers for the utilities and separate ones for the, for the Ranch, but there’s Mr. Beam [sic], and there’s Mr. Bickerton, there’s Ms. Izu--

VICE-CHAIR HOKAMA: Uh-huh.
MS. LOVELL: I, I'm forgetting...oh, Mr. Duca.

VICE-CHAIR HOKAMA: Okay. Are you aware whether any or all of these legal counsels, either for the utility or the property owner, are doing this pro bono?

MS. LOVELL: ...(laughter)... I am not aware of any such thing, and I would assume, in fact, that they are charging. I know for a fact that some of Ms. Izu's bills have been submitted to the Public Utility Commission because she is working on their rate case. And, therefore, one possibility would be that her firm's bills would be built into the rate adjustment. That is something that the County is not happy to see that, that we're questioning many of the things that are being folded into the rate, the rate case that's ongoing--

VICE-CHAIR HOKAMA: Uh-huh.

MS. LOVELL: --including the legal fees. But to my knowledge, the attorneys are charging and the only possible exception to that is, besides the Deputies Attorney General, of course, is their in-house counsel, Mr. Orodenker. And I would assume that he's got some sort of salary arrangement and is not being paid extra. But I don't know that.

VICE-CHAIR HOKAMA: Okay. Well, it's just interesting, Mr. Chair, that part of the position of the property owner utility is that they don't have money, but they can hire a lot of principal partners in law firms to fight the County of Maui in its efforts to protect our residents of Molokai of this County. Chairman, I await your recommendation, but I believe we have been served well by Ms. Bronster, and I'm happy to look forward to your recommendation. Thank you.

CHAIR MATEO: Thank you, Mr. Hokama. Ms. Anderson?

COUNCILMEMBER ANDERSON: I'll be very brief. Chair Hokama covered most of what I was interested in. But I, I guess I'll just make the comment, and you tell me ...(laughter)... if you agree or not. I'm astounded the Department of Health is still trying to force this County to take over this dilapidated water system. Are they still being forceful? I mean you said you haven't heard much from them, but here they are.

MS. LOVELL: ...(laughter)... Yes, Chair Mateo, Councilmember Anderson, the Department of Health's...the Department of Health brought four cases--two were against the Utilities and the Ranch. And the County thought those were valid. And in fact Mr. Kushi and I told the Department of the Attorney General that if those were the only two Department of Health cases, that we would be on their side. However, the Department of Health also
brought notices of violation against the County based on the theory that if the utilities stopped providing services, that the County would be legally responsible. And, of course, we couldn’t let that go unchallenged. So we did challenge it quite vigorously. In the end, the Department of Health’s own hearing officer, in his recommendation, made a finding that the State could not constitutionally force the County to take over and operate a private business. That, however, is on appeal.

COUNCILMEMBER ANDERSON: The Department of Health is appealing their own Attorney General’s decision?

MS. LOVELL: No, that, their hearing officer.

COUNCILMEMBER ANDERSON: Oh, the hearing officer.

MS. LOVELL: So the County has appealed, the State has appealed and, of course, the Ranch and the Utilities have appealed. And so, that’s why we are in the First Circuit in one appeal, and we have two appeals in the Second Circuit.

COUNCILMEMBER ANDERSON: And, where does the State Commission on Water Resource Management weigh in on this since they are the management entity for the water on Molokai?

MS. LOVELL: Uh, they, to. . .they’ve, they’ve been entirely. . .silent.

COUNCILMEMBER ANDERSON: Irresponsible . ..(laughter) . . Okay, go get ‘em.

MS. LOVELL: Absent . . (laughter) . .

COUNCILMEMBER ANDERSON: Thank you, Chair.

CHAIR MATEO: Thank you, Ms. Anderson. Any additional questions, Members? Go ahead, Ms. Baisa.

COUNCILMEMBER BAISA: Thank you, Chair. Not really a question, but a comment. I don’t see that we have much of a choice here. We either going to pay now or pay later, maybe a heck of a lot more, and we certainly need the help. This looks more complicated. I can’t believe this list. Just incredible how this has grown like topsy. . .the people that are involved. And when you look at all these deadlines and all the paperwork that’s involved I certainly understand the need for the best help we can get. So I’ll be supporting this request.

CHAIR MATEO: Thank you, Ms. Baisa. Mr. Molina?
COUNCILMEMBER MOLINA: Yeah, thank you, Chair. It’s getting late, and I know we got
another big item to take on, so I’m awaiting your recommendation, Chairman. Thank
you.

CHAIR MATEO: Thank you, Mr. Molina. Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: Yeah, I’ll be supporting the Department’s request. Just
one question to our attorney. You say that we probably will be seeing more lawyers that
represent the foreign entity.

MS. LOVELL: Actually, Chair Mateo, Councilmember Pontanilla, not quite. I, we don’t know
at this stage in the proceedings if international law questions will come up, but we
anticipate that that is possible just because the owner of the corporation, the owner of the
land is a foreign corporation. So, for example, if we wanted to get documents from them,
if we wanted to take a deposition from the chairman or something like that, we would
have to go through international treaties. We couldn’t just send a subpoena. We would
have to go through a complex procedure which involves the State Department and, and
the Embassy, and, and so forth. So that is a possibility down the road. We don’t know if
we’ll ever get there, but if that happens that’s a little bit beyond what we do in our
Department on a daily basis. I’m sure it would be quite interesting, but it’s not kind of
the usual thing we get to do every day.

COUNCILMEMBER PONTANILLA: Thank you. Thank you, Chairman.

CHAIR MATEO: Thank you. Members, if there’s..., I’m sorry, go ahead, Mr. Victorino.

COUNCILMEMBER VICTORINO: Yeah, and more along the lines of what Ms. . . .

MS. LOVELL: Lovell . . . (laughter) . .

COUNCILMEMBER VICTORINO: . . . you see my mind went blank.

MS. LOVELL: Ms. Bronster.

COUNCILMEMBER VICTORINO: --but I almost forgot the question, but now I remember.

MS. LOVELL: Okay.

COUNCILMEMBER VICTORINO: But thank you, Ms. Lovell, what, the statement I was
going to make. Since this is for the safety, and well-being, and the security of the people
of Molokai—and I know this is far fetched, but can we bring Homeland Security into this
matter because, I mean, if you want to play the game, well, let’s play it all the way. I
mean if you want to play tick-for-tack, I, I can play that. I mean you’re going mess

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saying I’m a foreign entity, I don’t have to give you nothing, but at the same token, you
know, you made money off of our people and now you leaving them high and dry where
their safety, well-being, and security has been challenged. I mean, you know, is there a
possibility?

MS. LOVELL: Well, Chair Mateo, Councilmember Victorino, actually I, I can’t say that
Homeland Security was involved, but the State Civil Defense was involved. In the
Department of Health hearings, the State Attorney General’s office called the Adjutant
General of the, the Hawaii Civil Defense to testify about the emergency preparedness
and, and how the County and the State should respond, you know, to the, to the
emergency and so forth. So certainly there, there are public, there are severe public
health and safety issues. I think it’s, it’s very clear that, that, you know, half of the island
cannot live without these essential, essential services.

Whether there’s something that we can do through the Federal government, I do, I am
aware that the Mayor did make contact with the U.S. Attorney, Mr. Kubo, in Honolulu. I
know she made contact with the U.S. EPA. I know she made contact with the U.S.
Justice Department. Whether she made any contacts at Homeland Security, I’m not sure
but, you know, we, we could use all the armies we could, we could get . . . (laughter) . . .
actually. So--

COUNCILMEMBER VICTORINO: Well, thank you, Ms. Lovell. And again, you know, I’m
glad to hear that we’ve gone beyond the, the reaches of the State and because it doesn’t
seem like the State sometime is really on our side in working together with us, and if we
need the Feds to get involved and there are issues, Mr. Chair, I, I don’t, whether it’s
Homeland, the, the Federal attorney, I don’t care which department, but let’s get on them,
because we to make sure they understand this is for real. We’re not messing around
anymore and that’s what they’re going to pull, then we’re going to pull every punch we
can. Thank you, Mr. Chair.

CHAIR MATEO: Thank you, Mr. Victorino. Members, additional comments? Hearing no
additional questions, Members, the Chair recommends the adoption of the proposed
resolution entitled: Authorizing additional compensation of special counsel
Bronster Hoshibata, a law corporation, with respect to legal claims relating to water and
wastewater utility services on Molokai.

VICE-CHAIR HOKAMA: So moved.

COUNCILMEMBER ANDERSON: So moved.

COUNCILMEMBER VICTORINO: Second.

CHAIR MATEO: It’s been moved by Ms. Anderson, second by Mr. Hokama. Additional
comments, Members? Hearing none, the Chair will call for the question. All those in
favor, signify by saying “aye”.

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COUNCILMEMBERS: Aye.

CHAIR MATEO: Those opposed? Motion is carried. Nine “ayes” and no “opposed”.

VOTE:  
AYES:  Councilmembers Anderson, Baisa, Johnson, Medeiros, Molina, Pontanilla, Victorino, Vice-Chair Hokama, and Chair Mateo.

NOES:  None.

ABSTAIN:  None.

ABSENT:  None.

EXC.:  None.

MOTION CARRIED.

ACTION:  Recommending ADOPTION of resolution.

CHAIR MATEO: Thank you, Members. Members, it’s almost five o’clock. If the body would want a brief recess before going into our last item, that the Chair does not have any objections to a five-minute recess prior to going into this next item.

VICE-CHAIR HOKAMA: Five-minute.

COUNCILMEMBER ____: . . .(inaudible). . .

COUNCILMEMBER ____: Five-minute.

CHAIR MATEO: Five-minute recess?

VICE-CHAIR HOKAMA: Yes.

CHAIR MATEO: Fine. The--

COUNCILMEMBER ____: . . .(inaudible). . .

CHAIR MATEO: Pardon?


CHAIR MATEO: Ten minutes? This, this Committee will stand in recess until 5:00 p.m. . . .(gavel). . .

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The Policy Committee meeting for December 2nd, 2008 will reconvene. Members, we’re going to go into our final, into the second to the last item on our agenda for today. It is Policy Item 57.

**ITEM NO. 57: RESOLUTION AUTHORIZING PROCEEDINGS IN EMINENT DOMAIN FOR ACQUISITION OF REAL PROPERTY INTERESTS AT LAHAINA (LAHAINA WATERSHED FLOOD CONTROL PROJECT) (C.C. No. 08-255)**

CHAIR MATEO: 57 is a resolution authorizing proceedings in eminent domain for acquisition of real property interests at Lahaina, Lahaina Watershed Flood Control Project. Members, this Committee is in receipt of County Communication No. 08-255 from the Director of Public Works transmitting the proposed resolution authorizing proceedings in eminent domain for the acquisition of real property interest at Lahaina, Maui, Hawaii, for the Lahaina Watershed Flood Control Project. The purpose of the proposed resolution is to authorize the proceedings of eminent domain to acquire approximately 20.572 acres, 2.311 acres, and 9.919 acres located in Lahaina, Maui, for drainage easement, access easement, and construction easement purposes respectfully. Members, with us this afternoon we have, first of all, from the Department of Corporation Counsel, we have Ed Kushi. Also with us, the Director of the Public Works, Mr. Arakawa. And, Mr. Arakawa, you also have, if you could introduce the two additional gentlemen with you.

MR. ARAKAWA: Sure.

CHAIR MATEO: Cary, as well as…

MR. ARAKAWA: With me I have Cary Yamashita, he’s our Engineering Division Chief at Public Works; and also Walter Havekorst, who’s our Land Agent.

CHAIR MATEO: Okay. Members, all afternoon you’ve heard public testimony, and I’m sure you’ve had the opportunity of reviewing the documentations that had been provided us by the Department. So, at this time, the Chair will ask the Director of the Department to please provide us additional information, comment, and please be as specific as you can.

MR. ARAKAWA: Thank you, Mr. Chair. As you noted, the item pertains to a proposed resolution before you entitled: Authorizing proceedings in eminent domain for the acquisition of real property interest at Lahaina, Maui, Hawaii for the Lahaina Watershed Flood Control Project. The purpose of the proposed resolution is to authorize eminent domain proceedings in the Second Circuit Court, State of Hawaii for the Lahaina Flood Control Project which is intended to provide enhanced flood protection for the residents.
of West Maui. The project is intended to divert flood waters from the West Maui Mountains around portions of Lahainaluna Road, Luakini Street, and the Wainee area of Lahaina town.

By way of background, I have circulated several maps. It’s just been stapled together like this. . .to aid in my presentation to the Committee. Figure 1 of the proposal, of the maps, show the. . .overall the watershed area being served by the proposed project. The Lahaina Watershed is 5,250 acres in area and actually includes three sub-watersheds: the 2,140-acre Lahaina sub-watershed, the 2,780-acre Kauaula sub-watershed, and the 330-acre sub-watershed to the south of Kauaula Stream to Waianokole(?) at the coastline. This project, the Lahaina Flood Control Project has a history which dates back to the 1980s. And at that time, the proposal was to construct berms and ditches from mauka portions of Lahainaluna Road to Kauaula Stream which extends through the Puamana Project. The proposal did not gather support from the Puamana development at that time. Consequently, the Department of Public Works worked on a design with the West Maui Soil and Water Conservation District, and the Natural Resources Conservation Service which kept storm flows through Puamana at less than existing levels while proposing a design for a second outlet to Waianokole(?) which is located on the Olowalu side of Lahaina, approximately halfway between Puamana and Launiupoko.

The second outlet would discharge all the excess storm flows. Also to reduce the amount of sediment flowing to the ocean, a number of sediment and debris basins are proposed. During the. . .EIS process, I would note that this design was endorsed by the Puamana. . .folks, the association. And the design of the proposed project with the second outlet is shown in Figure 2 of your handout.

The Environmental Impact Statement for the project was done in the 2003 and 2004 timeframe and a record of decision has been received for the EIS. In addition, there are a number of permits which needed to be obtained. For example, there has been an SMA, Special Management Area CDUA, construction, I’m sorry, Conservation District Use permit; Corps of Engineers permit; Section 401, Water Quality certification; and Stream Channel Alteration permits. All of these permits have been approved.

The action that is before you today in the proposed condemnation extends from Puamana to Waianokole(?). The properties are owned by Makila Land Company, LLC and Kauaula Land Company, LLC whose key principals are Peter Martin and Jim Riley. The maps are attached in your handout and the legal description of the proposed condemnation have been also transmitted to the, to the Committee. A total of 20.72 acres is proposed for the drainage easements. And these are designated as TMK 4-7-1:portion 26; 4-7-2:portion of 4 and 12; and 4-7-3:portion of 28, 31, 32, and 33. And these are all noted in your, your transmittals. The appraisal for the drainage easements show a fair market value of $2,063,300.
An easement for access purposes is also proposed. This involves 2.311 acres which is appraised at $219,000 \ldots \textit{(end of tape, Side 3B)}. . . the tax map parcels involved are 4-7-1:portion of 26; 4-7-2:portion of 4 and 12; and 4-7-3:portion of 28, 31, and 32.

Finally construction easements total 9.919 acres, and the appraised value of the construction easements is $77,935. The tax map parcels involved are 4-7-1:portion of 26; 4-7-2:portion of 4 and 12; and 4-7-3:portion of 28, 31, and 32. And I would note that the construction easements would expire after construction is completed. So the total amount of estimated just compensation is $2,360,635.

The Department of Public Works first made an offer in September 2005 in fee simple for the subject area for $1.6 million. Based on an updated appraisal, a new offer was made to the landowners in April of 2008 for the, for the easements for drainage access and construction for $2,360,635. In May 2008, the landowners denied the offer to acquire the easements. We have not been able to come to a satisfactory resolution on price and terms and the communications with the landowners have suggested that eminent domain is the only alternative with the proposed alignment. Thus, a request for condemnation has been prepared and is before this Committee. It is noted that the amount of $2,360,635 has been appropriated and is ready to be deposited with the Clerk of the Second Circuit Court upon approval of the Council. A resolution entitled, Authorizing proceedings in eminent domain for the acquisition of real property interest at Lahaina, Maui, Hawaii, for Lahaina Watershed Flood Control Project, has been prepared and is in your binders. And the Committee’s review and consideration of the proposed resolution is respectfully requested.

CHAIR MATEO: . . . Thank you, Mr. Director. Members, the floor is open for questions. We’re going to right down the line again, okay. Let’s go with . . .let’s go with Mr. Hokama.

VICE-CHAIR HOKAMA: Thank you, Chairman. We, we thank the Department for their briefing as well as those that provided testimony this afternoon. A couple of questions, Mr. Director. Is the Committee’s understanding correct in under, regarding the Federal or the Soil and Conservation funds that the County would potentially not be able to utilize if we change our plans is approximately valued at $15 million? Is that a good number or is that totally inaccurate on my part? Mr. Yamashita?

MR. YAMASHITA: Councilmember Hokama, that is true we were looking at estimation of about $14 million. However, we are unaware of the ramifications if we do go to another alternative. But one thing for sure we will have to go through the environmental process all over again and that is very time consuming and funding for, for that scenario is up in the air.

VICE-CHAIR HOKAMA: I, I believe the Committee understands your last comment, Mr. Yamashita. But let’s say we go back as a, for my example, we go back to the Puamana, the plan we had 10, 15 years ago, and we update it and we submit--that, that
would still go through a full environmental process for review, comments, and final decision or approval?

MR. YAMASHITA: Yes, that is correct.

VICE-CHAIR HOKAMA: And that takes approximately, at your best estimate, two years, four years?

MR. YAMASHITA: We're looking more like six to eight years.

COUNCILMEMBER BAISA: . . . Oh . . .

VICE-CHAIR HOKAMA: Okay.

MR. ARAKAWA: Council Member, can I add to that?

VICE-CHAIR HOKAMA: Mr. Director?

MR. ARAKAWA: There's also all these other permits that I mentioned as well that would still need to be reapplied for, and basically we have to go through all those processes as well and that is also why the timeframe is going to be a relatively long one, if we have to basically redo the thing where we would have to go with one outlet.

VICE-CHAIR HOKAMA: Okay. We appreciate that, and I've sat on Council paying out claims and settlements for flooding in West Maui in the past regarding Wainee and adjacent properties, so I, I can appreciate your concern of time and dollars. But we, we've heard some interesting comments, I just want to pursue because even on Lanai the plantation in the, historically on Lanai did a good job regarding our, our drainage. Was it part of the due diligence on the County's part to see if there was something useable within the old agricultural drainage retention system whether it was, could have been a part of this project or, or after review it didn't make sense to be included in part of the project, including potential use of some of the reservoirs that we have heard in public comment earlier?

MR. ARAKAWA: Councilmember Hokama, you heard testimony earlier from Wes Nohara and actually the West Maui Soil and Water Conservation District as well as, you know, Maui Pine have a done a really yeoman's job in doing and implementing and maintaining that interim diversion feature which they have done, you know, at our own expense and has really protected the town of Lahaina. During the EIS process, a number of these alternatives came up as well. I know some of the testimony earlier referred to using the ditch, the existing ditches that the plantation formerly used to use. And during the EIS process, the EIS found that you could divert roughly about 100 to 200 CFS of water in the existing plantation ditches. So it does help but, you know, in terms of the total volume of water--we were talking earlier about, 10,000 CFS that needed to be handled
through these two sub-watersheds. . .so it’s still a sizeable amount of water that needs to be handled in addition to what the plantation ditch system could, could have handled.

VICE-CHAIR HOKAMA: Okay. And currently under the existing system or program we have today, if that 10,000 cubic feet per second did come down Kauaula Stream would it go through the Puamana channel and outlet that way right now or..., what would happen with the 10,000 CFS if it came down today?

MR. ARAKAWA: That number represents the flows, the peak flows that would come down from the Lahaina sub-watershed which basically goes through Lahaina town, and you might recall the flooding that occurred, you know, not, in the recent past, you know. But there really is an insufficient outlet for the waters that, the sheet flow that comes down in the Lahaina sub-watershed. As far as the part, part that goes to Kauaula, the stream narrows near the mouth, and then the part that goes through Puamana is basically a concrete ditch, which I’m not quite sure if you can consider that ditch adequate per se, but it is privately owned.

VICE-CHAIR HOKAMA: That, I, we, yeah, I understand that. What is your Department’s understanding of that current concrete channel that runs through Puamana capacity? It can handle, what, 500 CFS? Is there, does the Department have some sort of understanding or reliable information you could share with the Committee this evening regarding the, the use of that current concrete channel and what it could divert or, or the process?

MR. ARAKAWA: Councilmember Hokama, we don’t have the number that, which is basically the theoretical capacity for the existing concrete ditch through Puamana, but I can tell you that if the flood waters from the Lahaina sub-watershed is diverted there the existing ditch is definitely inadequate.

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VICE-CHAIR HOKAMA: Well, you know, for those of us that have seen and, and, and visited that site we, yeah, we’re well aware . . .(laughter) . . . of its inadequacy. You know, Chairman, I’m going to relinquish the floor, but I just wish to share for the Members, so they can kind of have a sense. If the decision is made, as I understand our numbers, Mr. Chairman, and the County chooses to forego this option and, and postpone and do something else, potentially, the impact on real property tax rates—and, again, to simplify it I just, I’m using the Residential rate, not all of the PITT codes that we have in our, our system. But if you just look at the Residential tax rate, potentially pay for the, I’m thinking if we’re using their number, at least another 20-million-or-so-plus dollars that we may not get from the Federal government, more than likely we’re looking at more than doubling the current property tax rate for Homeowners. From $2, I’m thinking we would have to go to $4.50 to pay for just this component. And I bring that up, Members, because we already know we got to find another potential $10 million to take care of our 30 percent requirement for the improvements that the Iao levee is going to require from the Corps of Engineers redesigning of a $30 million project for Iao. So we’re looking at now, with this and that, minimum 25, 30 million dollars of County funds. I’m happy to
say you folks are going to be dealing with that question. But you’re looking at potentially from a $2 rate for current Homeowners, to potentially at least raising it for those two projects up to $5 for all homeowners in this category under real property tax. So I just share that as something you, we need to consider as part of our due diligence and decision-making. Thank you, Mr. Chairman.

CHAIR MATEO: Thank you, Mr. Hokama. Ms. Anderson?

COUNCILMEMBER ANDERSON: Thank you, Chairman. Director Arakawa, the design that we have in front of us...as I look at it, I only see one place above Wainee Village, and then again between the inlet basin and the first sediment basin, those are the only two places where I see reinforced concrete channel. Am I to assume, then, that the rest of it is all grass-lined channels?

MR. YAMASHITA: Councilmember Anderson, that is correct. The outlet structure is going to be concrete and just mauka of that we have about a 300-foot-section that is also concrete and that section is about 300 feet by 150 feet wide, and it would be located behind an embankment that traverses the, the highway, between the highway and, and the proposed flood control channel. From that point on to Hokiokio Road there will be a grass swale, a grass channel, diversion channel.

COUNCILMEMBER ANDERSON: Hokiokio Road is the terminus of this drainage?

MR. YAMASHITA: Oh, no, no. That is just south of Puamana.

COUNCILMEMBER ANDERSON: Okay.

MR. YAMASHITA: That’s the existing divided highway, roadway system.

COUNCILMEMBER ANDERSON: Okay. So the sediment basin...all the way at the end, the very terminus of this drainage project, that is going to be a grass basin not concrete?

MR. YAMASHITA: That is a concrete basin, about 300 feet by 150 feet wide.

COUNCILMEMBER ANDERSON: ...That is concrete?

MR. YAMASHITA: Yes.

COUNCILMEMBER ANDERSON: ...Okay. So what is the cost of this project? This is a $14 million project...from Puamana down to the end of the project--

MR. YAMASHITA: Okay. Yeah, let me...

COUNCILMEMBER ANDERSON: --that’s something like, what, 3,600 feet?
MR. YAMASHITA: Yes.

COUNCILMEMBER ANDERSON: Linear feet? What’s the cost of that section, do you have any idea?

MR. YAMASHITA: Okay. We do have some concrete figures. As far as Phase I, which is the outlet structure and the...debris basin at the outlet, it’s $4.6 million. That project...

COUNCILMEMBER ANDERSON: Now, that is, is that the part at Puamana?

MR. YAMASHITA: No, that, that’s the outlet, at the terminus.

COUNCILMEMBER ANDERSON: Okay.

MR. YAMASHITA: And that, that section is approximately 700 feet long.

COUNCILMEMBER ANDERSON: Okay--

MR. YAMASHITA: Yeah.

COUNCILMEMBER ANDERSON: --that’s Phase I.

MR. YAMASHITA: That’s Phase I. Phase IIA has also been bid and awarded and that project was bid out for about, approximately $600,000 and that is to install culverts for crossing at Hokiokeio Road. For Phase II, we have the design done, however, we are working with the Federal government to have funds transferred from the highway system to NRCS. There’s a Federal earmark of close to $4 million for Phase II. And Phase II would be the grass swale between the outlet and Hokiokeio Road.

COUNCILMEMBER ANDERSON: So, I’m sorry, I didn’t get all those numbers. So what does that add up to?

MR. YAMASHITA: We’re looking at 12.5 million for the first three phases.

COUNCILMEMBER ANDERSON: And that only takes us up to the Puamana channel?

MR. YAMASHITA: Not even, just past Hokiokeio Road.

COUNCILMEMBER ANDERSON: Just below the Puamana channel?

MR. YAMASHITA: Yeah.

COUNCILMEMBER ANDERSON: So then how much is it, and you only get 14 million, so how much is it going to cost you to go all the way back up to Lahainaluna Road?
MR. YAMASHITA: Um... we haven’t estimated those phases as of yet. However, of that 12.5 million, NRCS funds amount to 3.4 million and the Federal earmark is another 4 million. So we’re looking at $7.4 million Federal funding.

COUNCILMEMBER ANDERSON: And the rest is County funding?

MR. YAMASHITA: County funding and, and... let’s see...

COUNCILMEMBER ANDERSON: Five million from the County?

MR. YAMASHITA: Uh... yes.

COUNCILMEMBER ANDERSON: And then we got to add on another 2.4 million for the acquisition?

MR. YAMASHITA: That is correct.

COUNCILMEMBER ANDERSON: ... (inaudible) ... Okay. So that’s 7.4 million County money, and another 12.5 million, rather, rather, rather... another 7 million in Federal money, so that’s 14.4 million including the acquisition. And that’s only for this ending phase. I would think that you’d start up here where all the flooding is happening. But I’m sure you have your engineering reasons to start at the end of the project and go up--

MR. YAMASHITA: Yeah.

COUNCILMEMBER ANDERSON: But I mean...

MR. YAMASHITA: Let me make a correction to that.

COUNCILMEMBER ANDERSON: Maybe, maybe just ask, let me ask this one question, and then you can say what you need to say in clarifying my question.

... What good is this section, this last section going to do us if you don’t have money yet for the beginning section where the inlet is?

MR. YAMASHITA: There’s no way... no area for that water that comes off of Lahainaluna Road to go. It will still just outlet at an incomplete portion, and it will just sheet flow or, or proceed as it’s...

COUNCILMEMBER ANDERSON: As it does now.

MR. YAMASHITA: ... as it’s going. Yes.

COUNCILMEMBER ANDERSON: So why aren’t you guys starting up at that end where the flood problems are?
MR. YAMASHITA: Normally, we start projects downstream and work our way up, from the outlet, and we work up towards the, the inlet.

COUNCILMEMBER ANDERSON: Well, sometimes you got to do things outside the norm. I mean, you know, I could see the reasoning. . .\textit{maybe} if you already had money for the rest of this project, but how, how do you know you’re going to get, how much more money do you need to finish this project?

MR. YAMASHITA: In my correction, the Federal funds available is 9.5 out of the 12.5, and 3 million in County funds.

COUNCILMEMBER ANDERSON: Okay.

\ldots But \textit{still} how much money are you going to need from the inlet up at Lahainaluna Road to complete it down to the debris basin at Puamana?

MR. ARAKAWA: Councilmember Anderson, you know, the answer to your question really is \ldots it’s unknown at this point in time. But generally we would do drainage projects, major drainage projects like this from the outlet going mauka because if we’re doing it incrementally at least the project can work on an incremental basis as you go, as you finish. And, you’re right, the project will not be fully functional until we complete the whole thing.

COUNCILMEMBER ANDERSON: Yeah, so…

MR. ARAKAWA: But, but basically if you start at the top, we’re still going to end up with flooding problems in Lahaina town because the, the water has no where to go.

COUNCILMEMBER ANDERSON: Well, you got some sediment basins, and you got a diversion, a grass-lined diversion that can, you know, hold some of the water and, and, you know, if it overtops and there’s some sheet flow, it’s not going to be as bad as it is now with nothing. So…

MR. ARAKAWA: Well, we, we would have some issues with that in the sense that it, it would basically provide some retention, but most of the flood water would still go to Lahaina town. It may flood a \textit{different} portion of Lahaina town, but it would be a substantial amount of water that still would be unaccounted for.

COUNCILMEMBER ANDERSON: Well. . .I got a problem with this, the way this, I mean I can appreciate how you normally do things, but I don’t think normally you start a project without an end in sight. I mean do you have any \textit{idea} when you’re going to get the money, and are we looking at ten years before this is completed and functional, or…because, you know, what is this going to protect down here at the end? It’s not going to do any good until you’ve hooked it up to the inlet at the top.
MR. ARAKAWA: Well, obviously, we'd like to complete it as soon as possible because, you are correct, the project will not be fully functional until we do the whole thing. So if we can proceed with this first section, we will be asking the Council for future appropriations as well as working with NRCS to provide the funding for future segments. But obviously, we want get it done as soon as possible. Yeah, you're correct.

COUNCILMEMBER ANDERSON: So when you got original funding before this extension was added on. . .is the, is the 14 million you have right now from Federal money, is that, was that money committed originally before you did the extension?

MR. ARAKAWA: No, the Federal money that we have now was based on the EIS which was done in 2003, which showed the, the proposed project that you have before you with two outlets.

COUNCILMEMBER ANDERSON: Yeah, but there was an EIS before that that didn't show...

MR. ARAKAWA: There was an EA that was done before that --

COUNCILMEMBER ANDERSON: Right.

MR. ARAKAWA: --which showed one outlet.

COUNCILMEMBER ANDERSON: And did you get funding for that at that point?

MR. ARAKAWA: I, I don't believe we got funding for that. And, also, there was some reference to the EA. There is certainly a question about the applicability of an EA that's that old at this point because, you know, if it was done in the early 1990s, obviously the data is quite antiquated already and the findings, I think, are quite subject to question at this point.

COUNCILMEMBER ANDERSON: Well, I'm glad to hear you say that, Director Arakawa, because we've just passed out a huge rezoning application on a 34-year-old EIS.

MR. ARAKAWA: I'm glad we didn't do that though.

UNIDENTIFIED SPEAKER: . . .(laughter) . . .

COUNCILMEMBER ANDERSON: Yeah. But, you know, I, I think that you could probably, you know, I'm not going to argue with you because I know your minds are made up, and you have reasoning behind this that, for whatever reason, you're sticking to it. But, you know, I mean it wouldn't be that hard to do a supplemental EA. It certainly wouldn't take six or eight years. You could probably just revitalize the original EA and have it done in a year, but I want to get on the record that you have every intention of putting
culverts over the, the diversions so that those people who live mauka can continue their access, their historic access to their kuleanas.

MR. ARAKAWA: That has always been our intent and that has been mentioned in the EIS.

COUNCILMEMBER ANDERSON: Okay, great. You know, the other thing I want to bring up is this outlet, this second outlet that you’re beginning with this is coming out at “Guardrails”, which is a surf spot. And, you know, when you have an outlet like that, you got a lot of debris going in the ocean, you attract sharks. . .and that’s not a good thing for a surf spot. So I really wish you could find a way--I mean Puamana folks have agreed now that they are willing to have this go through their channel. Peter Martin guys have said that they would give you $500,000 to help redesign it and bring that channel up to par, and you know this whole thing is designed for 100-year flood. And you just told me during the break that the EIS estimated the 100-year flood, the number . . .10,000 CFCs [sic]. That’s a lot of water and that’s what they estimate--every 100 years you’re going to have a storm that big. And you just told me that the EIS said it’s, it’s happened since the 1800s once every five years. So . . .

. . . you know, I’m really sorry, but I, I think this is a lot of money to spend on something that’s not going to be useful for who knows how long.

. . . And even if you’ll get the money to finish it given the current economic status of the Federal government, and our status, and the State status. And I’d say take this money and use it up front where you know it’s going to do some good. And, you know, if it has to sheet flow. . .if it overtops. . .make your sediment basins a little bigger. And that’s going to be better than nothing at all because if it’s another, you know, five, ten years before you can get the money to build this out it’s still going to be sheet flowing and flooding Wainee. Thank you, Chairman.

CHAIR MATEO: Thank you, Ms. Anderson. Ms. Johnson?

COUNCILMEMBER JOHNSON: Being the area representative you can see . . .(laughter). . . what a, what a problem we have, and I totally appreciate, Mr. Chair, the situation that they’re in because Mr. Nobriga, Mr. Nohara, the community, I can’t tell you how long they have lobbied for this and unfortunately the change that has come down is, you know, now it’s almost like we’re going back to plan A again. So this can continue on, but I’ll just ask some basic questions that at least may help us move things along.

There were some questions that were asked by the members, you know, of the community who came forward, and particularly with Hawaiian issues, you know. I know we’re dealing with that right now up on Ikena Street or at least with the project that’s going on for our State highways. And so, I don’t want to get into another, you know, messy area, but with regard to a title search, you know, on this land because we’re, we’re always getting into this, is there anything, you know, when you go in and do condemnation or eminent domain we always get into this of who has title, and has a title
search been done on this property to make sure that we’re not depriving any native Hawaiian family of their rights?

MR. ARAKAWA: I can tell you, Councilmember Johnson, we, we did do a title report and maybe Corporation Counsel can add to it, but my understanding is that once a title report is done we, we basically drafted up the easement documents, and we’re basically asking for a condemnation for an easement, all these easements. So it’s, it’s not the full bundle of ownership rights, but the easement that, that we’re asking for, and it’s going to be for a public purpose. And if there are any other claims that may come up, they should be settled as part of the condemnation process, and we can let the court decide.

COUNCILMEMBER JOHNSON: Okay. So this isn’t an outright condemnation of the land, it’s just for the easement?

MR. ARAKAWA: Yes.

COUNCILMEMBER JOHNSON: One expensive easement, if you ask me ...(laughter).... The, the problem, I guess, that was also alluded to is with Mokuhunia(?) and Mokuula, this whole thing because of the comments made, and, and it’s been in many meetings past where when you look at diversions of any sort, and you change the, the natural flow of the waters that used to feed Mokuhunia(?) and Mokuula that has been a project that, of course, Army Corps has been involved with also--is there or was there at any time in the Environmental Impact Statement anything that addressed diversion of water in a way that it will make that project no longer feasible?

MR. ARAKAWA: I know this was discussed as part of the EIS. It came up as part of the, the questions, I believe, but basically the sub-watershed, as...as the graphic basically shows, in that Lahaina sub-watershed, you’re talking about sheet flows that come through Lahaina town which happen fairly infrequently, but when it does happen, I mean the flows can be quite, quite significant. Basically ...(end of tape, Side 4A).... discussion as to whether or not Mokuula could be used as...either a basin, or some sort of wetland, or something to that effect, but the EIS basically stated that it’s, like I said, you know, when it does rain it could be very significant amounts of water, but it happens quite infrequently. So for, for Mokuula perhaps the...the more--and this is my opinion--perhaps the more prudent way to revitalize Mokuula is to rely on some of the brackish water or the, the ground water as opposed to runoff from rainwater since it happens so infrequently.

COUNCILMEMBER JOHNSON: And I believe a portion of this, probably when there were flows that were, you know, when everything was in agriculture operation I think that there were also, even just the ground water was, you know, not so saline and there were other conditions that existed at that time that made it, I guess, more wet than it is right now. I mean I can’t even remember the last time, except I think it was when, during one of the floods where that area has actually been wet. But the, the, I guess do you believe
that there is any connection between this project and Mokuula and Mokuhunia(?)? Was that connection ever made? Because we don’t have the EIS here, and...

MR. ARAKAWA: I don’t believe it was really as, as part of the, the watershed EIS. But you, you might also recall that separately we’ve done a Lahaina Town Drainage Master Plan which assumes that this Lahaina Watershed Flood Control project is implemented. And even with this project there is still a significant need to do drainage improvements within Lahaina town. And one of the areas, of course, is near Mokuula. And you well know there is that open ditch on Mokuhunia(?) which we always receive concerns and issues about. But that will have to be dealt with as part of this Lahaina town drainage plan. So probably the better route to deal with Mokuula is when we deal with the, you know, drainage within Lahaina town itself.

COUNCILMEMBER JOHNSON: Uh-huh, going more from the aquatic center area, and that basin?

MR. ARAKAWA: Makai of Honoapiilani Highway.

COUNCILMEMBER JOHNSON: Yeah, with what we commonly refer to as Lake Dengue . . .(laughter). . . you know, so, not recently but, you know. The other thing that I have a question to ask you and, you know, if we move forward with the condemnation of the land or, or at least it’s not the land, but the easement, will, let’s, for example, say that you could move forward in this way that Brennan Morioka’s doing. . .kind of working in one area of the project while you’re seeking an amendment to another part of a project. And that, of course, is, you know, the Lahaina bypass project which has taken, you know, equally as long as this has. If we were to acquire these easements, would that give us any additional rights if we were to go through an amendment process, get the funding? Because I know that they’re talking about funding a lot of infrastructure projects, at least at the Federal level, and would we have any use of that easement irrespective of this particular project?

MR. ARAKAWA: . . . Um, that’s a hard question to answer, but I can tell you that the grass-lined diversion that, the channel that’s proposed between Puamana and Waianokole(?), it’s a fairly substantially wide channel. It’s basically 65 feet across at the bottom, and it basically goes like a trapezoid--

COUNCILMEMBER JOHNSON: UH-huh.

MR. ARAKAWA: --and it goes up like that. So you’re talking about roughly 120 feet across, that’s basically to accommodate the 100-year storm flows. So if we’re planning for that at the get go, it’s very difficult to use that for some other purpose when it’s, you know, other than what it was originally intended for.

COUNCILMEMBER JOHNSON: Okay. Let, let me ask the second part of my question, and then maybe you’ll understand why I asked the first part . . .(laughter). . . If we were
to—and I’m assuming now that the Environmental Impact Statement that you did included the entire route from the top to the bottom, which includes the Puamana connection . . .

MR. ARAKAWA: That’s correct.

COUNCILMEMBER JOHNSON: Is that correct?

MR. ARAKAWA: Yes.

COUNCILMEMBER JOHNSON: Okay. Many times what we’ll do, we have various phases and, you know, sometimes we redescribe phases, so what I’m asking you is if you were to redescribe a phase of an already approved Environmental Impact Statement and you begin, like, with that sediment basin, and you begin at the area above Puamana, and then you incorporate that as part of a redescribed phase, maybe having a connection you know to this, I guess the land that you’re talking about that we have the easement on—what I’m asking you is if we began at that point and later on went through the process that Member Anderson suggested which is doing a supplemental EIS because you’ve already gotten this part approved, would it be so difficult, you know, to then...even if we move forward with this easement, let’s say if you don’t start with the construction of that trapezoidal channel and you move forward just with the phase above Puamana, is that something that is feasible to at least try to move forward on?

MR. ARAKAWA: . . . Basically the EIS . . . looked at the entire project. The EIS, of course, assumed two outlets. If the County proceeds on portions of it but decides to change it, basically we have to start the whole process over again because we are talking about a project that is different from what was approved in the EIS. I mean that’s, that’s basically the bottom line.

COUNCILMEMBER JOHNSON: Yeah, and, and I, I guess, Mr. Chair, that’s where I have a problem when we do these things. We have no plan B. Everything that we do should have a fall back position so that, at the very least, we should have fallen back on the original configuration as was described and said, look, if we have to go with this, because we get into this all the time with costs, I would like from now on to have our departments look at maybe two different fully approved plans to proceed on; one if it’s going to cost X number of dollars and maybe a plan B. Because I think that what we do is we lock ourselves into it’s all or nothing. It’s either this way or no way.

So that’s my problem, I guess, in a nutshell with everything that we do. But I guess, Mr. Arakawa, what you’re saying is that, you know, at this point in time even though the Environmental Impact Statement has been approved for the whole entire project including the Puamana, you’re saying we can’t just begin at the Puamana part?

MR. ARAKAWA: . . . Again, we’re basically, I think almost without exception we’ve started our drainage projects from the outlet because that’s what makes sense.
COUNCILMEMBER JOHNSON: …(laughter)…

MR. ARAKAWA: Now, if you want to start at some other point in between, the whole project basically doesn’t work, you know, unless there’s, you know, a safe outlet for the water. I mean that’s basically how the project is designed. So that’s why we’re starting from the outlet first and working our way mauka.

COUNCILMEMBER JOHNSON: If, if I can mention though that that outlet at Puamana is a planned outlet, maybe not to handle the 100-year flood or whatever it is, but if the Puamana Association, you know, is willing to make some improvements to that drainage area, or we have other parties where it’s a public/private partnership, and they’re willing to improve, I don’t see why if we have the whole thing approved and an Environmental Impact Statement—we do it all the time with our bikeways. We have this phase and that phase and sometimes even when we have six lanes approved for DOT projects, we sometimes only implement two lanes. So I, I mean I’m just asking you, isn’t that something we could at least ask them, and then, you know, just say, well, okay, we’re conserving this other part because right now there’s an outlet already built there at Puamana, and if we had a storm, better it goes into something than have a project that’s not even fully completed? So I mean if that, if you could build that rational, I would certainly appreciate it. Thank you, Mr. Chair.

CHAIR MATEO: Thank you, Mr., Ms. Johnson. Mr. Pontanilla, you had a question to …(inaudible)… earlier?

COUNCILMEMBER PONTANILLA: Yeah, fast one. Do we have anybody from NRCS?

CHAIR MATEO: Yes.

COUNCILMEMBER PONTANILLA: I just want to ask him a fast question in regards to federal funding, use it or lose it.

CHAIR MATEO: Thank you. I’m going to have to apologize, I do not know the representative’s name. If you could please come on down to the podium and introduce yourself and your position as well?

MS. GANSKE-CERIZO: Good evening. It’s been a long afternoon, hasn’t it? My name is Ranae Ganske-Cerizo, and I’m the District Conservationist for the Natural Resources Conservation Service. In regards to the funding for this Phase II, if we don’t use it, we will lose that funding. It has been obligated for Phase II to start at that particular area.

COUNCILMEMBER PONTANILLA: Okay, and, and, and the amount of the funding is, total?

MS. GANSKE-CERIZO: What is the amount? I’m not, I don’t have any…

MS. ALLAN, FROM THE AUDIENCE: Fourteen million.
COUNCILMEMBER PONTANILLA: Fourteen million?

MS. GANSKE-CERIZO: What is it?

MS. ALLAN, FROM THE AUDIENCE: ...(inaudible)... 

MS. GANSKE-CERIZO: 3.5 for that Phase II.

COUNCILMEMBER PONTANILLA: And any more funding for the total project?

MS. GANSKE-CERIZO: The funding, like they say, is 14 million. And when it breaks up in the different phases, I think Milton has it broken out in the Phase I and II, which I don’t really have it.

COUNCILMEMBER PONTANILLA: So the total funding that we probably lose if we don’t do it, is 14 million or 3.5?

MS. GANSKE-CERIZO: We would lose the funding for Phase II --

CHAIR MATEO: Three point...

COUNCILMEMBER PONTANILLA: 3.5?

MS. GANSKE-CERIZO: --and, and Phase I as well.

COUNCILMEMBER PONTANILLA: What is Phase I? How much, 3.3?

   ... Okay. Thank you. Thank you.

MS. GANSKE-CERIZO: Oh, you’re welcome. Thank you.

CHAIR MATEO: Thank you, Mr. Pontanilla.

COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR MATEO: Yeah, go ahead, Mr. Victorino--

COUNCILMEMBER VICTORINO: Before she runs off.

CHAIR MATEO: Ranae, Ranae, can you please stay?

COUNCILMEMBER VICTORINO: Okay. So what you’re basically say, saying to us is these two phases for the total amount that you’ve just...told us, we would lose this if we decided not to move on this project?
MS. GANSKE-CERIZO: Correct.

COUNCILMEMBER VICTORINO: And there’s no alterations, no changes that can be made without losing and starting all over again?

MS. GANSKE-CERIZO: Not, not to my knowledge. Usually when we obligate monies for a project, we identify, we, they do the engineering design, they obligate the particular monies for that particular phase, and that money is obligated from our PL 566 from National headquarters, and that money is put into that particular phase and that is what is obligated. If we don’t use it, we lose it. It goes back to headquarters.

COUNCILMEMBER VICTORINO: And so, we start the process over again?

MS. GANSKE-CERIZO: Um...I don’t know if that...will be a time where we can start the process over again mainly because our watershed monies have now completely zeroed out...from our head, from D.C.

COUNCILMEMBER VICTORINO: So, in other words...

MS. GANSKE-CERIZO: So, in other words, we have this funding now and if we don’t use it, we will lose it.

COUNCILMEMBER VICTORINO: Thank you, Mr. Chair. Seems like a rock and a hard place right now.

CHAIR MATEO: Thank you. And so, can you tell me what the actual drop-dead date is? Is it calendar year or is it, what is, what is the date that the funds got to be committed?

MS. GANSKE-CERIZO: Okay. They’ve already committed for Phase II, okay, and construction can begin...I’m not sure what the date is for construction because this, this actual project has been in a long time running. And we lost watershed monies. So I know that for Phase II, if you can help me out, I know that you guys have some background information.

CHAIR MATEO: Mr. Director?

MR. YAMASHITA: Yes, Phase II has been designed. We’re ready to go out to bid; however, the monies were earmarked under the highways appropriation. And, therefore, the agencies are trying to resolve, or trying to come up with an agreement to transfer it over to USDA, NRCS. But right now it’s under the highways funding as an earmark.

MS. GANSKE-CERIZO: Okay. Yeah, that’s correct.

COUNCILMEMBER PONTANILLA: Question.
CHAIR MATEO: And, and, yeah, so, so, Mr. Yamashita, can you tell me what the timetable would be for the transfer of those funds from highway to, to construction?

MR. YAMASHITA: They’ve been trying for quite a while now to get the monies transferred over to USDA, but they’re supposed to be meeting sometime next week, and they’ll, they’re keeping us informed as far as to when that monies can be accessed.

CHAIR MATEO: Thank you. Ms., Ms. Anderson?

COUNCILMEMBER ANDERSON: Thank you, Chair. Thank you for being here, and I’m sorry, I didn’t catch your name.

MS. GANSKE-CERIZO: Ranae.

COUNCILMEMBER ANDERSON: Ranae. So the total amount from... --

MS. GANSKE-CERIZO: NRCS.

COUNCILMEMBER ANDERSON: --NRCS is 14 million.

MS. GANSKE-CERIZO: Yes.

COUNCILMEMBER ANDERSON: And for Phase II, 3.5 million is set aside of that 14 million.

MS. GANSKE-CERIZO: Correct.

COUNCILMEMBER ANDERSON: And so, what was Phase I?

MS. GANSKE-CERIZO: Phase I...

COUNCILMEMBER ANDERSON: Was the design phase?

MR. YAMASHITA: That’s the outlet structure. And that was funded approximately 3.1 million was in USDA, NRCS funds.

COUNCILMEMBER ANDERSON: . . . So that 3-point million comes out of the 14 million?

MR. YAMASHITA: I believe so.

COUNCILMEMBER ANDERSON: You believe so?

MR. YAMASHITA: Yeah, we just request the funding, and where, it comes from or originates, we don’t --
COUNCILMEMBER ANDERSON: Get that involved?

MR. YAMASHITA: --we don’t know what the, the total amount is and…

COUNCILMEMBER ANDERSON: Okay. So--

MS. GANSKE-CERIZO: But--

COUNCILMEMBER ANDERSON: So Phase I is the outlet--

MS. GANSKE-CERIZO: Phase I…

COUNCILMEMBER ANDERSON: --at the highway. . .

MS. GANSKE-CERIZO: Excuse me--

MR. YAMASHITA: That’s correct.

MS. GANSKE-CERIZO: --Phase I money has not been obligated yet.

COUNCILMEMBER ANDERSON: It has not?

MS. GANSKE-CERIZO: It has not.


MS. GANSKE-CERIZO: . . .(laughter). . . All these numbers are getting me confused.

COUNCILMEMBER ANDERSON: Okay. Phase I is 3.1 million, and it has been obligated; right?

MS. GANSKE-CERIZO: Correct.

COUNCILMEMBER ANDERSON: Okay. But it hasn’t been built yet, right?

MR. YAMASHITA: No.

MS. GANSKE-CERIZO: No.

COUNCILMEMBER ANDERSON: Okay, and then Phase II is the sediment basin…

MR. YAMASHITA: No, Phase II is the grass diversion channel between Phase I and Hokiokio Road.
COUNCILMEMBER ANDERSON: And so, when are you going to do the sediment basin above the culvert?

MR. YAMASHITA: . . . Uh, which culvert? The outlet?

COUNCILMEMBER ANDERSON: Yeah.

MR. YAMASHITA: That, that’s under Phase I.

COUNCILMEMBER ANDERSON: That’s Phase I?

MR. YAMASHITA: Yes.

COUNCILMEMBER ANDERSON: The sediment basin is part of the culvert?

MR. YAMASHITA: The sediment basin and outlet structure.

COUNCILMEMBER ANDERSON: Okay. Now, we’re getting somewhere. Okay. So then the, the diversion is the 3.5 million --

MR. YAMASHITA: That is correct.

COUNCILMEMBER ANDERSON: --to just --

MS. GANSKE-CERIZO: Phase II.

COUNCILMEMBER ANDERSON: --just south of Puamana?

MR. YAMASHITA: Yes.

COUNCILMEMBER ANDERSON: Okay. So there we have 6.7 million, and then some additional monies from the County. I think you said 2.4 million from the County?

. . . In other words, what I’m trying to get at is that the 6.7 million from NRCS is less than half of the 14 million earmarked for the County’s project from NRCS. Is that correct? And so, that we, we would have hopes of using the additional 7 million in the future.

MS. GANSKE-CERIZO: Yes, we would have hopes of utilizing obligated, funds that would be obligated for the project.

COUNCILMEMBER ANDERSON: Okay. So, so there’s 7 million for the rest of this, and you don’t know how you’re going to get, I mean if this little bit, amount, I mean I don’t know the culvert’s probably a bigger expense under the highway. But . . . you know, what I’m trying to get at is how much hope is there to get the additional money to go from
Puamana to the inlet basin so that there’s...we have some idea...you’re asking us to authorize $2.4 million to condemn land to build a drainage facility that is not going to be functional for some time into the future. And we don’t even know if the money’s going to be there and how long do you have to use that 7 million? Here, here we’re on a deadline for this 3.5 million. How long would that additional 7 million be available to the County before that also sunshines [sic]?

MS. GANSKE-CERIZO: That’s a good question. I’m not really sure, and I can get back to you on that in regards to monies that will be obligated to finish the project.

COUNCILMEMBER ANDERSON: Okay. You know, Mr. Chairman, I think we need the big picture here.

COUNCILMEMBER PONTANILLA: Chairman?

COUNCILMEMBER ANDERSON: I’ll yield.

CHAIR MATEO: Thank you, Ms. Anderson.

MS. GANSKE-CERIZO: Again right now our watershed monies in...from headquarters, we have zero. Okay, and I don’t what will happen with the new Administration coming in. They may look at watersheds as being very important and may add more money back. But until we come to that point, that’s when we will all know where we can go with our projects.

CHAIR MATEO: Okay. Thank you. Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: Thank you. Ranae, I’m through with her. Now, we know how important Federal monies are and, and, you know, we’ve had conversation in regards to State highways--use it or lose it, and this is almost similar. Question for the Department, though, in regards to Puamana Channel. You know, like you said, about 20 years ago you folks tried to get some approvals from the property owners and, you know, they weren’t willing to provide us that approval. Did you folks go back in regards to the association to try to get approvals maybe the second time around, if you guys did the second time around?

MR. ARAKAWA: Actually they were, in the late ’80s and early ’90s there were several attempts to come to a resolution, but it was not successful. When we did the redesign to do the two outlets, we went through the EIS process. And the Puamana Association endorsed the two outlet proposal. So it came as somewhat of a surprise to us now that they are willing to do a single outlet through Puamana. And one, one thing I, I would like to bring to the Committee’s attention too is that it’s not just a matter of fixing up the, the existing ditch that goes through the Puamana property. If, if you can imagine that that grass-lined diversion is 65 feet across and another, you know, the other 65...
COUNCILMEMBER PONTANILLA: Yeah, my next question to you was, you know, if you were to make Puamana channel the, the main channel to, to handle most of the CFS in this particular area, what needs to be done at Puamana channel and how much it would cost to do that? And then the overflow, you know, taking a look at the grass-lined diversion area, you know your, between Puamana channel going towards Launiupoko as an overflow diversion, you know, for...you know, if Puamana channel couldn't handle the 100-year CFS, that the diversion go further south as, as you proposed rather than have all of the, the, the sheet flow, the majority of them, go to what is being proposed at this time.

MR. ARAKAWA: Well, the, the channel that actually goes further south, of course, there’s, it’s fairly flat, and it’s fairly wide. So it’s, it’s meant to, you know, hold a significant amount of water, but there is an outlet. Now, if you take away the outlet, obviously, there are limitations on what the capacity of the existing Puamana channel can hold. One of the things that we’d have to do is probably expand the size of the debris basin, which is already substantial--

COUNCILMEMBER PONTANILLA: Uh-huh.

MR. ARAKAWA: --and that was, in fact, one of the concerns of the Puamana folks back in the late '80s and '90s, was that they didn’t want this huge body of water, you know, located mauka of them. So, you know, that concern would still be there.

COUNCILMEMBER PONTANILLA: Yeah, all right. Well, for me, you know, you know $14 million is a lot of money; 3.5 Phase II which you guys want to do at this time is also a lot of money. And, you know, this is one tough decision that all of us are trying to cope with. You know, here, you know, utilize, you know, most engineers they go from point A to point B, straight line. And this is one of the case--the stream is coming down straight line. You know, to divert a stream flow to another direction, you create you know not only shoreline, additional shoreline issues, but, you know, the, the topography of the land, you know, changes also, yeah? Mr. Chairman, I think you have a hard decision to follow, but I would love to see that we utilize Puamana channel as much as possible as the main channel to divert most of these sheet flows that, you know, you expect for 100-year flood. Thank you. Thank you, Chairman.

COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR MATEO: Yeah, thank you, Mr. Pontanilla.

COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR MATEO: Go ahead, Mr. Victorino.

COUNCILMEMBER VICTORINO: Yeah, I, I do have one, one question for you, Stacy [sic]. You know on that $3.5 million that you said that they was in highway funds, and they
still got to talk and to transfer over. What if highway funds says no? What if they don’t transfer it over? What happens then? I mean, you know, that may sound like a foolish question, but worse things have happened, right?

MR. YAMASHITA: From what I know the money has been earmarked and specifically set aside for that flood control Phase II.

COUNCILMEMBER VICTORINO: So the earmark specifically says it goes to this phase?

MR. YAMASHITA: That is correct.

COUNCILMEMBER VICTORINO: It cannot be used for anything else.

MR. YAMASHITA: Yes.

COUNCILMEMBER VICTORINO: Highways cannot say, oh, I like use…

MR. YAMASHITA: It’s just a matter of who actually releases that, that funding--

COUNCILMEMBER VICTORINO: Okay.

MR. YAMASHITA: --whether it’s the Highways administration or whether it’s USDA, NRCS.

COUNCILMEMBER VICTORINO: Okay. I understand earmarks. And just for the public, public’s awareness just so that you, what does an ‘earmark” mean, just so that the public understand what earmark means?

MR. YAMASHITA: Well, it was monies that was appropriated through a congressman. Yeah, probably it was Mr. Inouye.

COUNCILMEMBER VICTORINO: Okay. Okay. Just so people understand what all of this means, and my concern is the transferability. You know, if something was to change it. As long as you have that guarantee that’s been specifically earmarked for that, then I have no problem with that. Thank you. Thank you, Mr. Chair.

CHAIR MATEO: Thank you, Mr. Victorino. Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. I was just wondering for the Department, being that I’m closing in on just two years on this Council, I don’t recall any presentations made within my tenure. Did you do any presentations within the last two years or was it prior to that?

MR. ARAKAWA: I believe it was prior, but…
COUNCILMEMBER MEDEIROS: And I don’t see any blueprint drawings or renditions in our binders to look at. There’s no elevations. There’s no way to know how it looks from the road or from the mountains. Why wouldn’t we have that information?

MR. ARAKAWA: We actually have had a number of appropriations that we have requested in past years, and we have freely discussed that with the Council. And as I mentioned, there was an EIS process that took place in 2003, and we went through a number of permits and hearings on this project. And certainly if, if the Council wants to have additional information on the project, we’d be happy to provide that.

COUNCILMEMBER MEDEIROS: So if I wanted to research background information on this, which isn’t available in our binders, then I would have to go to the Department for that?

MR. ARAKAWA: Yes. In fact, I had requested all the files to go over for this meeting, and I, I got like six different files that I needed to go over for it. So it’s, it’s a very lengthy history that you’re talking about, but certainly, you know, we’d be willing to share . . .(inaudible). . .

COUNCILMEMBER MEDEIROS: Well, we’ve seen projects of 11 binders, so it wouldn’t be, you know, something very different, you know. But it’s hard to, you know, look at this project just from a birds-eye view, which is all that is before us right now. The other thing is can you define for me what is “sub-watershed”?

MR. ARAKAWA: Basically, what the engineers do is they look at all the topography of the land and they determine, you know, if rain falls where is it going to, I mean where is it going to runoff to, I mean what direction. And they calculate all the amounts of rain water. And, basically, as I mentioned they, they looked at this whole, just for purposes of categorization Lahaina Watershed, and they looked at three sub-watershed areas where basically you can segregate the amount of flows and where it will go. So that’s basically what, what it is.

COUNCILMEMBER MEDEIROS: Okay. Thank you. And I think it was discussed a little bit before, but now we’re asking to go through the process of eminent domain, condemnation of private property for easements. So if that was an option, well, if that’s an option now, why wasn’t that an option when considering Puamana outlet?

MR. ARAKAWA: . . . We, we really couldn’t get the approval from the Puamana Association, and, and as I mentioned one of, it’s, it’s not going to look like the existing ditch, it’s going to be a lot wider. There’s no access roads. We’re going to have to put in an access road on the Puamana property. So the Puamana development will look significantly different from what it looks like. . .(end of tape, Side 4B). . . sediment and taking people, taking drainage water from other people’s sub-watershed and directing it to their, the property in front of their, their condos. So that’s why the redesign was done with an eye towards retaining as much of the sediment as possible.
COUNCILMEMBER MEDEIROS: Okay, because, you know, on the, on the channels because it, again, because there's no elevations, I have no real accurate way of looking at this. But because we're going laterally across the slopes of the land, what is the average velocity for these channels? Because, you know, Kahoma is one of the fastest velocities in the State as far as a flood control system. So what is this compared to, because I know a lot of it is on level as, as it approaches close to Honoapiilani Highway that it's more level there, but coming across from Lahainaluna Road down to Kauaula Stream, that must develop some pretty good velocity.

MR. YAMASHITA: That is correct. But we haven't conducted any studies up towards the inlet portion, segment of, of this project. But the portion that has already been analyzed, there are very low flows because it is relatively flat and because you have that grass surface, and it's not a concrete surface. So it'll be a slow-moving water flow.

COUNCILMEMBER MEDEIROS: I see. Okay, and it was described that one of your sediment basins is like 700 feet long. Is that correct? Did I hear right?

MR. YAMASHITA: No, the initial basin that's going to be constructed with Phase I…

COUNCILMEMBER MEDEIROS: Which is the basin at Kauaula or that basin at the outlet?

MR. YAMASHITA: At the outlet.

COUNCILMEMBER MEDEIROS: At the outlet?

MR. YAMASHITA: Yeah.

COUNCILMEMBER MEDEIROS: Okay. That's another problem with these drawings, it doesn't --

MR. YAMASHITA: Yes?

COUNCILMEMBER MEDEIROS: --define Phase I and Phase II on the drawings.

MR. YAMASHITA: Right. Exactly.

COUNCILMEMBER MEDEIROS: So we're always lost when you guys say Phase I, Phase II.

MR. YAMASHITA: And we have construction plans already done for Phase I, Phase II, and Phase IIA.

COUNCILMEMBER MEDEIROS: Okay.

MR. YAMASHITA: And you, you…
COUNCILMEMBER MEDEIROS: So which basin is the larger of the two?

MR. YAMASHITA: Okay. Right now the only basin that’s designed is for Phase I.

COUNCILMEMBER MEDEIROS: Which is?

MR. YAMASHITA: Which is at the outlet end.

COUNCILMEMBER MEDEIROS: Okay.

MR. YAMASHITA: And it’s approximately 300 feet long by 150 feet wide. And you’ll see only about 10, 10 to 15 percent of it from the roadway because most of the basin is located behind an embankment that separates the roadway and the flood control channel.

COUNCILMEMBER MEDEIROS: So what is the depth of the basin?

MR. YAMASHITA: Approximate, I think it was about 14 feet deep.

COUNCILMEMBER MEDEIROS: Okay. Okay. So and, and so the capacity of that sediment basin, if it fills up with sediment, is what?

MR. YAMASHITA: I’m not sure.

COUNCILMEMBER MEDEIROS: And the reason I ask that is the Kahoma Stream debris basin, when we completed that project and the storm came down in the late ’80s, early ’90s, that basin filled up, and we hauled away and contracted hauling away over 50,000 cubic yards of material. Now, this basin here would be able to store how much materials as sediment?

MR. YAMASHITA: I don’t know the quantities offhand.

COUNCILMEMBER MEDEIROS: Okay. And the reason I, I ask that also is because Kahoma Stream, the debris eventually reaches the ocean and it forces the State to dredge that harbor at Mala Wharf, what is going to be the accumulation of the debris as it discharges from the outlet? And where is it going, and how is it going to accumulate on the reefs and so forth?

MR. YAMASHITA: This system, when totally constructed and installed, will take away most of the sedimentation that comes down from those watersheds that, that it’s serving. And, and I believe that due to the flatness of that grass diversion segment between the outlet and. . .I would say up to Kauaula is relatively flat, so that whole section would act as a debris catchment.

COUNCILMEMBER MEDEIROS: Right. And, and when you have debris catchment or a debris basin, periodically you got to go and excavate that materials.
MR. YAMASHITA: Definitely.

COUNCILMEMBER MEDEIROS: So the equipment—and, and I ask this question because when they built Kahoma Stream our debris basin had no access to it.

MR. YAMASHITA: That is correct.

COUNCILMEMBER MEDEIROS: We had to go and build the access ourselves to get the equipment into there —

MR. YAMASHITA: Yes.

COUNCILMEMBER MEDEIROS: --to excavate all the materials. So is this plan, because I haven’t seen a plan also, is there access for maintenance into the channels and the debris basins?

MR. YAMASHITA: That is correct. We have access roads on both sides of the channel.

COUNCILMEMBER MEDEIROS: Okay. Not so much on the sides of the channel, into the basin —

MR. YAMASHITA: Yes.

COUNCILMEMBER MEDEIROS: --and into the channels.

MR. YAMASHITA: Yes.

COUNCILMEMBER MEDEIROS: There is? Okay. Now, I understand that Corps of Engineers had to review and approve the plans for this project?

MR. YAMASHITA: That is correct.

COUNCILMEMBER MEDEIROS: Okay, and, and I, I spoke to the Director on this, and he said he would look into the, my inquiry—is that Kahoma Stream designed into the floor of the stream, imbedded into the stream were chevrons and footprints to allow water to accumulate after the flow so fishes like oopu could go from the ocean and work their way up the stream. Is that also a part of this plan? For, for instance, Kauaula, you guys put in a debris basin right over Kauaula stream—is that correct, according to this drawing?

MR. YAMASHITA: That is correct.

COUNCILMEMBER MEDEIROS: So if oopus had an opportunity to go upstream from the ocean, can they get by the debris basin and continue their way upstream?
MR. ARAKAWA: Councilmember Medeiros, I did look through the EIS to see if, you know, that concern was raised during that whole process, and I could find very little mention of it. I think the, the problem here is that when you’re talking about the existing Puamana channel, it’s basically a concrete, it’s like, it’s an existing channel that we’re talking about and since we’re doing the, the two outlet alternative, I guess that, you know, that didn’t provide a very good habitat for stream life, you know, at the current, at the current location.

COUNCILMEMBER MEDEIROS: Well, that’s also true of Kahoma Stream, but that was a requirement by Corps of Engineers to design that into that project. Kahoma Stream doesn’t flow all the time, but it was a requirement that they provide similar to Iao Stream channel. There’s a way for the oopu to climb up that steep wall by Happy Valley, and then continue upstream. So I just wondering, you know, because I haven’t seen plans, and I, I’m not sure what the public hearings were all about, I just was wondering if that’s all been, you know, incorporated in the planning.

MR. ARAKAWA: No, not to my knowledge. There was no mention in the EIS or in the plans about that. And I would mention the big difference between, like, Iao and Kahoma, of course, is that there you’re talking about concrete channels. Here, we’re talking about primarily, you know, grass-lined channels.

COUNCILMEMBER MEDEIROS: Well, not, not when you look at Kauaula Stream. Kauaula only has concrete up to the highway. After that, it’s a natural stream bed. So they still do have the opportunity to go upstream. But, you know, I’m sure, you know, you gave me all the information you have. So this is an NRCS project just by funding or by design?

MR. ARAKAWA: We’ve worked closely with NRCS on the design as well as the funding, and of course, hopefully the construction.

COUNCILMEMBER MEDEIROS: Okay. Are they similar to Corps of Engineers where they have mandates on the maintenance operation of, of the project?

MR. ARAKAWA: I believe so. Anytime you take Federal funding, there’s going to be strings attached on the maintenance.

COUNCILMEMBER MEDEIROS: Right.

. . . So in the EIS. . .there was no concern raised about sediment eventually getting discharged at the outlet into the ocean as far as accumulation on the reefs?

MR. ARAKAWA: No, there, there was, that was the main concern in the EIS.

COUNCILMEMBER MEDEIROS: And how was that addressed or mitigated?
MR. ARAKAWA: As I mentioned, in the design there are a number of sediment basins throughout the project which were incorporated as part of the design. So sediment actually is being reduced by about roughly 25 percent. And actually the Puamana folks were quite concerned about sediment in front of their property. And the flows through Puamana were actually reduced as well to take care of, you know, their concerns.

COUNCILMEMBER MEDEIROS: Okay. Thank you, Director. Just maybe finally, you know, because we talked about Kauaula Stream and the water coming down there, at the outlet channel by Puamana probably would not be adequate to discharge all the water that’s accumulated from this project from Lahainaluna Road over, but I must say, you know, when I, I was in the Lahaina District working for the County, we had a very large storm that that stream channel held and along with the discharge channel. And that was the same time where the family got washed down the stream, and the car crossing the stream, and we went to look for them. But, you know, I didn’t remember any overflow of that channel or the natural stream channel. So, you know, I know by design and by engineering numbers it probably shows it has to be larger, and I probably agree with that. But the, the other part about you know, Mokuula and the Mokuhunia(?) fish pond that, that, that ditch you talked about, that drainage ditch, that ditch fills up mostly from water percolating from the ground up. It’s not from water that is from runoff, normally, because that ditch is always filled with water and it’s from percolation. And the Kauaula, not Kauaula, but the Mokuula and the Mokuhunia(?) fish pond, the water that filled that area was mostly from the ocean and from percolation, from ground water and ocean water coming up. But that area was filled in, so there’s no opportunity for the water to fill around what used to be the island there. And but, you know, again, a lot of the water comes down from mauka through that Wainee, Luakini Street area and goes down to that wetland. So part of that problem with that flooding there is some of our former planners allowed for houses and businesses to be built in flood zones. And that’s what we’re facing now. But, thank you, Director. Mahalo, Mr. Chairman.

CHAIR MATEO: Thank you, Mr. Medeiros. Mr. Molina?

COUNCILMEMBER MOLINA: Yeah, thank you, Chairman. Mr. Director, just for the record, you mentioned earlier that the present design was endorsed by the Puamana, was that Association, and can you tell us roughly how long ago this endorsement was made by this Association for this present design?

MR. ARAKAWA: During, this was during the 2003 EIS process.

COUNCILMEMBER MOLINA: Okay, 2003. And was this a, and this was a public meeting, right, for everybody? Or was this just a meeting with the County and Mr. Nohara’s group?

MR. ARAKAWA: No, as part of the EIS process, there is a public comment period.

COUNCILMEMBER MOLINA: So everyone had an opportunity to comment?
MR. ARAKAWA: Yes, and they did provide testimony, written testimony which endorsed the two-outlet design.

COUNCILMEMBER MOLINA: Okay, and then the issue of, earlier we heard testimony about the issue of access for some of the residents from the Valley. Will this design have an impact on access for, for these residents?

MR. ARAKAWA: As we mentioned through the EIS process, it was always our intent to work with the residents in providing adequate access.

COUNCILMEMBER MOLINA: And so, have you had meetings with the residents?

MR. ARAKAWA: I have not been part of it, but like I said, you know, it’s our intent to work with them and make sure that the concerns of access are, are adequately resolved.

COUNCILMEMBER MOLINA: And this, and this is the first time you’ve heard their concerns about this?

MR. ARAKAWA: No. No. No, it was part of the EIS process--


MR. ARAKAWA: --but I, I personally have not met with them.

COUNCILMEMBER MOLINA: Okay. But did anyone from the, no one from the Department has thus far come up with any type of solution or remedy?

MR. ARAKAWA: I know our consultants have worked with them during the EIS process, this was some years ago. But like I said, you know, the designs for the future sections, as you’re going mauka of Kauaula Stream, you know, those hasn’t, that, those designs haven’t been finalized yet.

COUNCILMEMBER MOLINA: Uh-huh. Okay.

MR. ARAKAWA: So, you know, we can work, we can work out the details and, you know, we’re certainly willing to do that.

COUNCILMEMBER MOLINA: Okay. And the environmental assessment that was done in 2003, no significant findings or comments were, were mentioned? Or were they? Were there any?

MR. ARAKAWA: No, the EIS, there were a number of concerns. The primary concerns had to do with sediment, as I mentioned, in the ocean--how it would affect, you know, the ocean, the water quality as well as fishes and, you know, the aquatic life within the ocean.
as well. There were also concerns about archaeology. There were, in any major project you’re going to find a number of these concerns. It was a very thorough process. We answered all of the concerns and a record, a record of decision was entered for the EIS.

COUNCILMEMBER MOLINA: So you provided mitigation --

MR. ARAKAWA: Yes.

COUNCILMEMBER MOLINA: --responses to those concerns?

MR. ARAKAWA: Yes.

COUNCILMEMBER MOLINA: Okay, and I don’t know, Mr. Chairman, we haven’t had any representatives from the Puamana Association here, yeah, and I find that surprising that they’re not here. Mr. Director, can you tell us, so now with this sudden change of heart, which has been expressed to us by the, I guess I would assume the Puamana Association, who has been primarily responsible for, I guess, going to these residents or to these Association members to convince them now to have the design change? Can you tell us for the record? Obviously, it’s not you or the Department.

MR. ARAKAWA: Councilmember Molina, I, I believe...

COUNCILMEMBER MOLINA: . . . Was that Mr. Martin?

MR. ARAKAWA: No, I thought the representative from Puamana might have been here, but I guess he’s not in the audience. So, I, I...

COUNCILMEMBER MOLINA: Okay. I, I just want it known for the record, so, because we are so far into this process now, and I just want to make sure that, I don’t know, it would seem, at least appearance-wise, that it’s something that’s coming to us at the eleventh hour now, and I’m, I’m concerned about the credibility of our, our Department here. Say, if we were now to change the design how that will affect our Department, you know, seeking Federal funding in the future, you know, it’s sort of like, well, you asked us once before, and we gave it to you, and you turned it down, and now you come by years later, you want more money for a different design—you know, what kind of response we’re going to get from the Feds on that? But, Mr. Chairman, I know we heard from Mr. Nohara that there were several public hearings, I don’t know unless maybe Director Arakawa can comment, how many public hearings in the West Maui area was held on this? Because it would seem that from, you know, I’ve heard from some testimony today that maybe there weren’t enough hearings. I don’t know, you know, so can you help clarify that for me?

MR. ARAKAWA: Offhand I, I really cannot answer that question. I know that there haven’t been hearings like within the last year or so because obviously we were kind of in the implementation stage. But there were, you know, a number of opportunities for comment
through the EIS process, as well as the subsequent permits that needed to be obtained. So I, you know, I don’t know exactly how many meetings were, were held in the West Maui area, but there were a number of hearings that were held. I, I can, I can tell you that.

COUNCILMEMBER MOLINA: And typically with an EIS hearing that’s advertised in the paper. I mean, or is it one of those type of advertisements you find in the back of the classifieds? Because you know a lot of people sometimes don’t look back there, whereas if you have, like, an association that will, you know, announce a meeting, a community meeting or the County you find it in the A section of the paper. So I’m, I’m just concerned that maybe there wasn’t, there wasn’t enough advertising about this thing and maybe some people were, have the feeling of being left out of the process to express their opinions.

MR. ARAKAWA: Councilmember, offhand I, I, you know, I don’t know, well, I don’t have the file in front of me, obviously, but I don’t know if the EIS process itself held a public hearing, although public opportunity for comment is, is mandated. There’s a public comment period which is mandated by law. So we, we, we did that, but I’m not sure if a hearing was held specifically on the EIS. But hearings, I know, were held for the SMA. And it was well attended and people were notified through the SMA process.

COUNCILMEMBER MOLINA: Okay. Well, thank you. Mr. Chairman, you know, this is quite frustrating, you know. I mean there’s been good arguments on both sides, but for me it’s just what do we do here. But unfortunately it would just seem, this seems to me at somewhat of the, the late hour here, now people change their minds. And if we keep changing our mind, what’s going to happen? Then we get the next big rainstorm and what happens? You know we’re going to get slammed either way because what’s happened here, we’ve been put in a tremendously difficult position now, and I don’t know whether it’s through our own fault or, you know, the Department, or the conservation group, or the Puamana Association. You know, I’m just expressing my frustrations about this, Mr. Chairman. Thank you.

CHAIR MATEO: Thank you, Mr. Molina. Mr. Pontanilla, would you want to continue since you had a very short period of time to ask questions?

COUNCILMEMBER PONTANILLA: No, Chairman, I just was looking at the...Director, correct me if I’m wrong, as far as the County’s responsibility, we already had provided some funding through General Obligation Bond--am I right?

MR. ARAKAWA: That’s correct.

COUNCILMEMBER PONTANILLA: Seven, $7.3 million. And then when you look at 3.5, 3.1, you know, it comes, it equates to 6-point, no, 3.2, 6.7. Then, yeah, 7.3 is our own money. So thank you, Chairman.

CHAIR MATEO: Thank you, Mr. Pontanilla. Members...Ms. Johnson, go ahead.
COUNCILMEMBER JOHNSON: I just had a couple more questions. One of the testifiers raised an issue about some of the area and, of course, you know, I’m more familiar with this area, but because the Wainee Village project is basically waiting for this to be constructed any of the areas that are, I guess, adjacent to this project. Have you looked at any changes that have taken place since the original EIS came forward? Because on the agricultural land that a portion of this will be traversing, there have been some modifications, and with changes in the terrain is that actually going to be addressed? Because I mean I look at it, like, when you do a land use or grading, you’re not supposed to shunt water onto your neighbor’s property. Well, if there are, and I guess the statement was there was illegal intrusions coming into the Kauaula Stream at the present time—so I want to find out, you know, if there’s an impact that’s actually creating additional volume or additional potential hazard with regard to this project. And has that been taken into consideration, and what is the mitigation that the people causing these intrusions, or is there any action that the County can take?

MR. ARAKAWA: Councilmember Johnson, if there are any significant changes to the land above, whether it’s graded or waters were diverted or what have you, they would need possibly a grading permit, maybe a drainage report. . .and basically be reviewed by our agency. If that has not been done, then we can certainly look into any kind of possible violations that may have occurred and take it from there. But basically if, if it has, if alterations of land were done in accordance with approved County ordinances, then this layout should be fine. Now but again, you know like if you have specific allegations of illegal grading that may have occurred, we’ll certainly look into that and see if there are possible violations.

COUNCILMEMBER JOHNSON: Yeah, and, and that I, you know, I just want to get on the record that there is some recourse so that if these are reported, they shouldn’t be creating an impact that now the general public has to face in terms of I guess accommodating or looking at additional problems. And, you know, one of the things that, I guess because this has taken so long I just want to let Members know, who may, you know, not be familiar with this, ever since I got, even before I got on the Council, Mr. Nobriga and I have toured all these debris basins and all of the stuff. This has not been something that has been on the backburner, and particularly when we had the flooding in Lahaina. This was looked at as the solution. So we have had many public meetings and much public discussion. It still doesn’t mean that I like this project. It still doesn’t mean that I like the design of it. I think basically, you know, this, this, the original one where it was going to come out at Puamana, the majority of the community supported that, but we didn’t get the cooperation. And the Environmental Impact Statement, basically because there’s mitigation, we didn’t get the support. I don’t like this coming out where it is because it is as, Member Anderson noted, it’s a really popular surf spot. And I just don’t know what is going to happen in the meantime, but I can tell you that Mr. Nobriga even, you know, people that have served in the past. . .and Wes Nohara, Amfac, you know, previously, they have been really working, you know, hand-in-hand to try to prevent a lot of Lahaina flooding problems. I basically don’t like the project. I didn’t like it when it was moving
forward, but I’m going to do what my community wants, and basically we’re so far down this road that, at this point in time, it’s kind of like trying to turn a, a cruise ship that’s headed full speed ahead, you know, for a shorebreak. It’s not going to be easy, but, you know, I, I just, whatever happens, happens and I totally respect the people. And particularly it’s very troublesome because I really love and respect the Hawaiian community who lives in this area, in Kauaula. But we’re caught between a rock and a hard place and I just feel, at this point, so much time, so much money, and so many comments have been invested in this process that to change, you know, the whole thing at this juncture is not going to be pretty, and I think that the community at-large is expecting something to be done. So, I, you know, any time you make your recommendation, Mr. Chair.

CHAIR MATEO: Thank you, Ms. Johnson. Ms. Anderson?

COUNCILMEMBER ANDERSON: Yeah, I just want to weigh in one more time. You know, I, I’ve been around a long time too, and I remember when the first EIS was done on this. And, and I think I made comments for Nishiki on this. And, you know, I don’t think it’s ever too late when you’re making a lifetime change to the way things are done. And I don’t think we have a mid-December deadline. We still haven’t gotten the transfer of funds from State Transportation that they need. The ladies from NRCS said the money’s not going to disappear if this doesn’t happen until January. Yeah, they’ve gone out to bid already, they’ve got all their permits and what not, but I don’t think it’s a big deal to change the phasing on this. You know, Phase I, make Phase I from the Puamana basin towards Lahainaluna. Get that part done first, because that’s the part that’s really going to be of use. That’s the part that’s going to relieve the flooding. The part from Puamana towards Launiupoko, that’s just an extension to take the overflow from Puamana. I say put your money where it’s most needed and, and, you know, I mean if it’s once every five years that we’re going to get 100-year storm of that magnitude, then, you know, you got five years. The Puamana folks are a different breed now. We all heard their attorney, off the record, that they’re in support of this channel being upgraded to take the overflow. I like the idea of bringing a stream back into its natural state and not take it down to the highway, and then turn it down to a whole new outlet and destroying a very popular surf spot that is very easily accessible to people because it’s just outside Lahaina.

I’d like to see some alternatives. I’d like to see the EIS. I’m sure, you know, when you do an EIS you have to show alternatives. And so maybe what I just described is an alternative, from Puamana to the inlet. And, and, and, and see how it works, and then do the extension when we need to get more money. That’s just my take on it, Mr. Chairman. I think we should be spending the money where it’s going to do the most good, and we don’t have any long-range plan in front of us that says, you know, if we condemn this land and build this section, in the next five years we’ll be able to build the rest. The whole idea is to relieve Wainee from flooding, and I don’t see that as being an immediate solution here to that problem. So, I’m sorry, because I know the Department’s done a lot of work on this, but I think we need a more complete picture and a better idea on the funding and the phasing, and I’d like to see some elevations too on how this is going to
look. It, you know, it’s not like it hasn’t been a problem for a long time. Another month isn’t going to change it where we can have more information. Thank you.

CHAIR MATEO: Thank you, Ms. Anderson. Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: Thank you. I, I don’t know if anybody asked this question, but 

coming down from Lahainaluna Road, the cost from the inlet basin to the second sediment basin; and what would be the cost from the second sediment basin to the. . .to Kauaula Stream, if the Department has that breakdown?

MR. ARAKAWA: No, we, we don’t have that breakdown at this point.

COUNCILMEMBER PONTANILLA: . . .Okay and you know, like I pointed out you, you got $7.3 million in General Obligation Bond. Is that 7.3 million includes the completion from the bottom portion?

MR. ARAKAWA: If your question is whether there was a proviso, whether it’s limited to that makai portion of the project, the answer is no. But as I mentioned from our standpoint, we always start drainage projects from . . .(inaudible). . .

COUNCILMEMBER PONTANILLA: No, I understand, yeah.

MR. ARAKAWA: So, I mean, we, we cannot responsibly just start it on the mauka side in increments without knowing what the impacts are going to be on the downstream properties. I mean that’s basically the bottom line. And if there was a way in which it could be done and not affect downstream properties, that perhaps could be a consideration. But I cannot make that assurance. If we proceed with mauka portions in increments, then it may not be the Wainee Street folks that may be impacted, it may be other folks that may be impacted. And I, I really cannot give you any assurance without a full drainage analysis.

COUNCILMEMBER PONTANILLA: Yeah, it would have been good to know that, you know, how much it would cost from the inlet basin to given areas as you come down towards the stream. You know, if it’s going to cost us. . .I’m looking at Phase I, Phase II 6.7, at least $6.7 million, you know, how much it would cost if you go by increments towards the inlet basin. Since you don’t have that cost, I just was wondering how we’re going to expend the $7.3 million in General Obligation Bonds?

MR. ARAKAWA: . . .I, I think we kind of went over the phasing before and basically that’s our proposal—is to start from the makai portions.

COUNCILMEMBER PONTANILLA: If I can get that information that would be good.

MR. ARAKAWA: Sure, I can provide that.
COUNCILMEMBER PONTANILLA: Thank you. Thank you, Chairman.

CHAIR MATEO: Mr. Hokama?

VICE-CHAIR HOKAMA: Chairman, I, I just, obviously, the Members are having a difficult time, and we’ve heard some very good community comment today about concerns, specifically more about the Kauaula Stream area. And, and for me, you know, I, I take their testimony, their thoughts, their opinions very seriously. But I also remember dealing with all the claims from Wainee, and for those that may have sat with me in 1999, 2000, 2001 when we had to deal with claims and settlements of that bad flooding, and we put out a lot of the people’s money to settle those claims. So there’s definitely another component of residents that live mauka and makai of Honoapiilani Highway, you know, the, the housing program that is across of the old Pioneer Mill area. We know what happened at Wainee, Prison Street, Shaw Street area. So I, I would share this evening, well, this night with the Members, I think one of the things, the decisions that I think we will need to make is if you don’t want to move this forward, then at least be aware that the County may have to foot the bill itself in the future. And if we are willing to pay the 100 percent that it will take to build a project to take care of the flooding, the potential public safety issues that this is trying to mitigate, then so be it. We will need to make that financial decision. And, again, knowing that we may have to pay for it, that we need to be aware that we may have to sacrifice other County CIP projects to fund this project. And it is part of the parameters of what we can afford in the current economic climate, Mr. Chair. So I think that’s the big question this evening--is if you don’t want to go forward with the proposal as presented, and you’re willing to forego Federal funds or NRCS monies, then at least know that we may have to fund the whole bill ourselves and that our taxpayers will pay the bill. . .Countywide, unless you folks are willing to look at, maybe, specific districting abatement taxes where, maybe for Puamana we’ll give them another special assessment to redesign the project and make them pay maybe a little larger share of the project. Because currently, as I understand it, they’re responsible for maintaining the current concrete channel that runs through their property. Okay? So by doing this we relieve them of that responsibility. So there’s value there, Mr. Chair. And, you know, if they had their representative, maybe we could have asked is, are your clients willing to pay for that difference. . .and maybe address it from that component. But I think that’s the main question this evening for me, Mr. Chairman, is--are we willing to let our people pay the whole bill and assess them the appropriate taxes? And for me, you know . . .(laughter) . . . it’s a hard decision. If you want to defer, I can support you folks to refer to the next Council. But except for Ms. Anderson and I, next month you will still have to make the decision. The decision will not go away. The decision will need to be made--it’s just whether you want to do it . . .(laughter) . . . tonight or you want to do it later, and you want the Federal money, or you want to pay the whole bill yourself. I think that is the two questions that the Committee needs to confront and come to terms with. Thank you, Mr. Chair.

CHAIR MATEO: Thank you, Mr. Hokama. Mr. Medeiros?
COUNCILMEMBER MEDEIROS: Just to clarify some questions I still have. Mahalo, Mr. Chairman. Department, the inlet basin down to Kauaula Stream, all that properties and easements have already been secured? Because we're only talking about the other portion of this system.

MR. HAVEKORST: Yes, I’ve already had a meeting with Kaanapali Land Management, and their discussions were in support of those land easements once they knew the whole scope of the project. So there’s a domino effect from, from the big, the outlet phase to this next phase.

COUNCILMEMBER MEDEIROS: No. No, I’m talking about the inlet basin to Kauaula Stream.

MR. HAVEKORST: Yes, that’s Kaanapali Land Management, Pioneer Mill.

COUNCILMEMBER MEDEIROS: Okay. You said the outlet. I’m not talking about that side.

MR. HAVEKORST: I'm sorry, it's all, once the outlet is designed and we have secured that property, then they said they know where to go next.

COUNCILMEMBER MEDEIROS: I see.

MR. HAVEKORST: So, yes, their, because they have, their development plan also requires the County to approve more things.

COUNCILMEMBER MEDEIROS: Right.

MR. HAVEKORST: So this is part of their plan.

COUNCILMEMBER MEDEIROS: Okay.

MR. HAVEKORST: It's already on their plans.

COUNCILMEMBER MEDEIROS: Some of the property from the inlet basin to Kauaula Stream, wasn’t that Kamehameha Schools properties?

MR. HAVEKORST: I'm not sure of the answer to that question.

COUNCILMEMBER MEDEIROS: But you’re saying you secured all the easements.

MR. HAVEKORST: We secured with, with the Kaanapali Land Management Company.

COUNCILMEMBER MEDEIROS: Which is the entire portion of the project from the inlet basin to Kauaula Stream—is that what you’re saying?
MR. HAVEKORST: Yeah, that’s what I’m saying, but I’m not sure of the history of the property.

COUNCILMEMBER MEDEIROS: . . . Okay. You know, that, throughout this area where this project is going, especially from Lahainaluna Road to Kauaula Stream, there are temporary mitigating measures that have been put in place and, you know, appreciatively, you know, Buddy Nobriga and Wes Nohara played an important part on those diversions to take it away from above Wainee Street and Luakini Street. And I know from, you know, touring those projects with Buddy Nobriga and Wes Nohara, that they were working fairly well at that time. I’m not sure about the current status. And, and how, Director, how does the water enter the system between inlet basin and Kauaula Stream other than through the inlet basin? Can, can it enter along the way?

MR. ARAKAWA: Oh, absolutely.

COUNCILMEMBER MEDEIROS: Okay.

MR. ARAKAWA: Absolutely.

COUNCILMEMBER MEDEIROS: Okay. So there’s inlet areas that--

MR. ARAKAWA: Well--

COUNCILMEMBER MEDEIROS: --the water flowing down these slopes will go into that?

MR. ARAKAWA: Yes, because a great portion of it is basically grass-lined channels. So it certainly have sheet flow running into the channel.

COUNCILMEMBER MEDEIROS: Okay. Thank you for that clarification.

. . . I . . . (laughter) . . . I’m probably in the minority on this, but, you know, I, I hear the concerns and the voices of the people that, the Kanaka Maoli that live in Kauaula Valley and in surrounding ahupuaas. And too many times we don’t hear their voices loud enough. And so, for me, you know, I can support the segment of the project as Member Anderson has indicated—which would do the best good for the flooding above, I mean in Lahaina from the inlet basin to Kauaula. But I have a hard time supporting from Kauaula to the second outlet. And, and, and, you know, it’s been voiced pretty extensively and in a very, you know, humble way that the people that live mauka of this area have seen enough of their properties, you know, changed, and not to the better for them, but for others. So, you know, my feelings on this is, yes, we do need that flooding because I have seen it firsthand. I have walked into homes on Wainee Street where the water inside the house was up to the windows. And yet, again, I mention that our planners before us allowed homes in flood zones, and that’s the same thing as planners that allow homes on slopes in California that end up down at the bottom of the hill. So I
think, you know, we all have a responsibility in this, but for me I need to support the constituents that have come forward to speak on behalf of their kupuna and their moopuna and themselves in Kauaula. So that’s my final comments on this. Mahalo, Mr. Chairman.

CHAIR MATEO: Thank you, Mr. Medeiros. Members, additional, additional comments?

COUNCILMEMBER MOLINA: . . . Recommendation?

CHAIR MATEO: Thank you, Mr. Molina. Members, for the last, for the last several hours, I think, I think we all, I can see the frustrations on your face, and I hear the frustration in your voices. I think we can stay here all night until the cows come home and still ask questions of the Department, ask questions of each other, and ask questions of the Federal people who control a portion of the purse strings. One of the, one of the urgencies in us addressing this today was because if we didn’t there’s the potential of us losing the Federal funds that was attached to this particular project.

We had the opportunity, I had the opportunity a few minutes ago just to ask a question of the representative of NCRS [sic], and I asked her if we don’t take any action tonight does the funds go away? She said, no. So if we take an action in January or February, is the funds going to go away? And the answer is, no. We heard today more questions than there were answers. I think it would behoove us, you know, the general questions that a lot of you asked couldn’t really be responded to. Simplistic requests like we didn’t even know the size of a drainage basin. We were told initially it could be the size of two football fields. We didn’t know if it was going to be cement or grass. There’s a lot that we didn’t know.

I don’t know if it’s going to be, do any good for us not to take any action. What is worse? What is worse, us taking no action and letting existing conditions continue to exist or us in addressing this problem in taking a look at the realities and the need of having this drainage system put in place? It’s been worked on for 20-somewhat years. This is a real difficult call for all of us. It is the Chair’s recommendation at this particular point in time that we defer this item. It will also be the Chair’s recommendation that we recommend this communication to the Council Chair for the term beginning January 2, 2009, pursuant to Section 19 of the Rules of the Council. We hopefully will be able to receive some of the responses from some of your questions that had been asked of the Department. I, for one, know the full value of having this project completed. It’s needed. We also need to be sure that the specifics of the inquiries and the concerns that was expressed by everybody who came and testified is also addressed. It is equally important. I know Mr. Pontanilla who controls our purse strings, so to speak in the budget process, has, has concerns that he had asked and was not able to get responses too. So hopefully concerns of costs, concerns of phasing, concerns of options could be addressed when this item is reviewed by the next sitting Council.
Public safety is all of our concern, and it will not go away until we vote projects like this up or down. But until we have access to the appropriate information before us, I think it’s, I think we’re not able to do this that at this point. Mr. Pontanilla, the Chair will recognize you.

COUNCILMEMBER PONTANILLA: Thank you, Chairman. And, and my question to you, because you mentioned that, you know, the funding will not disappear, you know, having that conversation with, with the person from NCRS [sic] or NRCS. I, I just want to be sure that, you know, if we could have something in writing that assures us that the funding will not be lost because, you know, I hear Mr. Hokama on the other hand saying, you know, do we take advantage of the Federal funds at this time. I, I want to take advantage of, of Federal funding, at this time if we’re going to lose it. But if we’re not going to lose it, then I want to be assured that, in writing from whoever, that, you know, telling us that we’re not going to be losing that funds.

CHAIR MATEO: Thank you. The Chair will ask Ms. Ranae Cerizo? Was that the last name, I’m sorry? If you can come…

MS. GANSKE-CERIZO, FROM THE AUDIENCE: Ganske-Cerizo.

CHAIR MATEO: Thank you. Could you come down to the podium again?

VICE-CHAIR HOKAMA: Chairman, would you allow me to ask her a question, because I think Mr. Pontanilla brought up a good point. And there is a difference between an “earmark” and an “authorization”. And for those that deal with Federal, the Federal government appropriation projects, I’m sure she understands the difference between authorization and an earmark appropriation.

MS. GANSKE-CERIZO: Yeah. Well, again, this is, this situation with the Highway Department, okay, is, they will be meeting next week, I hear. I just heard that this evening. And they’ll be discussing the release of these monies. So what I can do, tomorrow I will call our State engineer, and speak with him, and find out, you know, all of the information that’s going to happen at this particular transportation highway meeting and NRCS. And then I can get back to you in writing, and put, put this in writing for you to let you know how these monies will be obligated and when they will be obligated for Phase I.

Again, to just stress this point, the other part of the project, there’s zero monies in our watershed. Okay? So when you look at the other side, there isn’t any money there. There’s only money for Phase I at this time.

CHAIR MATEO: Mr. Hokama?

VICE-CHAIR HOKAMA: So when you say public law and, and funds in the watershed program was that an --
MS. GANSKE-CERIZO: That was an appropriation.

VICE-CHAIR HOKAMA: --appropriation. Not part of an authorization?

MS. GANSKE-CERIZO: Well...

VICE-CHAIR HOKAMA: You, you know, because normally our, our general understanding is when Congress gives an authorization or reauthorizes such as the Transportation Act, they make a commitment to fund over a period of years so much money to carry out the mission of the, of the legislation of the authorization, whether it be for, you know, ISTEA, or we call it, I forgot what we call the new Transportation Act, but, you know, right now we're going through an aviation reauthorization which is a commitment of Congress to fund so many billions for airports and air safety.

MS. GANSKE-CERIZO: Uh-huh.

VICE-CHAIR HOKAMA: So you understand that--

MS. GANSKE-CERIZO: Yes.

VICE-CHAIR HOKAMA: --I just hope you could maybe share with the rest of my colleagues because there is a difference from their Federal perspective between earmarks and authorizations.

MS. GANSKE-CERIZO: Okay. What happened in this situation, they authorized a certain amount of money for this particular project. And then I think it was a year and a half, two years ago, because of all of the expenses with the Federal government, the Iraq War and other things that came up they removed that money from our watershed monies for this PL 566. And then the Transportation Department had some monies available to work with NRCS. Okay? And I think that Milton can go into that a little bit more, but all the money that was appropriated for this particular project went back to the headquarters.

So we're again, like I said, we're waiting now for the new Administration to come in and see how they look at watersheds. If they're important, they will look for some money to reappropriate those funds and make, and have some earmarks to put back into that watershed PL 566.

VICE-CHAIR HOKAMA: Chairman, I think she is doing the best she can to explain the situation. Our Congress is facing a trillion dollar deficit.

MS. GANSKE-CERIZO: Uh-huh.

VICE-CHAIR HOKAMA: Okay, trillion dollar deficit. So, again, I just, I just share this information because I think it's important for the Members and the community to
understand if we want to take a chance and roll the dice, the short side of, of the roll is that we will have to pay the full bill; and on the high side is we’ll get potentially Federal assistance in the future. And it’s, it’s the chance we take, Chairman.

CHAIR MATEO: Thank you, Mr. Hokama. Ms. Anderson?

COUNCILMEMBER ANDERSON: Yeah, Ms. Gans-Cerizo [sic], when you were up here earlier you told me that, that there is a total amount of 14 million appropriated for this project as a whole.

MS. GANSKE-CERIZO: Correct.

COUNCILMEMBER ANDERSON: And that what’s up right now for release is the 3.5 million for Phase I only. So that isn’t going to change, excuse me, between now and January 30th?

MS. GANSKE-CERIZO: No, it shouldn’t. Like I said I know that they’re going to be meeting. I don’t know if it’s this week or next week, but I will follow through with our State engineer tomorrow and find out what will become of that meeting and the information that is discussed.

COUNCILMEMBER ANDERSON: Okay, and it may not even change between now and February 30th?

MS. GANSKE-CERIZO: I can’t really say that. February 30th, is, you know, a couple months away. Right now, you know, it’s December 2nd, and after the new year things are, you know, move fairly slow. But after the, you know, when January 2nd kicks in, again, then things might be moving quite quickly. So, yeah.

COUNCILMEMBER ANDERSON: Well, maybe after January 20th things might--

MS. GANSKE-CERIZO: . . .(laughter). . .Okay--

COUNCILMEMBER ANDERSON: --move very quickly.


COUNCILMEMBER ANDERSON: So, and, and we hear that he’s very green. So--


COUNCILMEMBER ANDERSON: . . .(laughter) . . So, you know, Chair, I just think, you know, you know, we’re safe to put this off until January 30th when we might be able to have a clear idea. I would hope that the Department could give the Members a big picture of what this project is going to entail from money to time. And, so that when
you're making a commitment to condemn land and spend $2.4 million of our taxpayer dollars to buy land for the tailend of a project, you know when the, the beginning of the project's going to get done so that the tailend makes, makes sense, you know. And that's why I like the idea of starting at Puamana and going up to Lahainaluna Road and doing that first, because then at least you've got something functional. And I don't know if, if you folks can change what Phase I really is or, I mean, I don't what the details on that, if a supplemental EIS is needed. I mean maybe you got to make the commitment, but at least we get a big picture idea of what we're committing to as far as money, funding, where it might come from. I mean we may not have the money, the Feds may not have the money, we may be stuck with a useless little segment of this thing for ten years while Wainee still floods. So that's why I think it's important to get the full picture on what the funding is going to look like, the possibilities. I mean you guys should be able to know from your engineering and from the EIS what the possible cost of the rest of this project are, so the Members would know that before they make a decision on condemnation. Thank you, Chairman.

MR. ARAKAWA: Mr. Chair?

CHAIR MATEO: Thank you. Go ahead, Mr. Arakawa.

MR. ARAKAWA: May I just make one clarification? I did mention earlier that there is a County bond appropriation Fiscal Year '08 for 2.2 million. So if no action is taken before the end of the year, those funds would lapse.

CHAIR MATEO: Mr. Pontanilla, would you like to direct a question to the NCRS [sic] representative?

COUNCILMEMBER PONTANILLA: No, I, I think we have heard enough and thank you for that information in regards to getting back to us in writing.

MS. GANSKE-CERIZO: Okay. Thank you.

COUNCILMEMBER PONTANILLA: Because, you know, $3.5 million is a lot of money. You know, like Chairman Hokama, this is an opportunity, and I know we all want to be sure that, you know, we looking into the right direction when we do decide to accept that funding or accept this project as, as presented to us. And, you know, our Director here just reminded the, myself in regards to $2.2 million of General Obligation Bonds would also be lapsing as well. Thank you.

MS. GANSKE-CERIZO: Excuse me, who would you like me to address this letter to?

CHAIR MATEO: Staff will, Staff will touch basis with you --

MS. GANSKE-CERIZO: Okay.
CHAIR MATEO: --prior to, you know, as soon as you leave the podium area.

MS. GANSKE-CERIZO: Okay. Thank you.

CHAIR MATEO: Thank you very much. Staff?

COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR MATEO: Go ahead, Mr. Victorino.

COUNCILMEMBER VICTORINO: One final comment in all of this, and we’ve, we’ve talked this to death, and I mean there’s people to consider and so many issues to consider, but besides just the money issue, there is a, quote, liability issue. And, you know, let us not forget whenever we lack or fail to act on something we know exists, we’ve not done our fiduciary duty. If we start, wherever we start, because that’s what the Department has to start with or that’s what they advised us and a flood does occur, not to say we cannot get sued, but the litigation or the liability falls far less because you’ve made a due diligent [sic] to correct the problem. It’s not that you just said forget it. Attorneys love when they sit there and see you have been inept in doing your fiduciary duty and that’s when they go after you like a ton of bricks. So like Chair Hokama said he has seen the checks, he has seen the claims, and I’ve been in this business long enough, and I’ve paid out on the claims. Okay? I understand the situation. We can wait until January, I got no problem. I will follow your recommendations or February 28th, or March 30th, or until the moon turns green or we lose the money. The bottom line in all of this is, one day soon, we’ve got to take some action to correct this problem or we’re going to continuously put our citizens at risk. I agree planners made some mistakes, I agree all of this has occurred. You know, you cannot change the past. My own duties is what the present holds and making the future better. I’ve said that many times, and I, I can’t say it any other way. But just remember, the longer we take to decide on whatever we decide leaves that liability wide open for the County. And attorneys just enjoy that, no offense to them, but that’s the way it is. Thank you, Mr. Chair.

CHAIR MATEO: Thank you, Mr. Victorino. And, Members, the Chair’s recommendation to defer did not get consensus. So, you know, if the Members still want to provide an opportunity to, to move this forward, the floor is still open.

COUNCILMEMBER ANDERSON: Chair, you didn’t give us a chance to move on your recommendation --

COUNCILMEMBER VICTORINO: Yeah.

COUNCILMEMBER ANDERSON: --but. . .I will make a motion to defer.

COUNCILMEMBER VICTORINO: Second.
CHAIR MATEO: Members, motion by Ms. Anderson, second by Mr. Victorino to defer. Additional discussion, Ms. Anderson?

COUNCILMEMBER ANDERSON: You know, if, if the County funding lapses at the end of December, well, then they can just bring it forward for reappropriation. You know, I don’t like, this is a big deal. This is something we’ve waited . . . (end of tape, Side 6A) . . . and I certainly support the project. I think it can be reconfigured in a more advantageous way. I think the, I’d like to see the whole extension from Puamana down towards Launiupoko done away with, but I think that there’s a way to get this done and get it done in an informed way so that, you know, by January 30th whoever has this Committee can bring this forward. We know what the total, the total cost of the project’s going to be by then, and we have some, some kind of a timeframe. I mean I, I’m just not comfortable condemning land unless I know what the end result’s going to be. You know, if it’s just going to sit there for five years waiting for more funding before it even becomes useful . . . then . . . then I got, I got problems with that. And, yeah, we want to make sure we keep that 14 million in Federal money, but we just had her tell us that doing this in January isn’t going to change that. So I support your recommendation, Chairman.

CHAIR MATEO: Thank you, Ms. Anderson. Members, additional, additional discussion? Just for information purposes after this vote, it is included with the following item, Policy Item 57, it will be the Chair’s recommendation to refer it to the next sitting Council. So, Members, motion on the floor. The Chair will call for the vote. All those in favor, signify by saying “aye”.

COUNCILMEMBERS: Aye.

CHAIR MATEO: Opposed? Motion is carried. We have four, five, six “ayes”. We have Mr. Hokama, Ms. Baisa, and Ms. Johnson “excused”.


NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Baisa, Johnson, and Vice-Chair Hokama.

MOTION CARRIED.

ACTION: Recommending DEFER pending further discussion.
CHAIR MATEO: Members, thank you very much. We’re going to move on to the final item on our agenda.

COMMUNICATIONS FOR REFERRAL TO THE COUNCIL CHAIR FOR THE 2009-2011 COUNCIL TERM

ITEM NO. 26: ACQUISITION OF LAND AT LIPOA POINT (C.C. No. 07-128)

ITEM NO. 57: RESOLUTION AUTHORIZING PROCEEDINGS IN EMINENT DOMAIN FOR ACQUISITION OF REAL PROPERTY INTERESTS AT LAHAINA (LAHAINA WATERSHED FLOOD CONTROL PROJECT) (C.C. No. 08-255)

CHAIR MATEO: This particular item is POL-26. Members, it is the acquisition of land at Lipoa Point. The Chair would like to have this communication, as well as Policy Item No. 57, resolution authorizing proceedings in eminent domain for the acquisition of real property interests at Lahaina (Lahaina Watershed Flood Control Project), the Chair recommends that those two communications be referred to the Council Chair for the term beginning January 2, 2009, pursuant to Section 19 of the Rules of the Council.

COUNCILMEMBER ANDERSON: So moved.

COUNCILMEMBER VICTORINO: Second.

CHAIR MATEO: It’s been moved by Ms., Ms. Anderson, second by Mr. Victorino. Members, any additional discussion on these two items that we are referring to the next Council?

. . . The Chair will call for the vote. All those in favor, signify by saying “aye”.

COUNCILMEMBERS: Aye.

CHAIR MATEO: Those opposed? Motion is carried with six “ayes”; Ms. Hokama, Ms. Baisa, Ms. Johnson excused.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Baisa, Johnson, and Vice-Chair Hokama.

MOTION CARRIED.

ACTION: Recommending REFERRAL of POL-26 and POL-57 to the Council Chair for the term beginning January 2, 2009, pursuant to Section 19 of the Rules of the Council.

CHAIR MATEO: Members, we have reached the end of our journey for today.

COUNCILMEMBER VICTORINO: ... (laughter) ...

CHAIR MATEO: It's been a very long day. I thank you all very much for sticking with it. Members, Policy Meeting for December 2\textsuperscript{nd}, 2008 is adjourned. ... (gavel) ...

ADJOURN: 7:18 p.m.

APPROVED:

DANNY A. MATEO, Chair
Policy Committee

transcribed by: Jessica B. Cahill
CERTIFICATE

I, Jessica Cahill, hereby certify that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED this 24th day of December, 2008, in Wailuku, Hawaii

Jessica Cahill