

BUDGET AND FINANCE COMMITTEE

Council of the County of Maui

MINUTES

December 1, 2008

Council Chamber, 8th floor

CONVENE: 1:35 p.m.

PRESENT: Councilmember Joseph Pontanilla, Chair
Councilmember G. Riki Hokama, Vice-Chair (in 1:39 p.m.)
Councilmember Michelle Anderson, Member
Councilmember Gladys C. Baisa, Member
Councilmember Jo Anne Johnson, Member (in 1:37 p.m.)
Councilmember Danny A. Mateo, Member (in 1:36 p.m.)
Councilmember Bill Kauakea Medeiros, Member
Councilmember Michael J. Molina, Member
Councilmember Michael P. Victorino, Member

STAFF: Lance Taguchi, Legislative Analyst
Michael Geers, Legislative Analyst
Yvette Bouthillier, Committee Secretary

Leinaala Kihm, Executive Assistant to Councilmember Bill Kauakea Medeiros

ADMIN.: Frederick Pablo, Budget Director, Office of the Mayor
Cheryl K. Okuma, Director, Department of Environmental Management
Tracy Takamine, Chief, Solid Waste Division, Department of Environmental Management
Kalbert L. Young, Director, Department of Finance
Scott Teruya, Acting County Real Property Tax Administrator, Real Property Tax Division, Department of Finance
David A. Galazin, Deputy Corporation Counsel, Department of the Corporation Counsel
Traci Fujita Villarosa, First Deputy Corporation Counsel, Department of the Corporation Counsel

Seated in the gallery:

Scott Teruya, Acting County Real Property Tax Administrator, Real Property Tax Division, Department of Finance

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OTHERS: Item 132: Gary Yokoyama, Vice President/Corporate Counsel, Castle & Cooke, Lanai
Ralph Masuda, Consultant for Castle & Cooke, Lanai

PRESS: Akaku: Maui Community Television, Inc.

CHAIR PONTANILLA: ...*(gavel)*... The Budget and Finance Committee meeting is now in session. Today is December 1st, 2008, and the time is 1:35. At this time, the Chair would like to introduce the Members that are present at this time. We do have Member Anderson, Member Baisa, Member Medeiros, Member Molina, and Member Mike Victorino. Excused are Members Mateo, Johnson, and our Council Chair Mr. Hokama. From the Administration, we do have First Deputy Corporation Counsel Traci Fujita Villarosa; our Finance Director, I'm sorry, our Budget Director, Fred Pablo; and the Director of Environmental Management, Cheryl Okuma. Supporting the Committee, we do have our Legislative Analyst, Lance Taguchi as well as Michael Geers; and our Committee Secretary, Yvette Bouthillier. Yvette, do we have anybody signed up for public testimony?

MS. BOUTHILLIER: No.

CHAIR PONTANILLA: Not having any one signed up for public testimony, is there any one up there that would like to provide public testimony at this time? Seeing none coming up; if there's no objections, the Chair would like to close public testimony.

COUNCIL MEMBERS VOICED NO OBJECTIONS. (Exc. DM, JJ, and GRH)

CHAIR PONTANILLA: Thank you. Members, we do have two items on the agenda this afternoon. The first item is BF-132.

ITEM NO. 132: AMENDING APPENDIX B OF THE FY 2009 BUDGET (WAIVER OF REFUSE DISPOSAL FEES); ACCEPTING DEDICATION OF PROPERTY FOR THE LANAI LANDFILL; AND AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT BETWEEN THE COUNTY AND CASTLE AND COOKE, INC. PERTAINING TO THE LANAI LANDFILL (C.C. No. 08-262)

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CHAIR PONTANILLA: This is amending Appendix B of the FY 2009 Budget (Waiver of Refuse Disposal Fees); accepting dedication of property for the Lanai Landfill; and authorizing the Mayor to enter into an agreement between the County and Castle & Cooke, Incorporation, pertaining to the Lanai Landfill. Again, Members, there are three parts of this item. We do have a proposed bill, “A BILL FOR AN ORDINANCE AMENDING THE FISCAL YEAR 2009 BUDGET FOR THE COUNTY OF MAUI, AS IT PERTAINS TO REVENUES – FEES, RATES, ASSESSMENTS AND TAXES FOR REFUSE DISPOSAL FEES”. And again, the purpose of the proposed bill is to amend Appendix B of the Fiscal Year 2009 Budget to waive refuse disposal fees at the Lanai Landfill for Castle & Cooke Incorporated.

The second item is a proposed resolution entitled “ACCEPTING DEDICATION OF REAL PROPERTY FOR LANDFILL PURPOSES AT LANAI, HAWAII, PURSUANT TO SECTION 3.44.015, MAUI COUNTY CODE:. And the purpose of the proposed resolution is to accept approximately 35.677 acres identified as Tax Map Key No. (2) 4-9-002:001(por.), also known as the current site of the Lanai Landfill, from Castle & Cooke, Incorporated, and authorize the Mayor to execute all necessary documents to effectuate the dedication.

And the final item is a proposed resolution “AUTHORIZING AN AGREEMENT BETWEEN THE COUNTY OF MAUI AND CASTLE & COOKE, INC., PERTAINING TO THE WAIVER OF REFUSE DISPOSAL FEES AND THE PROVISION OF LANDFILL COVER MATERIAL FOR THE LANAI LANDFILL”. Members, the purpose of the proposed resolution is to authorize the Mayor to execute all necessary documents to effectuate the agreement.

So, at this time, the Chair would like to recognize Member Mateo. Thank you for being here this afternoon.

COUNCILMEMBER MATEO: Thank you.

CHAIR PONTANILLA: And the Chairman would like to call on the Budget Director for any comments at this time, opening comments?

MR. PABLO: Thank you, Chair Pontanilla, and good afternoon, Members. At this time, I don’t have any comments regarding the negotiations for the dedication of the Lanai Landfill. The Budget office had prepared the bill to amend Appendix B, which has rates, fees, assessments, and taxes. And

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the purpose of the proposed bill is to reflect the terms of this dedication and agreement. Cheryl Okuma, the Director of the Department of Environmental Management is here to answer any questions you may have regarding the other documents. Thank you.

CHAIR PONTANILLA: Thank you. Also, Members, before I call on Director Okuma, you know, in our Chambers this afternoon we do have Ralph Masuda that can be a resource person regarding the Lanai Landfill. As you know, Mr. Masuda used to work for the Lanai Land Company. The Chair would like to recognize the presence of Member Johnson. Thank you. At this time, the Chair would like to call on Director Okuma for opening comments.

MS. OKUMA: Yes, thank you very much. If I may put this matter into some context because this is a matter that has had a ten-year history to it, and it might help this body to understand, you know, at least the history of some of what happened to get us here. But basically, with respect to Lanai Landfill, back in 1968 there was a license agreement executed between the County and Castle & Cooke for use of ten acres as a landfill for no fee. It was in 1988 that the tipping fee ordinance in its current form was enacted. Now going back about ten years, from 1997 to 1998 these are the best records that we've been able to pull, and basically it's records between our Department, the Finance Department, and involved some discussions with the Corp. Counsel. So it took quite a bit of effort to try to compile this information together. But from we've been able to find, back in 1997, 1998 records indicate discussions indicating Castle & Cooke's willingness to transfer landfill property, the Lanai Landfill property to the County at no cost and with a waiver of future tipping fees. November 14th of 2001 there was a draft resolution apparently prepared to settle outstanding past tipping fees with respect to the 35 acres and that was sent to the then, at that time, Mayor Apana and Council Chair Kawano. The Corp. Counsel was asked to take a look at the background to see where that resolution may have ended up, and that research indicates that the resolution was never adopted although it was approved as to form by the Deputy Corporation Counsel. On June 6th, 2003, Castle & Cooke sends a letter to Mayor Arakawa and disputed tipping fees again and their desire to resolve the dispute. It was then on September 11, 2006 that the State Department of Health indicated to the County that regarding an outstanding enforcement action the County should complete its storm water construction by May 2008. And if some may recall, because we tried to get written permission from Castle & Cooke to get on the property but at that time it was Castle's desire that the County enter into negotiations with

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respect to the property conveyance and waiver of tipping fees. And because there was no agreement reached at that time, as this body may recall, that funding actually lapsed December of last year and then was re-appropriated subsequently in the following month as the County together with Castle & Cooke tried to pick up those negotiations again.

In February of 2007, the County received an appraisal report for the 35 acres of approximately I believe it was \$348,000 from ACM Consultants. Now, the proposed bill and the two proposed resolutions that are before you, if I can just kind of explain the conceptual agreement because I guess there's fairly quite a bit involved in terms of the substance of the negotiations that went back and forth, and I just want to say that it was apparent to me that there was a particular time where the negotiations wasn't really going anywhere with Castle & Cooke, and that's when Chair Hokama and Mayor Tavares got involved in discussions with whom I understand Perry Saunders and Ralph Masuda representing Castle & Cooke. But, basically, the conceptual agreement revolves around the following points. Castle would not enter into the license agreement, which was needed to construct the compliance storm water project that I had just mentioned and that money had lapsed and needed to be re-appropriated. Also, we needed the P6 form for the purpose of getting landfill approval for a solid waste operation that's required by Department of Health for them to issue us a solid waste permit. That too was in abeyance from getting signature from Castle because the negotiations had not been completed to any successful resolution. And basically, the conceptual agreement revolved around the fact that in order to sign this license agreement to enter the property to construct the storm water project, Castle & Cooke wanted to resolve the tipping fees matter together with the landfill property conveyance. In terms of this agreement, the concept is that the County waives the past disputed tipping fees estimated in principle at approximately \$386,000 or you know about \$390,000. That was what was estimated back in September 26, 2007 when we actually started, when we got the negotiations back on track after many, many years of it just languishing. So, in other words, that incur . . . that tipping fee is incurred in an estimated approximately \$48,000 annually in exchange for this 35 acres, which was appraised at approximately \$348,000. The concept involves Castle continuing to use the existing landfill at no cost and to provide cover material at an estimated 80 tons per day, again at no cost to the County as long as the County does the hauling of this cover material. In the event Castle hauls the material, as requested and if requested by the County, then there will be a charge for that. It's also reflected in the agreements here that at some later point and time, the

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parties will begin discussion regarding future new landfill site and that discussion has not occurred at this point that's a future, potential discussion that the parties would in good faith do that at some point in the future.

So, in essence, what I have just gone through is the basic concept and understanding which forms the basis for this proposed bill and the two resolutions you have in front of you.

CHAIR PONTANILLA: Thank you. Members, with that, are there any questions regarding what Ms. Okuma had just reviewed with us in regards to the Lanai Landfill and all of that history? Member Anderson?

COUNCILMEMBER ANDERSON: Yeah, I'm just wondering if you can tell us what the unused capacity is right now?

MS. OKUMA: Well, I can tell you right now that according to our information, Lanai accepts about 20 tons per day. It's open five days a week and according to our, I guess our consultant, it's got an estimated capacity until 2020 approximately.

COUNCILMEMBER ANDERSON: 2020?

MS. OKUMA: 2020.

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

CHAIR PONTANILLA: Thank you. Chair would like to recognize Member Hokama. Thank you for being here as well as Tracy Takamine, the Division Manager for I guess the landfill area.

MS. OKUMA: Solid Waste.

CHAIR PONTANILLA: Solid Waste. Members, any more questions? Member Johnson?

COUNCILMEMBER JOHNSON: Uh, yes. Because this is of course, uh, I guess a dispute to help resolve both the dispute over the landfill fees and then get this under County control as part of a requirement I believe the way you explained, Ms. Okuma, for the Department of Health so that we can be up to their standards as well as all the other requirements. Is this in your view an equitable settlement for the taxpayers?

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MS. OKUMA: I can tell you that if this was negotiated, we certainly wanted something for something in exchange. So to that extent there is consideration for every point that I've mentioned, which is a legal requirement in any event.

COUNCILMEMBER JOHNSON: Yeah, because I'm looking at basically the disputed landfill fees which total more than the value of the property, plus the continuation of all of the remaining tipping fees.

MS. OKUMA: And I would just answer that this was a little more complex than your usual this for that because if you look back over the history of this landfill actually the County's license agreement back in 1968 only covered ten acres. So, you know, there's an argument, of course I can't tell you how or when that happened, but today we now occupy 35 acres.

COUNCILMEMBER JOHNSON: . . . (*chuckled*) . . . I guess possession is nine-tenths of the law. The other thing I would ask because this is upon mutual agreement, it's my understanding this contract is cancelable at any time so that let's say there was a storm event, which many times causes our landfills to fill up very rapidly and accelerate the . . . I guess the life of or the useful life of the landfill it diminishes it. Because this could be canceled at, is it cancelable by either party at any time or does it have to be mutually agreed upon?

MS. OKUMA: I believe there might be some, and I'm looking at our attorney up there, I believe that there's some provision on certain points as far as mutual cancellation in the future, yes. But as it's structured right now there are certain things we agree we would abide by. But in the future, any cancellation would require mutual cancellation.

COUNCILMEMBER JOHNSON: Okay. And the reason I ask this is because the scenario that I pose where there's an accelerated rate of the landfill materials actually going in which would diminish the useful life of the existing landfill. If we were to go and negotiate for another piece of landfill, if we were to go and negotiate for another piece of land on Lanai to actually expand our operations and close this particular landfill, I just want to make sure that we're not locked into something that would take away some opportunities later on if our situation changed where we did need to acquire land.

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MS. OKUMA: Right. And so on that point, again, there is mutual termination at some point in the future and the parties agreed in good faith at some point in time that's not set or determined, but in good faith attempt to negotiate on the future new landfill.

COUNCILMEMBER JOHNSON: Okay. And obviously, it would be in our best interest to try to keep the landowner on good terms with us so that negotiations go favorably because the obvious thing would be, well, okay, if you owe us more than the land is worth we'll just do condemnation because it's for a public purpose and compensate you "x" number of dollars and, you know, you pay for all of the amounts. I mean, that would be the other scenario that I would see.

MS. OKUMA: Right. But again, I just want to point out that just so everybody realizes that there's a relationship here in the sense that Castle has the cover material, the soil material we need. They're the only source on the island and so that is a regulatory requirement and we have to be able to deal with Castle on that very critical, important point. So, you know, that's just an aspect to know.

COUNCILMEMBER JOHNSON: And I think that certainly is taken into consideration because when just like doing our roadways when we have only one vendor beggars can't be choosers. Thank you.

CHAIR PONTANILLA: Thank you, Member Johnson. Member Hokama?

VICE-CHAIR HOKAMA: Chairman, thank you. Today, I'm going to be asking the Members of the Committee and yourself, as our Chairman, to be supportive of this proposal before the Committee. I'm very familiar with this. The last three Administrations could have done something; obviously they chose not to. But for Lanai, Mr. Chairman and Committee Members, I think the Director shared some critical things that we need to keep in perspective. There is basically only one other property owner on the island that can provide landfill cover. The company, Castle & Cooke, basically supports us regarding our repair work of our equipment. They have been patient over the last couple of decades trying to get this issue resolved. We have gone beyond our original ten-acre agreement. You've heard the Director talking about 35 acres; not really now a responsibility for. I need to do the appropriate . . . even doing closure and post closure requirements that we would do for any landfill, including the community's desire to move to a new site down wind of the highway system, and that is already under discussion and known by the property owner, Castle &

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Cooke, that is the County's desire eventually to move to a newer site, thus visible, downwind of course, so that we wouldn't be contributing litter to the Lanai Highway system. And so, Members, it is my true belief that the County is getting the better end of the deal. Sure we could moan and groan and be picky about the amount of money they owe us, well, imagine how much rent we would have to pay for 20 plus more acres over 20 years; a hell of a lot more than what we supposedly owe, they owe the County of Maui in my estimation. We can do a lot of finger pointing this afternoon. I just feel to move forward, get this agreement squared away so that we can all move forward, and Castle & Cooke knows exactly what the County is going to do and the County can expect what Castle & Cooke will do in the future. So I consider this a very responsible and fair consideration before the Committee this afternoon, Mr. Chairman, and I would ask for their support in moving this forward to the Council for approval.

CHAIR PONTANILLA: Thank you. Chair has a question for the Director regarding the County being responsible to haul materials. Do you have equipment to do that at this time on the island of Lanai?

MS. OKUMA: I'm told that we'll be making that request.

CHAIR PONTANILLA: Thank you. Is it budgeted already?

MS. OKUMA: We're looking at it in the next FY 2010 Budget.

CHAIR PONTANILLA: Good. Thank you. Members, any more questions for the Department? Member Medeiros followed by Member Mateo.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. And I think the representative from Lanai, Council Chair Hokama, you know in his expressions of requests for support I think tells us how important this is to the island. But I also want to add that, you know, having been with Public Works and operated the Hana Landfill and the West Maui Landfill, one of the most crucial things in landfill operations is being able to get cover material. And being that the property owner is providing that and if I think the County went to, try to purchase materials other than that company, I don't think that would be successful. So I think it's very important that Castle & Cooke, you know, provides, is allowing to provide the cover material because without that cover material you would be constantly in violation of the Department of Health's requirements for a landfill site. I think this is indeed a good agreement that both the County

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and the island and its residents benefit from. So I certainly would like to support this. But what I wanted to ask the Department is that in hopes to extend the life of the landfill, and I think your projected date was to 2020?

MS. OKUMA: Nodded yes.

COUNCILMEMBER MEDEIROS: Is there active and a comprehensive plan to have more diversions out of the landfill right now?

MS. OKUMA: The basis of that is our solid waste management plan which this Council will hopefully see very shortly as far as the presentation or the new Council actually. So in answer to your question, yes, there is a basic foundational plan, because as you know, one of the things that's coming out of that plan is to up our recycling rates from 30 to 60 percent. That certainly includes Lanai.

COUNCILMEMBER MEDEIROS: So in that response, you're saying there is a current plan going on, on Lanai, to help try divert . . .

MS. OKUMA: There is a current plan in the County of Maui, which includes the islands of Lanai and Molokai.

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

CHAIR PONTANILLA: Thank you. Member Mateo?

COUNCILMEMBER MATEO: Chairman, thank you. Madam Director, Budget Chair Pontanilla's question to the Department was who was doing the hauling of the materials to the landfill, and your response was, well, you had the equipment to do the hauling, and your response was, we will. So all these years the answer is actually, no, we don't have the appropriate equipment.

MS. OKUMA: We haven't had the equipment and I think that goes to the positive relationship we've had with Castle where they basically kokua our needs.

COUNCILMEMBER MATEO: Okay, so in addition from the cost of the fill material itself, hauling was also a kokua to the County as well?

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MS. OKUMA: No. In terms of cost, no. Actually, Castle was looking at and we were starting to pay Castle if this agreement had not come to this point.

COUNCILMEMBER MATEO: Okay, but all these years prior it was all done by donation?

MS. OKUMA: No, no. We were paying for that.

COUNCILMEMBER MATEO: For the fill --

MS. OKUMA: For the fill.

COUNCILMEMBER MATEO: --or just for the equipment used?

MS. OKUMA: For the fill.

COUNCILMEMBER MATEO: For the fill. Okay, thank you. Thank you, Chairman.

CHAIR PONTANILLA: Thank you. Members, any more questions for the Department at this time? Seeing none . . .

COUNCILMEMBER ANDERSON: Mr. Chair?

CHAIR PONTANILLA: Member Anderson?

COUNCILMEMBER ANDERSON: Just one quick question.

CHAIR PONTANILLA: Go ahead.

COUNCILMEMBER ANDERSON: What is the fill made of?

MS. OKUMA: It's just normally soil, soil material. It's natural soil material.

COUNCILMEMBER ANDERSON: It's not sand?

MS. OKUMA: No.

COUNCILMEMBER ANDERSON: Okay, thank you.

CHAIR PONTANILLA: Thank you. Any more questions? Member Molina?

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COUNCILMEMBER MOLINA: Thank you, Chair. Just one follow-up question to Member Johnson's inquiry regarding the disputed fees, what was that amount?

MS. OKUMA: The past disputed fees calculated in September 26, 2007, back at that time when we started, which is when we started the negotiations so you understand these accrue every month, so that's our snapshot. Back then in principle was 386,000 approximately or approximately \$390,000.

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

CHAIR PONTANILLA: Thank you. Members, any more questions? Member Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Just one final question, and it's basically a follow up of Member Mateo's question about the hauling. So, currently, or in the past history has been that Castle & Cooke does the hauling of the material?

MR. TAKAMINE: Uh, Councilmember Medeiros, currently we try to get on island they've been getting actually from construction sites so we've been getting the material free, and the contractors haul it as much as possible. But when we are short, we've in the past done purchase orders or done some kind of purchase through Castle & Cooke. But normally, when we do pay for it, they load it and haul it for us.

COUNCILMEMBER MEDEIROS: I see. Okay. Has there been any consideration for Highways to haul it? Because normally Highways, Public Works has the most equipment and trucking. And such as in Hana, Highways Division does the hauling of the cover materials. Was there any consideration of a partnership because you already have a Division that has equipment and trucking? And to increase their capacity would probably be something to be considered than trying to start a hauling segment of environmental management to do it. Has there been any consideration to partner with Highways to haul the cover material?

MS. TAKAMINE: Since I've been here, we have not had that discussion with Highways.

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

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CHAIR PONTANILLA: Thank you. Members, any more questions? Member Johnson?

COUNCILMEMBER JOHNSON: Yes, uh, Tracy, you just mentioned about something when the construction company is where there is construction the people that are actually working on the projects are doing some of the, you know, the provision of the material so you haven't had to pay for it and you haven't had to pay for hauling. That's correct, right?

MR. TAKAMINE: We have had to pay in the past year. We've paid Castle & Cooke for cover material when we did not get enough material from construction work.

COUNCILMEMBER JOHNSON: Okay. My question then pertains to basically Castle & Cooke their lands and their land development is mainly . . . even though there are private contractors working on it, when Castle & Cooke is having these refuse fees and everything waived and the fill materials are being provided, does that mean any construction even though it's being done by another entity other than Castle & Cooke if it's on their land that those fees would also be waived for that project?

CHAIR PONTANILLA: Department?

MS. OKUMA: Can you repeat your question?

COUNCILMEMBER JOHNSON: Okay. Let's say for example that Castle & Cooke is having cause they're the landowner there, they're having projects done on their property as a part of their planned development over time. When the private construction company comes and works on their land does this agreement mean that because it's taking place on Castle & Cooke land as part of their development that it implies that those fees are then waived or is it only a project where Castle & Cooke is doing something specifically themselves? And I don't know how else to express it other than it's taking place on their land and there's a private company doing it does that mean those fees are waived?

MR. TAKAMINE: Okay. Not real clear but I think, I believe this agreement for covered material being provided what we intend to get it from their quarry. So, on a daily basis we'll be getting it from the quarry. If there's construction work like we do now, it's not always on Castle & Cooke land. I know they're the major owners but I think there was a dredging project in the harbor so it was a State project and we got material from

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them. So it's not always Castle & Cooke project. But I would assume, unless I'm wrong, that as long as we get the soil on a regular basis you know where it comes from be it from the quarry or from a construction site that they own that it's one of their projects that it would satisfy the agreement of providing the daily cover material.

COUNCILMEMBER JOHNSON: You know I guess my conceptual understanding of this agreement is that basically if it's from what you've just said if it's a public project or State-run project or a County project, there would be no waiver or there would be no problems. Those people would have to pay fees, is that correct? We don't pay fees anyway? . . . *(change tape to Side 1B)* . . .

MR. TAKAMINE: Say it's a State project and they have material disposed other than construction debris, they would have to pay. We have charged or accounts with the State. So in this case, I guess what you're saying is if it's a Castle & Cooke project and they have landfill material that they need to landfill based on this agreement they would not pay a fee.

COUNCILMEMBER JOHNSON: Okay. So, essentially unless it's a private homeowner then or something having to do with this pretty much there will be no tipping fees received from Lanai?

MR. TAKAMINE: That's correct.

COUNCILMEMBER JOHNSON: Okay. And the approximate cost annually is what to the taxpayers?

MS. OKUMA: What we looked at was about \$48,000 annually.

COUNCILMEMBER JOHNSON: Okay. So around \$48,000 and that would come then obviously because it's not being paid; somebody has to pay it. Because that's a fund that is paid only from the user fees where would that money come from . . . from the General Fund or . . . because we always get into this thing every year about augmenting that's a special fund.

MS. OKUMA: First of all, they haven't ever paid, so nothing will ever really change in terms of what we need for operations for these. However long it's been, they've never paid except maybe one year so we never got these revenue streams anyway.

COUNCILMEMBER JOHNSON: Okay.

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MS. OKUMA: We still have to maintain our operating policies.

COUNCILMEMBER JOHNSON: Okay, then, where do we get the money if it's not coming from, you know, user fees?

CHAIR PONTANILLA: Corporation Counsel?

MS. FUJITA-VILLAROSA: Mr. Chair, the agreement contemplates that some of the cost would be offset by the cover material. So because the County wouldn't have to be paying for the hauling of cover material, you know, that would be less cost and some of the lost fees would be offset by that, you see what I'm saying?

COUNCILMEMBER JOHNSON: Okay, so what you're explaining is that basically it's going to zero out. Whatever we would not collect in tipping fees or administrative costs, we are then basically not having to pay for that cover or fill material --

MS. OKUMA: Yeah, I'm not sure . . .

COUNCILMEMBER JOHNSON: --which would be about the same, is that correct?

MS. OKUMA: I'm not sure if it's exactly the same but that was the theory, you know, that there would be less cost for operating.

COUNCILMEMBER JOHNSON: Okay. And then if there is a shortfall if we, you know, if we ran short then it comes from, as I heard Chair Hokama say, General Fund Transfer?

MS. OKUMA: Solid Waste Fund is subsidized by the General Fund.

COUNCILMEMBER JOHNSON: Okay. Thanks.

CHAIR PONTANILLA: Thank you. Member Hokama?

VICE-CHAIR HOKAMA: Chairman, I appreciate the Member's concern thinking that the County may not be getting a good deal or the upper-hand of the deal. If I was Castle & Cooke, I would prefer to be assessed the tipping fees and I would charge the County a hell of a lot to do the hauling, the filling, and providing for all of the materials to the County of

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Maui, and back rent for unauthorized use of all that 25 extra acres that we shouldn't have encroached on. So, if I was Castle & Cooke, I could make positive cash flow for the company if this didn't move forward. So I think what may not have been presented is what is the net. For me, it is still a net gain by approving this proposal for the County and for the Department. The Department is going to have to find a hell of a lot more revenue resources if we had to pay what the island and Castle & Cooke provides to the County, including the repair of our equipment. When our equipment goes down, whose equipment comes and supports the County's efforts to provide solid waste operations? Castle & Cooke. It's their manpower and it's their equipment that comes to the County's aid every time. So, for me, Members, I would ask that it is to our benefit, greater benefit to move this forward. And again, if you choose not to, I think it's to the great benefit of Castle & Cooke because they'll make sure they'll make a positive return. Thank you.

CHAIR PONTANILLA: Thank you. Member Baisa?

COUNCILMEMBER BAISA: Thank you very much, Chair. It appears to me that this is quite clear that this is of benefit to the County that we are saving a great deal of money by entering into this agreement and we're making out on it very nicely. And more important than that, I think is the issue of good will. We are dealing with a unique situation where there is essentially one company in charge of Lanai and we need to be partners and because it's advantageous to us and I think that we should support this. Thank you.

CHAIR PONTANILLA: Members, any more questions for the Department at this time? If not, the Chair would like to give his recommendation.

COUNCILMEMBER MEDEIROS: Recommendation?

CHAIR PONTANILLA: Thank you. And we're going to do this in three motions. The first motion is to recommend passage of the proposed bill, "A BILL FOR AN ORDINANCE AMENDING THE FISCAL YEAR 2009 BUDGET FOR THE COUNTY OF MAUI, AS IT PERTAINS TO REVENUES – FEES, RATES, ASSESSMENTS AND TAXES FOR REFUSE DISPOSAL FEES".

VICE-CHAIR HOKAMA: So moved.

COUNCILMEMBER MEDEIROS: Second.

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CHAIR PONTANILLA: Moved by Member Hokama; second by Member Medeiros. Members, any more discussion in regards to this? All in favor of the motion, please say “aye”?

COUNCIL MEMBERS VOICED AYES.

CHAIR PONTANILLA: Thank you. Let the record show nine ayes. Motion is carried.

VOTE:	AYES:	Councilmember Anderson, Baisa, Johnson, Mateo, Medeiros, Molina, Victorino, Vice-Chair Hokama, and Chair Pontanilla.
	NOES:	None.
	ABSTAIN:	None.
	ABSENT:	None.
	EXC.:	None.

MOTION CARRIED.

ACTION: FIRST READING of revised proposed bill amending Appendix B of the Fiscal Year 2009 Budget to waive refuse disposal fees at the Lanai Landfill for Castle and Cooke

CHAIR PONTANILLA: Second, Members, Chair is recommending acceptance of the proposed resolution, and Members, this afternoon we received from Corporation Counsel dated December 1, 2008, a revised resolution for both of the resolution the Chair is recommending. So the Chair would like to propose accepting the revised resolution entitled “ACCEPTING DEDICATION OF REAL PROPERTY FOR LANDFILL PURPOSES AT LANAI, HAWAII, PURSUANT TO SECTION 3.44.015, MAUI COUNTY CODE.”

VICE-CHAIR HOKAMA: So moved.

COUNCILMEMBER MEDEIROS: Second.

CHAIR PONTANILLA: Moved by Member Hokama; second by Member Medeiros. Members, any more questions, discussions? Seeing none. All those in favor of the motion, please say “aye”?

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COUNCIL MEMBERS VOICED AYES.

VOTE:	AYES:	Councilmember Anderson, Baisa, Johnson, Mateo, Medeiros, Molina, Victorino, Vice-Chair Hokama, and Chair Pontanilla.
	NOES:	None.
	ABSTAIN:	None.
	ABSENT:	None.
	EXC.:	None.

MOTION CARRIED.

ACTION: ADOPTION of revised proposed resolution accepting dedication of real property for landfill purposes at Lanai, Hawaii, pursuant to Section 3.44.015, Maui County Code

CHAIR PONTANILLA: Motion is carried. Nine ayes; zero noes.

MR. TAGUCHI: Chair Pontanilla?

CHAIR PONTANILLA: Mr. Taguchi?

MR. TAGUCHI: Could we have a three-minute recess so I can check on the attachment for the final resolution?

CHAIR PONTANILLA: Thank you. At this time, the Chair would like to call a three-minute recess. . . .*(gavel)* . . .

RECESS: 2:15 p.m.
RECONVENE: 2:18 p.m.

CHAIR PONTANILLA: . . .*(gavel)* . . . The Budget and Finance Committee meeting is now reconvened. Members, the third resolution the Chair would like to recommend the approval of the revised resolution entitled "AUTHORIZING AN AGREEMENT BETWEEN THE COUNTY OF MAUI AND CASTLE & COOKE, INC., PERTAINING TO THE WAIVER OF REFUSE DISPOSAL FEES AND THE PROVISION OF LANDFILL COVER MATERIAL FOR THE LANAI LANDFILL".

VICE-CHAIR HOKAMA: So moved.

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COUNCILMEMBER MEDEIROS: Second.

CHAIR PONTANILLA: Moved by Member Hokama; second by Member Medeiros. Members, any more discussion? Member Hokama?

VICE-CHAIR HOKAMA: Chairman, just so that the Committee is fully aware that we are talking about the proposed resolution attached to a December 1st memorandum from the Department of the Corporation Counsel?

CHAIR PONTANILLA: Correct.

VICE-CHAIR HOKAMA: Thank you.

CHAIR PONTANILLA: Thank you. Members, any more discussion at this time? If not, all in favor of the motion, please say, "aye"?

COUNCIL MEMBERS VOICED AYES.

VOTE:	AYES:	Councilmember Anderson, Baisa, Johnson, Mateo, Medeiros, Molina, Victorino, Vice-Chair Hokama, and Chair Pontanilla.
	NOES:	None.
	ABSTAIN:	None.
	ABSENT:	None.
	EXC.:	None.

MOTION CARRIED.

ACTION: ADOPTION of revised proposed resolution authorizing an agreement between the County of Maui and Castle and Cooke, Inc., pertaining to the waiver of refuse disposal fees and the provision of landfill cover material for the Lanai Landfill; and FILING of communication by C.R.

CHAIR PONTANILLA: Thank you very much. Motion is carried. Nine ayes.

Okay, Members, the second item, and thank you very much, Ms. Okuma, Tracy for being here. The second item is BF . . . the Chair's recommendation for referrals. The Chair would like to recommend that the following items be referred to Council Chair for the term beginning

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January 2, 2009 pursuant to Section 19 of the Rules of the Council. The first item is --

ITEM NO. 99 AFFORDABLE HOUSING FUND PROGRAM FISCAL YEAR 2009 ANNUAL PLAN (C.C. 08-68)

ITEM NO. 131 BED AND BREAKFAST REAL PROPERTY TAX CLASSIFICATION (C.C. 08-249)

CHAIR PONTANILLA: BF-99, Affordable Housing Fund Program Fiscal Year 2009 Annual Plan. And the second item is, BF-131, Bed and Breakfast Real Property Tax Classification. Members, if you have any questions on the two items, please let me know, in regards to this recommendation for referral for the next term. Member Johnson?

COUNCILMEMBER JOHNSON: I didn't have a question on those two items but they were just some of the ones I just quickly looked through what we had and Item No. 133, I can resubmit, which is the real property tax classification. Um, No. 124 for taxi rates and baggage, that was sent to us by the Mayor. Now, isn't that something that is required of us that every so many years we have to look at this?

CHAIR PONTANILLA: Um . . . Mr. Taguchi?

MR. TAGUCHI: Chair Pontanilla, I believe that item was a report that was submitted by the Mayor. It is required to be submitted to the Council. Under the Council Rules, it is not for action. There is no budget amendment, I mean, there is no Maui County amendment or anything or change in fees. So, it is one of many reports that are submitted to the County Council. In the next term, it is possible if someone wants to take up that item it could be referred to Committee for review.

COUNCILMEMBER JOHNSON: The only reason I ask, Mr. Chair, is because we had that in our committee, which was Parks and Economic Development previously and so I was just curious how our taxi people are actually doing.

And then the last item was Item 130, which was in regards to electronic exploitation. And did we already deal with that? I believe that we already dealt with that so I was just curious why it was still in the binder.

CHAIR PONTANILLA: Mr. Taguchi?

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MR. TAGUCHI: That item was reported out in the last Budget and Finance Committee meeting. It will be on the Council's agenda prior to the end of the term. So it will be passed.

COUNCILMEMBER JOHNSON: So, okay, it just was not removed from our binder yet?

MR. TAGUCHI: Yes.

COUNCILMEMBER JOHNSON: All right. Thank you very much.

CHAIR PONTANILLA: Thank you. Members, any more questions in regards to the referrals? If not, thank you very much. Those two items – BF-131 as well as BF-99 will be referred to the next term.

ACTION: REFERRAL of communications to the Council Chair for the term beginning January 2, 2009 by C.R.

CHAIR PONTANILLA: Members, that concludes the agenda for this afternoon. Members, any announcements? If not, the Budget and Finance Committee meeting of December 1st is adjourned. . . . *(gavel)* . . .

ADJOURN: 2:23 p.m.

APPROVED:


JOSEPH PONTANILLA, Chair
Budget and Finance Committee

bf:min:081201;jcs

Transcribed by: Jo-Ann C. Sato