

**LANA'I PLANNING COMMISSION
REGULAR MEETING
AUGUST 19, 2015**

APPROVED 10-21-2015

A. CALL TO ORDER

The regular meeting of the Lana'i Planning Commission (Commission) was called to order by Chair Kelli Gima approximately 5:31 p.m., Wednesday, August 19, 2015, in the Lana'i Senior Center, Lana'i City, Hawaii.

A quorum of the Commission was present (See Record of Attendance).

Ms. Kelli Gima: Time is now 5:31 p.m., so I'm going to call this meeting to order. This is the August 19th, 2015 Lanai Planning Commission meeting. We have...a couple of people missing. We have Jarrod missing, and Beverly missing, but we're going to go ahead and start. We have quorum.

B. PUBLIC TESTIMONY - At the discretion of the Chair, public testimony may also be taken when each agenda item is discussed, except for contested cases under Chapter 91, HRS. Individuals who cannot be present when the agenda item is discussed may testify at the beginning of the meeting instead and will not be allowed to testify again when the agenda item is discussed unless new or additional information will be offered.

C. APPROVAL OF THE MINUTES OF JULY 15, 2015 MEETING

Ms. Gima: So I'm going to open it up right now to public testimony. I don't have a sign in sheet, but if you signed up to testify raise your hand. Anyone? Well, alright then. So I'm going to close public testimony and go on to Item C, which is the approval of the minutes of July 15th, 2015 meeting. Any discussion regarding these minutes? Okay, no discussion. Do I hear a motion to approve?

Mr. Stuart Marlowe: So moved.

Ms. Gima: Moved by Stu, second by Brad. All in favor of approving the minutes of July 15th raise your hand. One, two, three, four, five, six, seven. And no noes. Okay, so the minutes are approved for July 15th.

It was moved by Commissioner Stuart Marlowe, seconded by Commissioner Bradford Oshiro, then unanimously

VOTED: to approve the July 15, 2015 meeting minutes.

**(Assenting: J. Aoki, M. Baltero, K. Gima, S. Koanui Nefalar, S. Marlowe,
B. Oshiro, B. Zigmund**

Excused: J. Barfield, S. Ferguson)

D. COMMUNICATIONS

- 1. MR. KYLE GINOZA, Director, DEPARTMENT OF ENVIRONMENTAL MANAGEMENT, COUNTY OF MAUI requesting a 15-year time extension on a State Land Use Commission Special Use Permit (SP 94-386) for the continued operation of the Lana'i Sanitary Landfill on approximately 25 acres of land at Kaunalapau Highway situated within the State Agricultural District at TMK: 4-9-002: 060, Lana'i City, Island of Lana'i. (SP 94-386) (SUP 94/0005)**

The Commission may take action on this request.

Ms. Gima: And we will just move on forward to Item D, which is Communications, starting with No. 1, Mr. Kyle Ginoza -- sorry if I pronounced that wrong...*(Ms. Kelli Gima, Chair, read the above project description into the record.)*

Mr. Clayton Yoshida: Good evening Madame Chair, members of the Lanai Planning Commission, Clayton Yoshida with the Planning Department. Staff planner for this item is Kurt Wollenhaupt. And also with us is the Deputy Director from the Department of Environmental Management, Mike Miyamoto; and an engineer from the Solid Waste Division, Department of Environmental Management, Elaine Baker. So I'll turn it over to Kurt.

Mr. Kurt Wollenhaupt: Hi and good afternoon members of the Lanai Planning Commission. It's a pleasure to be with you. My name is Kurt. This is my first time, so we hope that it's a happy relationship starting out. The item before you today is indeed a time extension of a special permit for the operation of the Lanai Sanitary Landfill. So that does bring us to the question, well, why are we here today and what are we doing? And that is that the special permit on any acreage greater than 15 acres on the agricultural district zoned land does require review by this body, the Lanai Planning Commission. In addition, because this is over 15 acres, it will require final approval by the State Land Use Commission. So depending upon what happens here tonight those results will be transmitted to the State of Hawaii's Land Use Commission for their final dispensation and review.

The original time extension request was submitted in a timely manner prior to its expiration date of September 13th, 2014. Obviously we are now in 2015. There have been some staff changes, additional information; however, the policy that should an application be presented prior to 90-days expiration that the department continues processing it so that we're hoping that this can be move forward in an expeditious manner.

That being said the Lanai Sanitary Landfill was originally approved for 10 acres. Consequently you had a Special Permit Petition Land Use Commission Docket SP66-36. I went back with Riley Hakoda at the State Land Use Commission and was able to pull those old documents from 1966 for the commissioners. That interestingly enough for the original 10 acres does not have a time limit, so upon the expansion of the landfill an additional 25 acres, the Land Use Commission ruled and approved these additional acres and that is indeed what we're today is

for a possible extension of special permit 94-386 for the 25 acres.

There's a historical time line that's in here. I'm sure that the members are well aware of what the history of this project has been. Of course, rate to fill are our moving target. The department did request and was pleased that there was a recent engineering study and consequently the Department of Environmental Management did revise the request to extend from 10 years to 15 years for the time extension, to September 13, 2029. Ms. Elaine Baker and Mr. Mike Miyamoto will be discussing the particulars as they're engineers, and I'm representing the Planning Department.

My apologies for a bit of an errata on page 4 that this is greater than 15 acres, and therefore the Lanai Planning Commission will be the advisory body sending it on to the State Land Use Commission.

Just to give some of the members that may be new, there are five criteria to review a special permit. Number one, is it an unusual but reasonable use within the ag district; whether the desired use would adversely affect surrounding property; whether it would unreasonably burden public agencies; whether new trends and conditions have arisen since the boundaries were established; and, what kind of land is essentially not so suitable for agricultural purposes. Those are indeed the criteria by which any special permit is to be reviewed by this body and by the State Land Use Commission.

Ms. Beverly Zigmond: Excuse me? Can I ask a quick question?

Mr. Wollenhaupt: You can.

Ms. Zigmond: Sorry. Over here. And this is just a really manini thing, but again I want to make sure that we're talking about the right thing on page 4 under applicable regulations. It says "therefore the Maui County Planning Commission is the authority for this Special Use Permit."

Mr. Wollenhaupt: And that was -- I apologize that was an errata. It is over 15 acres. The Lanai Planning Commission is advisory. The State Land Use Commission is the final authority. So thank you, and I'm glad we got that corrected.

The analysis portion with regards to the Maui Island Plan, the Lanai Community Plan is in the staff report, along with the five criteria which I just mentioned and how they comply with. I shouldn't probably need to have to read all of that because I'm sure you're interested in the engineering part of this. That being said, I think that provides an overview, and Ms. Elaine Baker, civil engineer, with the Department of Environmental Management, will present a power point on the specific Lanai landfill. Thank you.

Ms. Elaine Baker: Okay, the first slide. Can -- does this work? I guess, so okay. The first slide is an aerial from Google Earth taken in January of this year. And you can see the main features of the landfill -- the office, and equipment area in the middle, the terrace slopes, the concrete perimeter swale, two riff raft swales, and a retention pond for storm water in the upper left hand

corner.

Okay, next slide please. Okay, we're here for a 15 year time extension request for Special Permit 94-386. We were -- our permit had expired so we had to renew for 10, and we thought, well, let's make it 15 since that's maximum time estimated for the landfill life. Comparison of 2015 and 2014 topographic surveys of Lanai landfill estimates 15.6 years of additional life. This is the same fill rate that we've had this year, 19,500 cubic yards. This volume includes both cover soil and municipal solid waste.

Okay, next slide. This slide is a summary of the Special Use Permits obtained for Lanai landfill. October 29th, 1966, SP 66-36 was issued by the Land Use Commission for the establishment of Lanai landfill on 10 acres. There is no time limitation on this original permit for 10 acres. On September 13th, 1994, the LUC issued SP 94-386 for an additional 25 acres for the Lanai landfill. Then on September 12th, 2008, that was renewed in a 10 year time extension for 25 acres of the landfill. That expired on September 13th, 2014. Now we have the 15 year time extension for that 25 acres which when put with the original 10 acres is 35.78 acres. And we did apply for this extension in a timely manner, on January 29th, 2014. This Special Use Permit is required by the Department of Health to operate the landfill. It's imperative that we have this permit.

Okay, so now I'm going to leave the landfill momentarily, and go to Lanai Solid Waste and Recycling Plan highlights. Efforts to expand the redemption center into a recycling center on Twelfth Street hit a roadblock when the County was notified of lease termination by Pulama Lanai in January of 2013. Redemption is managed by the State. It is not a County function at this point in time. Current recycling for the island includes residential scrap metal and residential electronics, collection events coordinated with and/or managed by Pulama Lanai. Recent County scrap metal events for residents were held November 2013 and this past June 2015. Pulama Lanai is designing a facility at Miki Basin for collected materials. Now the County funds referred to recycling which is an Oahu company to handle the residential scrap metal, not commercial, and related materials which are the propane tanks, cars, batteries, and appliances, while collection is done by Pulama Lanai. Recent County electronic events for residents were in November 2013, and there is one scheduled for this month, next Wednesday morning at the central baseyard.

Now history of recycling on Lanai. In 1994 to 95, Na Keiki O Ka Aina Environmental Education Program was funded by a County grant, Lanai Community Benefit Funds, Lanai High & Elementary School. And included in this program was aluminum recycling. We also at that time had Lanai Waste Systems run by Mr. Manny Amaral. In that year, he recycled 565 tons. In 1995 to 96, we still had Na Keiki O Ka Aina Environmental Education Program and we still had Lanai Waste Systems. He was recycling 17 tons, primarily newspapers and aluminum. In 1996 and 97, we still had Na Keiki O Ka Aina Environmental Education Program, but in January 87 Mr. Amaral pulled the recycling bins from Lanai City. In 1997 to 98, Lanai Waste Systems recycles aluminum, scrap metals, newspapers, glass and used motor oil -- 22 ½ tons. 1999 to 2004, it was Lanai Waste Systems primarily recycling hotel glass and green waste. Now in 2005 the County received HI5 funds to run redemption centers, and Tri-Isle Resource

Conservation and Development, RC&D, received a County grant with State funds to run the HI5 Center on Lanai which is defined as an under served area. Tri-Isle negotiates an informal lease with Castle & Cooke for use of a temporary undeveloped property. In 2006 to 07 the Tri-Isle grant using State funds continues the HI5 center. In 2008, Tri-Isle is funded directly by the State to run the HI5 program. And that's when it changed from County to State, and continues to be State run today. 2008 to 2009, there was a lease agreement the County negotiated for M1 Zoning signed for an undeveloped site at Twelfth and Fraser. And in August 09 a relocation clause was added to lease agreement which meant that the tenants upon notice could be made to relocate. Okay, so Tri-Isle received the County recycling grant to design, build, equip and operate the recycling and redemption center at Twelfth and Fraser. In 2010, Tri-Isle hires Manthos Engineering and Lanai Building Company. In 2011, MECo installs electricity, the lease is amended to 2018. In 2012, RRR operates the redemption center, the building permit for the structure, and there was construction of the concrete slab and structure. In 2013, the County received the lease termination letter with relocation option in January, and vacate in June.

Okay, so recycling on Lanai, why did the County not choose to relocate? Land costs -- lease for the Twelfth and Fraser site cost \$400 a month. Leases had been negotiated for two undeveloped sites. Relocation meant a third undeveloped site. Development costs -- the County paid \$551,358 to develop the Twelfth and Fraser site. Operations cost -- energy cost for electricity to bale commodities and for fuel to move them to market offset environmental benefits as recycling markets fluctuates. And currently scrap metal is in the pits as well card boards. I was told card board used to 120 a ton, now it's 30 a ton, but recycling markets has always fluctuated like that. So what we have is an event base recycling on Lanai. Recycling occurs as events rather than as ongoing collection. Recycling is available for materials with the most adverse impacts to the landfill, either by their volume, weight, and/or component materials. So those are the scrap metal, appliances, auto, batteries, propane tanks, tires and electronics.

Now Lanai's waste management future. This is a question for Lanai's residents and businesses. In 2015, the County hired a consultant to evaluate further options. Do we landfill? Well land filling today is not what land filling was when this land fill opened back in 1966. There are State and Federal regulations, so that sites have to meet certain location and design criteria such as being located not more than 10,000 feet of an airport runway end, used by turbo jet aircraft, of within 5,000 feet for piston type aircraft, or demonstrate that there is not a bird hazard to aircraft. Have a line of whether hydraulic conductivity of no more than one times tenth minus centimeters per seconds. In other words, a bottom line or that doesn't leak to protect the ground water. Do we have a transfer station? Well, where do we transfer our waste to and why would we bother to do that? Small scale waste energy? Which one? Are there even any? Stay tuned.

So Lanai's landfill improvements -- now we're back to the landfill, the purpose of this meeting. The Lanai landfill improvements, 2006 to 2015. In 2006 the County spent \$150,000 for survey and design of the storm water system upgrade. In 2007, the design total was \$204,475. Additional funds were added and we did the job. In 2008 we contracted \$2.2 million for the storm water system upgrade, and we started the job. 2009 we constructed the upgrade. 2010 we launched the alternative daily cover program using a tarp instead of a soil four days a week.

We started at two. And this was approved by DOH. In 2011, we designed an alternative energy system for the landfill office, \$75,000. In 2012 we put up the photo voltaic panels and weather stations was installed with a laptop, \$150,000. 2012, we routed the rip rap channels into the detention ponds because the rip rap was rolling away, \$24,900. 2013, three moisture probes were installed per DOH, \$110,000. 2013, vetiver were was planted for erosion control, \$78,077. 2014, additional vetiver was planted for erosion control, and in 2015 we hydroseeded the slopes for erosion control, \$5,000 to date. We will continue the hydroseeding.

Okay, so on each one of those, the Lanai landfill storm water system improvement 2006 to 2009, it features a 15 foot wide, four-inch thick, perimeter fiber reinforce concrete swale, two rip rap channels to the basin, and one rip rap overflow swale, and two concrete inlet swales because we have to control the storm water runoff from the highway. Okay, the alternative daily cover program is the tarp, what you see in the picture. It saves air space and saves cover soil. January 2010 we notified DOH that we were going to conduct this demonstration program. July to December 2010, we did daily photo documentation of the demonstration program, and this was tarping for two consecutive days. February 2011, we reported to DOH, and in May 2011, we were approved by DOH. July to October 2011, we extended the tarp to four consecutive days. October 2011, we reported to DOH, and April 2012, we got approval from DOH.

Okay, photo voltaic panels installed 2012. Container roofs were coated elastahyde water proofing. We installed 36 240-watts solar panels with an inverter solar charger controller, power distribution panels, and battery storage. We also installed a weather station on the office roof which measures wind speed and direction, temperature, humidity, rainfall, solar radiation. And we have a lap top computer provided with an internet connection.

Okay, rip rap swales were grouted in 2012. Storm water flows pushed the rip rap off the filter fabric, and the County contracted with Lanai Builders to grout the rip rap. Grout has prevented further displacement of the rip rap. Moisture probes -- three were installed in June 2013 to monitor landfill . . . (inaudible) . . . Okay, and here's a photo of one of them. They go down about 20-feet, and to monitor moisture at the bottom of the landfill, and it has been very dry since 2013. Vetiver grass was planted in 2013 to 2014. Vetiver grass is a perennial bunch grass used as a vegetative barrier to control runoff. Its strong compact root system, it strips down the slope, runoff, traps sediment and allow water infiltrate soil. It was planted to prevent storm water from running across the landfill. As you gather from the storm water is an issue at the landfill. Hydroseeding, 2015, we hired a landscape to put hydroseed Bermuda and rye grass to protect the soil slopes from erosion due to storm water runoff, and we will continue to hydroseed the slopes.

So, the Lanai landfill staff performs rubbish collection, litter control, equipment operation and maintenance, customer service, innovative use of locally available no cost materials, pond sediment removal, erosion control. And here they are, Jason, Keoni and Manny. Any questions?

Ms. Gima: Any questions members? Go right ahead.

Mr. Oshiro: You're asking for a 15-year permit? Is one year gone already since you applied back in September of 2014?

Ms. Baker: Yes.

Mr. Oshiro: So you've only got 14-years left.

Ms. Baker: But they go retroactive. The permit is dated retroactively. So, yes, 14-years now.

Mr. Oshiro: Okay, I've got another -- I've got a bunch of questions, but I'll just go down. Motor oil, who and where? You know, any, any other, any other county you can go and dump it at -- not dump it but you can take it and, and . . . (inaudible) . . . Here on Lanai, we don't got no place to dump them. And if you don't got no place to dump guess where they put it? Some place out on Pulama's land.

Ms. Baker: Right. Yes. I know for a number of years they did have used motor oil collection at the service station. But I don't even see the service station. I guess I must have missed it. So apparently now they've been unable. See it's a partnership that we had with the County. It was the service station, that we paid them to handle the used motor oil. But if they're not willing to do that, if we can't find anyone who's willing to do it, then it doesn't happen. And now, see that's been funded by the State, and now the State is beginning to look at that money and consider not funding the used motor oil program at all.

Mr. Oshiro: Okay, next question. The scrap containers, the batteries, the paint, the appliances and stuff -- unless there's a more recycle, a reoccurring pick up, people going dump. And if you just go outside the dump, the first viewing point right below the dump, when you look out to the left, there's a T.V., there's a desk, there's a chair. And that's only right at the dump now. There's other people if you go out in the State land, they got dumped out in the gulches and, you know, it doesn't make sense because if you don't have a reoccurring pick up more often people just going take it to their convenience to get it out of their yard, and you going find it out in, out in the --

Ms. Baker: Well...well, the collections are to occur more frequently than they have recently.

Mr. Oshiro: How much more frequently?

Ms. Baker: Three times a year.

Mr. Oshiro: Three times a year.

Ms. Baker: There has been a permit problem with trying to get a DOH permit. That's why they didn't have recycling events from November 2013 until 2015. But now that they've got that hurdle handled so there should be collection events three times a year.

Mr. Oshiro: That don't even work because I had, I've had a garage, the whole roof re-roofed,

and I had all the metal out there. And if my wife didn't go out and stop they guys and say, hey, hey, what you guys going pick this up? They would've left it and it's been there since 2013. So, you know, I don't know if the County's got to get with Pulama to work out something where you call in say, hey, I've got some scrap metal that needs to be picked up cause these guys was going drive right by. And I would've, I'd be end up, you know, I'd be talking to somebody down in Pulama saying you guys gotta come get this.

Ms. Baker: Right. Well, Pulama apparently is applying to the State for permit for a recycling, a scrap recycling facility. But these things always take time.

Mr. Oshiro: Okay, right now, how high is that fence down at the dump?

Ms. Baker: It's a six-foot cyclone fence.

Mr. Oshiro: It's a six-foot cyclone fence but the problem is the landfill is higher than that six-foot. So what use is it there for? I know it was put there to stop, prevent waste from flying out.

Ms. Baker: Right. And now we have the portable screens and litter screens.

Mr. Oshiro: Yeah, but, but you still get stuffs that flies out.

Ms. Baker: Actually, I thought –

Mr. Oshiro: And it doesn't make sense because right now the landfill is higher than that six-foot.

Ms. Baker: Right.

Mr. Oshiro: And then if you gonna leave it open for another 14-years, eh, two years ago I could see the gulch. Now I cannot see the gulch and that's two years, okay. There still be a lot of construction here on Lanai so that dump is going get filled. 15-year time is going be filled long before that.

Ms. Baker: Well, they do have a 20 ton per day limit to have their small community exemption is that we don't have to put in ground water wells that go 800 feet deep. So the maximum the landfill can take any day is 20 tons.

Mr. Oshiro: So again we come to the problem if we don't have occurring pick up of waste people going to dumping out in the field.

Mr. Michael Miyamoto: If I may respond, my name is Mike Miyamoto. I'm the Deputy Director for the Department of Environmental Management. And I hear your concerns, and it's something we're working on, this household hazardous waste that will address some of these concerns regarding the oil that residents may have, old paint that you want to dispose of. We're just starting that on Maui right now, and we're planning to bring it to the various islands, you know, the other two islands also to try and get that to be an ongoing program. As you may have

seen last year's Council budget they approved this environmental protection and safety division program. And what that does is that it creates this pot of money to address these environmental type protection and concerns, which includes landfill diversion, these household hazardous waste, metals, and so forth, these other issues. So we're working with that. We're getting prepared to start the 2017 budget process, and we're going to be looking to put more money in there to, like, you say, serve the more rural communities for those type of services like household hazardous waste and metal. And since we don't have a facility here, we partner with Pulama Lanai and some non-profits to help them to try and get that off island as much as possible. So we're fully in support with what Pulama Lanai is doing, trying to get their own permits for those types of facilities.

Mr. Oshiro: Sorry, one more and then I give it to you. Okay Lanai planning, they didn't address anything about a future landfill, okay. You have any idea if it goes beyond what, what, it can fill up in the next 14-years? Do you have any idea where you gonna put the next landfill? I mean, would be nice to kind of think about it already, right?

Mr. Miyamoto: I agree. And we have been in discussion with Lynn here from Pulama Lanai, and we're also doing that engineering study that looks to do, you know, do you want to create another visual thing, like, another landfill, or like as Elaine showed in the presentation, do you want to transfer it? More than likely because of the barge system it would go to Oahu. Their facility, their incineration facility doesn't get enough trash right now. So right now they're just writing a check to the service provider for the incineration process because they don't get enough waste. So the waste may have some value to them. The other alternative is a small waste conversion type facility that could either generate power or some kind of alternative fuel like bio-gas. The one on Maui we're looking is bio-gas. We're looking at creating this bio-gas. You can clean it, you can manipulate it so it can be CNG, LNG, and that can be used to fuel diesel. So we just met with somebody who was thinking about --. I take that back. If you saw the one on the Big Island, the private company was looking to do their own waste conversion facility. They were looking to develop bio-gas, and they were going take that bio-gas and fill his refuse truck. He's got his own fleet of commercial refuse trucks, and he wanted to convert all of that into CNG and LNG, and he was going to use the trash that people threw away, convert it through that process, create the gas, and then use that to fuel his vehicles. So that's the kind of models that we're looking at and in conversations with Pulama Lanai.

Ms. Zigmond: Okay. Hi. I have a couple of questions on the staff report. So, on page, I guess, it's 4-5, the kind of items that are excluded in our landfill includes commercial construction and demolition debris. So I'd like to know what happens to that.

Mr. Miyamoto: Yes I'm sure Lynn could probably testify to how much we've made or shipped it off island, containerized it and get it off the island. Because we've agreed that there are certain things that could go into the landfill, but general construction waste like she's doing a great job trying to recycle as much of that as possible so she doesn't have to pay a landfill cost because metal has value. Although it's decreasing, it still has some value so she's trying to separate as much of that as possible. And we're trying to work with her to accept what is acceptable within that list at the landfill to reduce the cost.

Ms. Zigmond: Is there a fee for that?

Mr. Miyamoto: It's all -- the shipping off is all borne by the company. The County has no involvement in it at all. We're just saying, you can't bring it here. She has to pay the full bill to take it off island.

Ms. Zigmond: Okay. Thank you. And then it says "dead animals over 70 pounds," is there a scale? Do we actually weigh them?

Mr. Miyamoto: Oh, so you're --. That's mainly --.

Ms. Zigmond: It says "dead animals." I mean, I don't care what kind it is. I just want to know to know if there's a scale?

Mr. Miyamoto: To be honest I really am not familiar with the, the animals. I'll ask Elaine if she knows.

Ms. Baker: Well, I was talking to Manny and Jason today, they don't get full on dead animals. They get the remains, so the hide and bones, apparently. So they're now coming in. Apparently it was separated. Oh, because the State hunting season, so moufflon sheep has just started, or will start this coming weekend, and run for nine weeks. And then deer is February and March. And they use to come in separately. But then that incurred a special handling fee. And so now it comes in apparently as mixed load so the State has worked something out for mixed loads. So to my understanding the entire animal doesn't make it to the landfill. It's only parts of it.

Ms. Zigmond: Okay, thank you. And then about half way through the staff report, this is the...fiscal year 2014 annual report, on condition no. 3, it says "petitioner shall utilize non-drinking water to the extent possible for grading and dusting control at the landfill." And the response says that "it currently uses an agricultural source of water provided by Pulama Lanai." So I'd like to know where that water's coming from.

Ms. Baker: I thought it was a field across the highway.

Ms. Zigmond: Is it potable? Is it non-potable?

Ms. Baker: Well –

Ms. Zigmond: And I'd like a little more specific where that comes from please.

Mr. John Stubbart: John Stubbart, Director of Utilities. The water source currently being used for filling the truck for the waste water is potable water at this point. Before it was non-potable, but we have moved our chlorination point, and so that, all that water in the Palawai loop now is potable water.

Ms. Zigmond: About how much is used on a daily basis? And what well is that coming from?

Mr. Stubbart: Well 4 is the primary source. And gallons per day...

Ms. Baker: It's a 4,000 gallon trucks. How often do we fill it? I know we don't fill it every day because the man power issues. But I know Jason today was talking about he was glad to have a water truck because back in the day he use to have to pray for rain to control the dust down there. So I would say our use is moderate but I would have to defer that to Jason. He said I could call.

Ms. Zigmond: Because water is always an issue here. And one other question please. What happens when this permit expires? What happens to the current landfill?

Ms. Baker: It will be closed according to regulations. It will have a prescribed soil cover on it and be grassed and become vacant land...unless someone chooses to develop it. There have been landfills turned into golf courses, but I guess there are other lands for that here.

Mr. Oshiro: I have two more questions. One, one -- the biggest question I got is how high is this landfill going? Is it going become a mountain? It is going to be another -- we going have to rename this, this landfill?

Ms. Baker: It gets --. Sorry. It's narrower as you go higher so your capacity is reduced as you go higher.

Mr. Oshiro: So that's why you compacting everything that has to be brought down there?

Ms. Baker: That's standard waste handling to compact the waste.

Mr. Oshiro: Compact the waste to save landfill, save the landfill.

Ms. Baker: Right. Compact the air space. It's all about air space, trying to conserve it.

Ms. Joelle Aoki: In your recommendations on 5.2 you indicate that possible public composting options of green waste composting. Do you foresee that to be in this, in this 15 year extension? And, and one more part for that question. Is there, is there current regulation and/or fines on improper green waste disposal currently with the County of Maui?

Ms. Baker: With the State. Okay, that, that is with State. Okay, and also State. There's a limit. You can't have more than half a load be green waste that comes in. But we don't accept commercial green waste down at the landfill, only residential.

Ms. Aoki: And I'm sorry, let me clarify. Improper disposal of green waste, meaning in other areas beside the landfill. Do you know if there's any regulations and/or HRS relating to improper disposal of green waste. . . (inaudible) . . . invasive species, and, and that type of . . . (inaudible) . . .

Ms. Baker: You mean illegal dumping?

Ms. Aoki: Yes.

Mr. Miyamoto: Hi. Mike Miyamoto again. Having been in Public Works as a Deputy in Public Works, we treat it as, as littering. You know any time you see people who just dump green waste, trash or whatever, we treat it as littering, and for Public Works, anything in the public right-of-way we're responsible for. Anything outside of the public right-of-way within private property we try to work with the owner of the land to try to clean it up. There's certainly, you know, some Department of Health concerns about rats, and bugs, and everything else. And then there's also, you know, the fire hazard of it all, so if we try to get the Fire Department involved in those types of issues. So we try to work with private land owners if it's on their property. But if it's in the public right-of-way it becomes Public Works, and then we work with them when they try to bring it to the landfill to properly dispose of it.

Ms. McCrory: Lynn McCrory, Pulama Lanai. We currently have two compost facilities. One is in the city and that is operational. Right now we're just bringing a bunch of green waste up there, and it's going to be sitting on the site. The other site is a much larger facility. It's out near the airport. We have the permit for it, but we are waiting right now for a clean air permit for one of the machine and that's been about nine months now. So hopefully very soon we'll get that permit, and then that facility will actually start going the green waste to compost. And then that will be available and we'll be able to take more of that.

I did want to address just a couple of minutes, Brad, if you have a minute. The collections that we done, and they were done every four months since we started -- were paid for by Pulama. Our trucks, we picked up everything from cars, to white goods, to batteries, to tires. None of that went in the landfill. That all went to containers. It was all shipped to H-power, or the batteries went to a specific place, the tires went to a different place. There was only one period since 2013 where we didn't make every four months. We made it every -- we had one that went five months before we did it. The County does pay refrigerant recycling a small portion of that costs for them to do the work of smashing down the cars, filling up the various containers and shipping. But it doesn't cover all of the cost, so everything that everyone in this community had saved up -- and think we're down to almost to no cars and we're still finding some in the bushes as you know -- never made the landfill, where it could have.

We do have, at Miki Basin, two sites that we have set aside. One for Maui Disposal where they will operate to pick up the trash that they pick up around town. And the other one will be for refrigerant recycling, and we are in the process of setting up the lease for them. And then you will be able when that is set up and functional to take things to that site, so that will be in place. But they are also applying for the recycling permit. And once that is granted then we'll be able to go. In the mean we stay with, every four months and the notice that goes out. But know that gets done, and it doesn't go to the landfill.

Mr. Oshiro: Okay, I want to say thank you to Pulama for doing all of that because if not, like, it would be in your property. Question about the green waste, you said in the city, is that a

collection point or --?

Ms. McCrory: No, it's not open for collection at this point. You, you should take the green waste down to the landfill where it's separated, and then we try to come back up and pick it up, and we've just been, at this point, piling it over at the new composting site. It's just not been ground.

Ms. Aoki: Thank you. So does that mean in your recommendation what you've indicated as far as green waste disposal, will that still be an option in the next 15 years in light of Pulama Lanai's efforts with composting? And, and thank you very much Lynn because that is a huge benefit for our community. I'm asking these questions because I hike every evening and I've observed individuals who have started businesses illegally dumping green waste. And there is some contents in that green waste that is not considered green waste that is littering, and introducing invasive, potential invasive species that is very close to our hale. And so I'm just curious about this because now I'm really keeping an eye on it because I've seen it occur for almost every day. So will that still be an option in this next 15 year extension based on your recommendation?

Mr. Miyamoto: Yes. Typically, we take the residential green waste and so long as it's not over 50% of the waste. You know, we're thankful for our private partners who will then be up, and can take the commercial. And if residents would take it to her, they could certainly reduce the amount of trash going to our landfill. So right now we're still by permit allowed to take residential. And then hopefully when they get their commercial facility up, residents can then take it straight to them and possibly, who knows, maybe you get some compost at the back end or maybe some mulch out of it.

Ms. Aoki: I've observed -- I actually have taken green waste down on the weekend when they're open and they've segregated it, so I, I've personally witness that. And that, that just brings the light that at least six days a week, there's a location to dispose of your green waste. There is no reason to be dumping illegally. Thank you.

Ms. Gima: Any other questions from Commissioners at all? Anything else from you folks?

Mr. Wollenhaupt: The recommendation?

Ms. Gima: Yes, please.

Mr. Wollenhaupt: Members of the Lanai Planning Commission –

Mr. Yoshida: Yeah, I guess we did ask for public testimony at the beginning but that was for people who couldn't stay generally. So I guess if people want to testify on this item, I guess, the Commission can ask for public testimony.

Ms. Gima: Okay, we'll open up public testimony again.

Mr. Ron McOmber: I thought they were going to forget about us. My name is Ron McOmber.

I'm also a member, it's still in standing, of the community plan amendment stuff, the CPAC. You know what bothers me about this extension is all the stuff we read, that landfill only has six years of life left. Six years. It's six years, and you want to add another nine years to that? I mean, this is not our statement. This is statement in the, in the paperwork that, that landfill only has six years of life left. So what the hell we suppose to do with the other nine years? This is, this is not right. If we had known that the County was going to come back and ask for a 15 year extension while we were doing the CPAC, we would have addressed that. We did not address that. It was not brought up to us. We read it. Well, you've got six years. Go.

The other thing that bothers me is they show all this improvements that they did down there. Believe me I was a UPW shop steward. Everything they gave them down there made their life a little bit better to work in that hell hole down there. All the electricity, all of the air-conditioning, all the trailers, all of the stuffs that they did down there sure in the hell wasn't doing it 15 years ago. So whatever they've done, I think a lot of it was generated because the County knew they had to take care of their employees. It had nothing to do with how good. Those guys bust their butts down there. For you guys that go down there regular, that's, that's probably one of the cleanest landfills there is in the State. These guys are local boys. They work hard. So, to say we had to spend \$200,000 for this or \$150,000 for that, that was something they had to do for those people working down there. So this is not a given. It's something they should've been doing a long time ago. When I was UPW shop steward, they should have been doing it then. We couldn't get them to do.

If this landfill, it only has six years of life, what are we doing the other nine years? This isn't right. We need to have the County get off their butt and find another site. They were gonna go across to the other side and put it in the old quarry, but Castle & Cooke said, oh no we'll give you that site, but you've got to pave the road. Well the County doesn't have the money to pave the road. Something has to be done. I think it's misleading that this community, the community plan people did not see this and we should've addressed it at that point. And we're still not done with the community plan so we're gonna bring this. I'm going to personally bring it up when we continue our, out stuff on the community plan. This upset me something awful that this would come along six months after we're done doing the community plan. Lanai people don't deserve this. Pulama has done a wonderful job of taking all their big stuff off the island. If they went down their down there and started dumping their stuff like Castle & Cooke did, that dump would be across the road. I gotta give them credit for that. But not for one minute do you believe that this pit is a 15 year. This is actually a nine year on to what the County already understand is six year life is at. So when you're doing this, somebody needs to answer some questions. Before you okay this, we need to find out more about this. Thank you very much. You were going to ask me a question?

Ms. Zigmond: Okay this is disturbing, right? So we're hearing 15 years, 14 years, 15 years, and now you're saying six. So can you recall where that information came from because that's a lot of difference?

Mr. McOmber: It's in the assessment of that. There's somewhere there's an assessment that said that we only had six more years left of that. It's a County assessment. And now I'm

looking at 15 years now? Something's not right about this. And if you let the County off the hook on this, County's notorious for not taking care of this. Look at what we're doing about affordable housing. We have -- we have acres over here for affordable housing, we can't even get them to do the infrastructure. I'm really upset with the County. The County is not taking care of Lanai. Thank you.

Ms. Zigmond: Thanks Ron. Then I'd ask the County, I'd like to hear what you have to say about the six year life, please.

Mr. Miyamoto: Thank you. Mike Miyamoto, Deputy Director for Environmental Management. Basically the landfill has a fixed amount of air space it can occupy. So let's do an analogy. Like you have a gallon bucket, you have a gallon of air that you can put in it. When you calculate the six, you might be filling it with a big cup. The rate of fill tells you you're going to fill that gallon of bucket really quick. Well, if today you're filling it with an eye drop, how much longer will that air space in that gallon bucket last? It's going to last much longer. So right now that's why in our permit you saw that we stated 15.6 years based on the current rate of filling. So that rate goes down due the wonderful efforts of Pulama Lanai and recycling and everything, that may last, that landfill which has a fixed amount of air space by permit may take even longer to fill. So that, that's the key factor there, that rate you're filling these landfills at.

Ms. Zigmond: Could it get filled more quickly?

Mr. Miyamoto: Given the way we're moving right now, you know, because of our restrictions and the way we operation our permit, we do an annual assessment of how we're filling it. For example, one of the things that's really important, someone brought up about compacting. The better you compact that, the more air space you have available. So if we can do a better job at compacting, we can get more air space. If the dirt, the dirt has to be at least six inches at the end of every day, typically. But now we're using a tarp so we don't have to put in that additional six inches of dirt to fill that air space, so it's saving us more air space so the landfill can last even longer because we're not wasting air space with dirt.

Mr. Stephen Ferguson: Hi. I've got a question. So where did the discrepancy from his six year he saying was one County assessment and then how did --? I understand the volume you talking about here, you get one fixed volume, but what was his six, six year that he said, what were they based? You know, what input in the landfill was that based on if you saying that your 15.6 years was based on the current which should be a higher level now because get more stuff going on Lanai, and so, so how you got 15.6 and he saying is six. What was that six based on? Would you know that?

Mr. Miyamoto: I don't know personally off hand. All I can think of is we still have that same amount of air space that we can fill. We can't go above a certain elevation. We recently had that on Maui, that, the Maalaea C&D landfill. Their permit says they can only go to a certain height, and that's what they're limited to and that gives them the volume of air space they can occupy. We would have to go back and look at the calculations. Like you said, you know, maybe there were the fill rate was higher, maybe we didn't do as good of a job with the green

waste or with other bad things that shouldn't be in the landfill back then. I'd have to go back and do more research on it.

Ms. Stacie Koanui Nefalar: Mines is a commenting . . . (inaudible) . . . So my husband is the landfill supervisor. From what I know, conversations, was because the way Castle & Cooke dumped their, their rubbish or their trash, Manny Amaral use to pick it up. Manny use to bring his, his rubbish into the dump, so the dump would charge Manny. So it was hotel trash that would be going into the landfill too. So now that Pulama has a different way, they have different disposing methods, it's less trash going in there.

Mr. Ferguson: Okay so what would happen say, say that demand went up for waste? Say she said 20 tons maximum per day. What if this island start generating more trash and then you, you going turn away trash or what going happen to the excess if you reach that level if more construction happen, or more whatever? You know, where that excess going, if you exceed that 20 tons?

Mr. Miyamoto: Exactly. We're way, I think, we're pretty well below the 20 tons per day with construction/demolition waste at this point. You know, certainly as the island grows or if there's more waste, I mean, there's certainly things that the hotel can do like, for example, cardboard has a value on the market. So the recycling of cardboard is valuable to them. You know, for example, on Maui, a lot of the hotels have their own baler because they want that, that income from the cardboard. So we would look at further, you know, doing more recycling or landfill diversion as we call it, whether it be -- for the commodity that have a value on the market. I'll give an example, an extreme example. Glass has \$9.00 a ton when you deliver it all the way to the guy in California. It costs us about 300-plus dollars a ton to get it to him, and he just gives us \$9 at the back end, so it really don't make sense to do that. So we would look at somehow doing some kind of other program that could then recycle the glass. Keep it local. If we can crush it, we can possibly use it at the landfill to --. If you can imagine the top surface of the, of the trash everyday, it's not a perfectly flat surface. There's holes and everything. So we're working with DOH right now to allow us to crush that glass and fill in those holes and then put the dirt on top or the tarp on top so that way we can, we save some air space, we save some materials that goes in the landfill. Because like you say, glass has some air in it. If we don't crush it, it's wasted air space. So we would really look for more recycling. Partnering with the private sector to help us in that aspect also.

Mr. Oshiro: I got a question.

Ms. Aoki: Thank you. Thank you Ms. Chair. Based on your land diversion, have you monitored data on the rate of fill in the past three years since Pulama Lanai has started their recycling program because I didn't see that data provided?

Ms. Baker: The data is in the planning packet because we have to do an annual report to the Department of Health every year, the end of July, for the previous fiscal year so we do report on waste tonnages. And now that we do annual topography we compare the volume that we use each year with the tonnage. But because there is no scale we have to estimate the

incoming tonnage.

Ms. Gima: Okay, I'm gonna finish up public testimony before any of the other Commissioners ask any other questions. So anybody else would like to testify? Stan?

Mr. Stanley Ruidas: Stan Ruidas, Lanai resident. I was on the Commission, sitting where you guys sitting, I think Bev was there, and we approved this years ago, I guess, 2008. And they said that they would have a site that would be available, you know, at the end of the permit. Well, you gotta, you gotta hold these guys accountable because they neva do the recycling which is like they blaming the State. But every time blame the State, blame the State. But the County should be more proactive. And, you know, you look, you drive down there and you can see the thing is high. I no care about air space. You guys look at it, you know it's getting high. Brad knows. All, all the trash getting dumped. Sunday, Monday they close, where all the trash going? In the hunting area. That's not being nice. That's not being pono to the land. Oh, budget cuts, oh, maybe that. But look, you look you spend a lot of money on, I don't know, . . . (inaudible) . . . too much money. But my point is if I was you guys I would deny this, or if you guys no have the ability, just make sure it doesn't pass because at that time when we passed the original permit, this thing should've been taken cared of. And they going ask for 15 years? Something going happen. We going get one place that we not going like. Thank you. Thank you for letting me talk trash.

Ms. Gima: Anyone else wanting to provide public testimony at this time? Okay, so I'm going to close public testimony and last questions, thoughts, Commissioners?

Mr. Oshiro: You know, I asked the question, how high is this thing going? You guys actually know how this mountain's going so can I have the fact of how high up, elevation wise, this, this hill suppose to be?

Ms. Baker: Okay, it's in the planning document in the master plan, and it's my understanding, it's about 800 feet elevation above sea level. There should be a final grade drawing in here. So basically from where we are now the mauka portion would go up another 25 feet, and over the office it would be about 50 feet. Okay, does it give an elevation? He, he found the page. And it is a matter of economics. It's very costly to site and build a new landfill. Okay, 1,022. I'm off 200 feet. Okay, maximum 1,022. And that's the mauka, the most mauka point of the landfill because it does slope mauka to makai.

Ms. Richelle Thomson: Thank you. I just wanted to add Deputy Director Miyamoto addressed this, but just to qualify that what the Commission is considering is an extension of the special permit, a time-extension. The landfill does operate under a Department of Health permit so it has -- that's also Department of Health, that's the closure height, the closure plan, all of the waste restrictions that apply to the landfill. So what you're considering is whether this landfill has operated in compliance with its special permit, the terms, and whether it continues to meet those terms, and whether the time requested is backed up by the data presented by the department.

Ms. Gima: Okay, commissioners, any other questions...discussion, comments? Okay, so we'll have the County provide their recommendations on this permit.

Ms. Zigmond: Madame Chair could they please, for, especially for the sake of our new Commissioners, give us as on page 12 of the staff report what our alternatives are prior to them giving their recommendation? Thank you.

Mr. Wollenhaupt: Hi. Good evening Commissioners. In response to Commissioner's request for alternatives to the State Land Use Commission Special Use Permit, and to reiterate once again that this body is giving an advisory opinion to the State Land Use Commission for their final dispensation, there are three alternatives. The first would be deferral. The Commission may defer action to another meeting to obtain information they believe would assist in their deliberation on this request. Two, they can recommend approval to the State of Hawaii Land Use Commission. The Commission is not the final authority as reiterated as this is over 15 acres, and therefore can make a recommendation to approve or to deny the special permit. Or their recommendation to the State of Hawaii Land Use Commission can be to deny this time extension. So you have deferral, recommendation of approval to the State Land Use Commission, recommendation of denial to the State Land Use Commission.

Did you wish me to go on to the --? The recommendation of the Department of Planning regarding the time extension for the special permit SP 94-386, the application does comply with the applicable standards for a State Land Use Commission special permit as noted in the Conclusion of the Law, regarding the points one through five. That being the case, the Department recommends that the approval of the request for the Land Use Commission special permit time extension subject to 10 conditions. Did you want me to read all 10 or --? So in consideration of the foregoing the Maui County Planning Department recommends that the Lanai Planning Commission adopts the Planning Department's report and recommendation prepared for the August 19th, 2015 meeting as its Findings of Fact, Conclusions of Law and Recommendation and to authorize the Director of Planning to transmit the recommendation on behalf of the Lanai Planning Commission to the State of Hawaii Land Use Commission for their final deliberation.

Mr. Oshiro: You know everybody talking about tonnage going into the dump daily now. Well, Koele and Manele is not open, so their waste is not being taken to the dump. But as soon as they come online their waste, both hotels, going down to the dump. So they cannot say it's not over 20 tons. You know, you don't know what it is because right now the only waste they picking up is on Wednesday and Thursday -- Tuesday and Wednesday when they come through the city. And Maui Waste pretty much, when the hotels were open, they were picking up trash every day, from both hotels. I just want the Commissioners to know that.

Ms. Thomson: Thank you for the comment. I wanted to kind of reiterate too the, the options that you have -- deferral, if you don't have sufficient information or the resources can't answer the questions that you have; recommending approval or recommending denial to the State Land Use Commission. Recommending denial, I think, you know, I would, I'd suggest that you really think through what the landfill means to this community and the time needed to develop a new

landfill is very, very long. It's incredibly complicated, not only in the land acquisition, but in the permitting of a new landfill. It's a...it would probably take the better part of, you know, a decade, you know, it potentially could. So, you know, keep that in mind as far as, you know, what you're approving is does this landfill meet the requirements for a time extension of the special permit. And if it does not, or you feel it does not, you then can make those findings on the record as well. Thank you.

Ms. Zigmond: I have a question with all due respect to Madame Vice-Chair, do you need to recuse yourself from this vote?

Ms. Koanui Nefalar: I believe I can make a, you know, non-partisan position. I don't think I...and, you know, I can vote last to see what everybody else votes.

Ms. Thomson: Thank you for that question. The Vice-Chair and I did address this at the last meeting in preparation, and, you know, my thought on it are if you have a conflict of it's whether you or your spouse, generally, your very immediate family has a direct financial interest in the outcome of an application before you. Where her husband is a County employee and the fact is that even if this were denied, you know, or approved he has a County job and it's a union job, so he would not be losing his job or his salary. So that, that's kind of the thinking and my recommendation is that she does not need to recuse herself unless she personally feels that she couldn't make a fair decision.

Ms. Zigmond: I just know in the past there have been some times when people should've recuse and didn't, so I just wanted us to be squeaky clean. Thank you.

Ms. Gima: Okay, does any of the Commissioners want to entertain any motions regarding this permit?

Mr. Marlowe: I would like to move that we accept the permit, and pass it as requested. That's the recommendation.

Ms. Gima: Is there a second to Stu's motion?

Ms. Marlene Baltero: I second.

Ms. Gima: Seconded by Marlene. Okay, and so the motion has been made by Stu to recommend for approval to the State Land Use Commission, seconded by Marlene. All in favor? Oh, I'm sorry, is there any further discussion regarding this before we vote?

Mr. Ferguson: The length of this permit is, is set, what they asking for, yeah? The 15 years, that cannot be re-looked at or --? Because I just feel, I just feel from six to 15 seems -- nine years seems a whole big gap.

Ms. Thomson: So the motion is to approve as recommended by the Planning Department. So the, the current motion is to approve as requested for the full 15 years. And as far as what your

choices are though you don't have to vote for that motion, or you could make a motion to amend that time component of the condition. So if you, if you felt that you wanted a different time limit to be considered you could move to amend it. You may want to, you know, revisit the department information, though, you know, I think that they provided information supporting the 15 years by the most recent engineering report. But if you need any further data from them or to discuss it more, please feel free.

Ms. Gima: So we still have a motion on the floor. Stu, to clarify your motion was to approve as the County has recommended?

Mr. Marlowe: Yes.

Ms. Gima: Okay. Alright, and that was second by Marlene. Any further discussion before we vote? So all in favor of approving or recommending of approval to the State Land Use Commission as recommended by the County raise their hand. Okay so that motion fails, we have four. And how many against? Noes? How many noes? One, two, three. Joelle? None? Okay. Would anybody else like to entertain a different? Yeah, Joelle abstained. By abstaining your vote is a yes. Okay.

Ms. Aoki: . . . (inaudible) . . .

Ms. Gima: Well then it passed. But it's passed now...because you abstain that's a yes. So, the motion has passed.

It was moved by Commissioner Stuart Marlowe, seconded by Commissioner Marlene Baltero, then

**VOTED: to recommend approval to the State Land Use Commission
as submitted by the Planning Department**

(Assenting: J. Aoki, M. Baltero, K. Gima, S. Koanui Nefalar, S. Marlowe

Dissenting: S. Ferguson, B. Oshiro, B. Zigmond

Excused: J. Barfield)

Ms. Gima: I'm going to propose we take a 10 minute break before we go on to our next item, so we will resume at 6:55 p.m.

(The Lanai Planning Commission recessed at approximately 6:40 p.m., and reconvened at approximately 6:57 p.m. Commissioner Beverly Zigmond left the meeting at 6:40 p.m.)

- 2. August 4, 2015 First Semi-Annual Report (January to June 2015) submitted by LYNN McCrory, Senior Vice-President of Governmental Affairs, PULAMA LANAI regarding the project irrigation demand associated with**

the Residential and Multi-Family Development at Manele, TMK: 4-9-017:001, 002, 003, 004, 005, and 4-9-002:049, Manele, Island of Lana'i. (95/SM1-015) (95/PH2-001)

The Commission may provide its comments on the report.

Ms. Gima: Okay, we're going to resume our meeting right now. It is now 6:57 p.m. Just for the record Commissioner Zigmond has left this meeting, but we will move on with our agenda. And so up next is Item 2...*(Ms. Kelli Gima, Chair, read the above project description into the record.)* I'm not going to read through all the TMKs, and this at Manele on the Island of Lanai. And the Commission may provide its comments on the report. So Lynn, I'll turn it over to you.

Ms. McCrory: Lynn McCrory, Pulama Lanai, and I'm going to turn it over to John Stubbart our water utility manager for any questions you have.

Mr. Stubbart: Do you have any questions?

Mr. Marlowe: . . . (inaudible) . . .

Mr. Stubbart: No.

Ms. Gima: Any questions, Commissioners, for Mr. Stubbart or Ms. McCrory?

Ms. McCrory: I just want to be -- oh, Lynn McCrory -- I just want to be sure that we're still providing the information in a format that is workable with the graphs rather than all numbers that once were in there. Graphs are still good? Okay.

Mr. Oshiro: Thank you. Nothing to do with water, or maybe it does got to do with water, but Koele, when the hotels open up they going re-sod and open that . . . (inaudible) . . . up again? I just wondering.

Ms. McCrory: Decisions haven't been made on the golf course when it will re-open or what will be done.

Ms. Gima: Any other questions Commissioners? Okay, thank you very much Mr. Stubbart, Ms. McCrory. We will move along, and this to Item E which is the workshop on the Public Trust Doctrine provided by Corp Counsel.

E. Workshop on the Public Trust Doctrine provided by the Department of the Corporation Counsel

This is for information purposes.

Ms. Thomson: So Commissioners, my apologizes. I did bring the presentation on a flash drive,

but unfortunately the version of power point that I used to create it wasn't compatible with the machine so please refer to the hard copies. And there are additional hard copies if anybody in the audience would like to follow along.

So the public trust in Hawaii is a -- it's a body of law based on the Hawaii Constitution, and public trust resources are all natural resources including land, water, air, minerals, and energy sources such as geothermal. I'm focusing primarily on water because I think that's probably the, the issue of concern to the Commission. And that's also the bulk of the law in Hawaii has to do applying the public trust doctrine to water resources.

So we're on page 3, Hawaii Constitution Article 11, Section 1, is, I won't read it, but it states that natural resources are held in the public trust and they're held by the State for the benefit of the people. Section 7 of that same Article discusses water resources and the Constitution has set out instructions to the legislature to create an agency that would oversee water conservation and manage its use in a more holistic fashion. So the State Commission on Water Resource Management was created under State law, and the State Water Code is also a part of that chapter. It's 174C, Hawaii Revised Statutes.

Page 5, those are really just a listing of the primary public trust cases in the State of Hawaii. And you notice that near the bottom, the Waiahole Water Case is bolded. So that was the, one of our main cases that the Hawaii Supreme Court dealt with applying the public trust to water resources. So page 6, we're talking about the Waiahole Ditch, and it's a ditch constructed on Oahu in the early 1900s that diverted water from windward Oahu to water the sugarcane fields in the central plains. And that was used for decades before sugarcane became not viable, and the water continued to be used for different types of development. In 1992, the Commission on Water Resources Management began requiring people wanting to use the ditch water to apply a permit under State law. Many people applied. In fact, so much that they applied for a greater quantity of water collectively than was in the ditch. So several parties including community non-profit groups petitioned CWRM, which the Commission on Water Resources Management, to leave more water in the windward streams so that those streams would be viable and support aquatic life again. CWRM issued its decision and divided the water including leaving a quantity in, in the streams. That decision was appealed with the Hawaii Supreme Court, and the Supreme Court laid out several tests for public trust.

So the public trust according to the Hawaii Supreme Court is the State and the County's duty to protect the purity and the flow of waters, and to -- it should be insure -- that waters are put to a reasonable and beneficial uses. The State can compromise the public rights and the water resources only after a decision is made with openness, diligence, and foresight, and that commensurate with the high priority of these rights. What the court is saying is that when you're looking at the public trust resources you need to use a high level of scrutiny and do a very good job in your analysis.

The next page, page 8, describes the dual nature of the water resources trust. So it's both resources protection, protecting traditional and customary Hawaiian rights, wildlife and maintenance of ecological balance, scenic beauty, and the preservation and enhancement of

the waters where uses that in the public interest, while also maximizing the reasonable and beneficial use of the water. So it is a balancing test based on the best available information that you have and that applicants provide to you.

So the Hawaii Supreme Court kind of went on through this case to discuss applying the public trust, you know, and stating that it doesn't preclude, you know, ceases any uses, but it requires that all uses, public or private, promote the best economic and social interest of the people of the state. And it's a balancing test again. It's a controlled development, rather than no development.

On page 10 is the most recent case. We refer to it as Kauai Springs. It's a 1914 -- I'm sorry -- a 2014 case, and a private water bottling company reviewed by the Court of the Kauai Planning Commission to -- excuse me -- the Kauai Planning Commission's denial of a combined application for a use permit -- a special use permit -- zoning and also a special permit to withdraw water from the stream for use in its operation. This case also went up to the Supreme Court, and the Supreme Court laid out a very clear set of steps for agencies to follow in applying public trusts. So the agency's duty is to maintain the purity and the flow of the waters and to ensure that water is put to reasonable and beneficial uses. So again, it's a balancing test. The applicant seeking to use the water needs to demonstrate actual need, and also the propriety of draining the water from public streams to satisfy the need. They need to demonstrate that there is no practicable alternative water source, and if there is a reasonable allegation of harm to one of the uses protected by the public trust, the applicant, the applicant also must demonstrate either that there's no harm or that the potential harm does not preclude a finding that the requested use is reasonable and beneficial.

So pages 11 and 12 really go into, or the rest of the pages actually go in to how does an agency such as a planning commission apply the Kauai Springs analysis. So in analyzing an application, you, you would look to is this use consistent with public trust purposes? And those are enumerated. They're under the first bullet of page 11. When you're in your decision making mode you apply a presumption in favor of the public use, access, enjoyment and resource protection. Each proposal should be evaluated on a case by case basis. And the applicant has the burden of producing the necessary data and information. If the requested use is private or commercial, you apply an even higher of scrutiny to it.

Page 12 discusses what is reasonable and beneficial? What you're doing is you're examining the proposed use in relation to other public and private uses. State law defines reasonable and beneficial use as the use of water in such a quantity as is necessary for economic and efficient utilization, for a purpose, and in a manner which is both reasonable and consistent with the state and county land use plans in the public interest. If the, and in case if the Lanai Planning Commission would find that use is reasonable and beneficial, the applicant continues to have a duty to implement reasonable measures to mitigate cumulative impacts.

And page 13 is really just a reminder on, you know, making a very clear record, especially if you're making decisions on water uses. You know, that's not completely uncommon that these would be reviewed by a court. You need to make findings on the record to track the steps that

you took in reaching the decision. So how did you get to your decision. Analyze the application and all of the evidence presented, and then base your decision on the evidence in the record, and the law they applied. And your commission, your commission's decision is reflected in the document called Findings of Fact, Conclusions of Law, Decision and Order. And that, along with the entire record would be reviewed by an appellate court. And the Supreme Court said that clarity in your decision making is all the more essential when you perform a duty as a public trustee. And you are bound to demonstrate that you've properly exercised that discretion vested in you by the constitution and the statute.

If a decision -- and this goes for really, you know, all commission, commission decisions that are reviewed by a court. Page 14 is how a decision may be overturned. And what you're trying to do is make decisions that are not overturned. So you want to stay away from this listed six things. You know, make sure that you're making full decisions based on the record, the evidence before you, and the law that you're applying.

So I realize that the -- you know, we, we spend at least a semester discussing things like public trust in law school, so you know, 10 minutes worth is probably...a little bit confusing. But, as we get to applications that involve any public trust resources, it's an overlay of law that is in addition to, you know, say an SMA permit. So you not only are apply SMA law, but you also consider public trust concerns on that application. I mean, if you have questions, I can try to answer them. Or if I can't, I'll get back to you on it. But it's definitely a very . . . (inaudible). . . area of law, so thanks for your time.

Ms. Gima: Commissioners, any questions, comments? No test. No test please. It's a lot to take in within 10 minutes, but I guess if any of us have any questions that come up in the future then we can refer back to you. Okay. Okay sounds good. Alright, so we'll move along to the next item which is Item F, the Director's Report, starting no. 1, open Lana'i applications report as distributed by the Planning Department with the August 19, 2015 agenda.

F. DIRECTOR'S REPORT

1. Open Lana'i Applications Report as distributed by the Planning Department with the August 19, 2015 agenda

Mr. Yoshida: Thank you Madame Chair and members of the Lana'i Planning Commission. The Department has circulated its list of open applications as of August 10th. Is there any questions?

Mr. Oshiro: Clayton, excuse me, the pink house, okay, the hedge, the hedges are cut down, but I still want to know if they approaching in the County, County's, the variances the County get. And I don't know if you know that but, you know, I just wondering because you still have the hazard where if somebody parks along the mock orange going up on Eleventh Street you get hard time to see a vehicle coming down the road, even though they the bushes down, down to three feet. So I was just wondering, you know. I, I got my, I did do the e-mail to the Mayor and

I got results, and two days later after I e-mailed it was cut. So, you know, I, I was just wondering about that.

Mr. Wollenhaupt: This is for Jean, right? Jean Buckley, the pink house? Yeah, she, she's coming in for a short-term home rental permit. And so I was over there today and they're going to be redoing the driveway. So the driveway is not the issue. I guess the issue is the, the vegetation that goes around that corner. Now that was my first time over on Lanai. I'm trying to understand. So I went over there. She passes the results for the short-term rental home, and she's getting a driveway permit. But as for the view plain corridor, it doesn't really, it doesn't go with the, the permit, but we can certainly do what –

Mr. Oshiro: The reason I bring up that, if you had seen that mock orange bushes it was like this much below the stop sign. I mean that stop sign is like eight or nine feet high, okay. The thing that bothers me is that the house on both sides of the street, both sides, okay, I want to know if they approaching the County's property because if you look at it the house on the left side of road is about this much of grass and then the road and he's got bushes planted. And if this guy doesn't take care of those bushes when they grow we going have another problem.

Mr. Wollenhaupt: So the issue is the vegetation and the corner cutback.

Mr. Oshiro: Cutback or are they in -- are these bushes in their property?

Mr. Wollenhaupt: And I don't have any idea.

Mr. Oshiro: Because, yeah, that, that was one of the issues when I e-mailed the Mayor. I asked, you know, is, is the boundary of that. Because if you look down that street, Eleventh Street, you can see that the boundary from the road to where most people got their property line is almost five yards. And these guys are just a foot away from that road. So, I just want to know.

Mr. Wollenhaupt: Do you know how long that vegetation has been there? Is that something new?

Mr. Oshiro: No, the reason I'm bringing it up because I just moved in about a year ago, and I, I almost got hit coming out of there. I have, you have to actually come out in the middle of the road to see up if a vehicle is parked on the up side, along that mock orange bush.

Mr. Wollenhaupt: Right.

Mr. Oshiro: So, you know, that's why I brought it up. It's a hazard just waiting, an accident waiting to happen. Okay. And it bothers me that if, if she does it, and she's in County's property, what about the guy down below? You know those -- I don't know what the guys on the left side is going do, but I think he's going try get in short term rentals over there to. So, you know, they pretty much going let the vegetation grow, you know.

Mr. Wollenhaupt: Yeah, I don't know what Public Works issues are in corner cutback. I know most towns have a -- you go from corner to corner, you make a diagonal or triangular, and then you can't have any obstruction in that view plain as you're turning the corner. But I -- Public Works, we don't have anyone from Public Works. I guess it's a question I can refer over to them. We have some diagrams and pictures.

Mr. Oshiro: When she does get permitted to do the short-term, is she, does she have to come out with a letter to go around that area?

Mr. Wollenhaupt: She will have to come out with the copy of the permit, and a 24-hour contact number to everyone that's adjacent to her property, and the adjacent to the adjacent. So if this is your property, everyone around that property, and then everyone around that ring. That's the current --

Mr. Oshiro: A bigger ring.

Mr. Wollenhaupt: Well, it's adjacent to you so. . . (inaudible) . . . This is adjacent. So if you live next door to Jean, you'll get a letter. And the people who live next door to those people will get a letter. That, that's how they decided on.

Mr. Oshiro: Well, Jean, Mendes. Yeah, okay, I'll get one. Alright. Thank you.

Mr. Wollenhaupt: . . . (inaudible) . . . you get one.

Ms. Aoki: So when you say "adjacent" does that mean --? What, what is the status right now on Lanai Planning Commission's recommendations to the Maui County Council regarding short-term rentals specific to Lanai? Do you know where that's at or are they still in deliberation review?

Mr. Yoshida: Yeah, Planning Committee, Council Planning Committee chaired by Council Member Don Couch considered the proposed amendments again on July 23rd. I think Gail Riener testified from the Lanai Council Services Office. She was here the week before talking about an issue she has with a short-term rental home. The matter was deferred at that July 23rd meeting, and I guess to believe that the item may come back sometime in October.

Ms. Aoki: And how many permits do we currently have outstanding or submitted for short-term home rentals that is active besides the pink house?

Mr. Yoshida: One other one.

Ms. Aoki: One other one coming up, yeah?

Mr. Wollenhaupt: That, the Peterson's house on Houston Street, Jeremy Peterson. Jeremy and Amanda Peterson, at 928 Houston Street. They submitted theirs, and then there could be -- there was a gentleman in here who was asking questions about the process, and he may

presumably submit one. So right now, since I guess I have, I'm the only real person processing, I have two currently in process on Lanai.

Ms. Aoki: These individuals, these owners are actually submitting their certified letter of notification according to County requirements of a 500 foot radius according to the GIS site?

Mr. Wollenhaupt: According to the real property tax?

Ms. Aoki: Yes.

Mr. Wollenhaupt: Yeah. That's where they get their names off our real property tax.

Ms. Aoki: Okay. Just curious because that's a lot of people.

Mr. Wollenhaupt: Well, that is indeed a unique. Whether one would call this a problem, it's a situation because your lots here are pretty small and it's a considerable amount of notification. So we're going to get to the point very quickly where if anyone else is coming in for a permit here, they're all going to be coming to this commission for public hearing. Because now that we have one over Queen Street, and now there's one probably on Houston Street, you're going to get a couple more and you're going to have the entire area now bounded by them. So you're going to be seeing them all if that provision of a hearing when there is one within 500 feet automatically comes to this commission. So, preparing you for many perhaps.

Ms. Aoki: Thank you.

Ms. Gima: I have another question regarding the pink house. So I see there's one completed project and then one open? Is that the driveway? One of them is the driveway project right now?

Mr. Yoshida: Well, I guess they're both for the pink house. The one that's close was the Request for Comments (RFC) which the planner checks for completeness before we start processing. Because if it's incomplete then this month sit there for months until it's completed. And it has been completed and now the planner is processing those short-term rental home permit applications.

Ms. Gima: Thank you. Any other questions regarding the project, open and closed projects? Okay. Thank you.

2. Agenda Items for the September 16, 2015 Lana'i Planning Commission meeting

Mr. Yoshida: Okay, our next meeting is scheduled for September 16th. We don't have any definite items for that meeting. You know, I would say from October on that, that probably you'll be busier especially if the Council on Tuesday passes the resolution referring the bill for an

ordinance to allow for accessory dwellings on smaller lots, between 5,000 to 7,499 square feet to increase the -- to help to address the affordable housing issue. So if that pass, the resolution passes on Tuesday's Council meeting, then it will be referred to the three planning commissions for public hearing and comments.

We also have two applications that recently have been filed by Pulama Lanai. And another application from AT&T to locate a cell tower in the ag district. So those will be coming up. With respect to the Captain's Retreat, I guess people have been asking about, well, what happened to the Captain's Retreat. This was brought up when they wrote a letter of protest on the Maly's Bed & Breakfast Home permit back in February. Gina Flammer did file a Request for Service (RFS). The owners of the Captain's Retreat were contacted by a zoning inspector instructing them to take their advertising off the internet. We had checked several times, and the advertising is not on the internet. So that's kind of a follow up on, on that item.

Oh, I guess, we have a up-coming -- well, last year we hosted the state wide planning conference and this year the State Office of Planning is hosting the conference, October 14th through the 16th at the Hawaii Convention Center. And it's a good chance to meet your, you know, fellow commissioners from different jurisdictions. We have allotted two slots for this commission, and so far we just have Vice-Chair Nefalar can attend. But if there's anybody else who would like to attend, they can contact the Chair or Leilani and we can circulate the information to them.

Mr. Marlowe: When are the dates?

Mr. Yoshida: October 14th through the 16th. Typically on the Wednesday they have all these field tours of the rail, Kaka'ako. They probably go through the homeless camp in Kaka'ako. They have different mobile workshops. So if commissioners are interested, you can let the Chair or Leilani know. That's all we have to report Madame Chair.

Ms. Gima: So, Clayton, I'm going to request, and given that you just said that we don't have anything on the agenda as of now, for next month. I had e-mailed Leilani and Clayton back, regarding, you know, putting in a request for items for the agenda for this meeting. So I'm just going to request right now, and we talked about this before, you know, resuming the discussion of the SMA boundary amendments or changes for Lanai. Also, to get a status of the light and heavy industrial area at Miki Basin...and I guess that would be, yeah, from Pulama Lanai.

Ms. Lynn McCrory: . . . (inaudible) . . .

Ms. Gima: We can put it on the next because it's not on the agenda now.

Mr. Yoshida: Yeah, I guess, with respect to the SMA boundary, amending the SMA boundaries, the director kind of wants to take a hands on, kind of supervision of that project because he did make himself available to attend various CPAC meetings, Lanai Planning Commission meetings, and the Council's Planning Committee meetings here on Lanai. And he did hear suggestions that the boundary, SMA boundary be revised. So, he's working in house with some

of our geographic information system folks regarding the mapping of the current flood zones and archaeological sites, and so forth.

Ms. Gima: So maybe it would be appropriate, then, for next month since the director's currently working on this in house, is to then to get an update on where he's at with that. You know, again, I'm going to put on the record again this has been a request that's been made for the past two years, and we haven't yet to have it on the agenda or have any sort of discussion. So at this point I'm not going to ask, I'm going to kind of demand that it's on the agenda because it's, like, I said it's been two years. That, and the update from Pulama. I mean if there's no objections can we, since Lynn is here and is willing to give us an update and it's only 7:30 p.m., can we, can we vote to have that put on the agenda right now?

Ms. Richelle Thomson: To add an item to the agenda it would, you just need a, you need at least two-thirds of the majority. So you need to vote to add it to the agenda, and it would need to be something that does not affect a significant number of people, so it's limited in scope, not a significant number of people would be affected by it. So those are the two criteria for adding things to agendas. If it's just, if it's just an update and there aren't a lot of people in the public who would be interested in that. You know, that's a sunshine law thing, yeah. So if you think it's something that generally the members of the public would want to know about and be able to testify on them, then you'd just want to put it off. Or you can listen to what Lynn's going to tell you.

Ms. Gima: Well, okay, you know, Lynn's here, she's willing to give us this update right now. I mean, sure, there are people in the public that would probably want to hear this, but it's not, like, we're, yeah, I mean we could always ask for another update again. So, I'm just going to, for the record, get a vote to add this to the agenda, getting an update regarding the light and heavy industrial at Miki. So all in favor of adding this to the agenda raise your hand. One, two, three, four. Okay, it failed. We can't put it on the agenda. We need six. Okay, so I'm asking that we put that on next month's agenda, and Lynn will be ready to give us an update at that time.

And then, and then just lastly, I mean, since we're not going to add anything on the agenda at this time, I don't know, in regards to just having announcements being made. Maybe an announcement can be put on next month's agenda, you know, I was informed by our previous chair that LWAC has an opening a member on the Planning Commission as he was a member of the Planning Commission and a member of LWAC. So, if you could put that on just as an announcement. We don't need to vote on anything about that. It's just an announcement. LWAC has a seat for someone from the Lanai Planning Commission, and, yeah. It's an announcement. So those are the items I would like on the September agenda please. I don't think it's much to ask.

Mr. Yoshida: Yeah, I mean, possibly could we tie the update on the SMA boundary review, to make it cost effective, say when we have a public hearing item such as -- if we have a public item such as if Council passes out this resolution on Tuesday regarding allowing for accessory dwellings, affording accessory dwellings, on smaller lots with an area of 5,000 to 7,499 square feet?

Ms. Gima: So am I hearing –

Mr. Yoshida: That would make it more cost effective.

Ms. Gima: Well, when would, yeah, when, I mean, when would that be?

Mr. Yoshida: Possibly October –

Ms. Gima: Okay.

Mr. Yoshida: -- because we have –

Ms. Gima: But then you said once October comes we're really busy, so I can really foresee it again, saying, we don't have time to discuss it.

Mr. Yoshida: Well, we're only -- yeah, we're only starting to process the Pulama applications and the AT&T cell towers because they've only filed them within the past two weeks. So it will take some time for that. But I think we're going to be busier than we were in the first half of the year...aside from that January meeting on the Manele Bay Hotel Renovations SMA. But, you know, again, with these Council resolutions we have a 120-days to turn it around. So, you know, by the end of year, that's minutes, everything, to turn it around. So we would try to have the hearing within 60-days after the resolution is transmitted to the department.

Ms. Gima: I guess I'm just confused on why it -- about the whole cost effectiveness of having something on the agenda.

Mr. Yoshida: Well, I guess it's just we're just trying to make it cost effective for the, I guess the, for the public at large. Because there are expenses. You know, we're going to have to stay over night.

Ms. Gima: So am I kind of sensing that we may not have a meeting next month if there's not anything important on the agenda?

Mr. Yoshida: Yes.

Ms. Gima: But we're requesting for things to be put on the agenda, Clayton.

Mr. Yoshida: Yes.

Ms. Gima: And it is our meeting. It's Lanai's meeting. So I'm, again, I understand your point about being cost effective...but, I, I'm, again, requesting on the record that that be on next month's agenda. Any other discussion about anything that any of you would like to have added to the agenda? I mean, Corp Counsel, I'm right when we can request for items to be on the agenda, correct?

Ms. Thomson: Yeah. So if they are items that are within your jurisdiction. So if you have a supervisory or approval authority over the subject matter, then, yeah, you know, that would be your--. One of the things, you know, just from, it's more from a departmental standpoint -- so with, you know, with having night meetings, night meetings aren't required by, by the rules, the Planning Commission rules or by the County Code. In fact there's, there are probably some issues having night meetings because they're outside of normal County working hours, and they're really expensive. So, it's, you know, it costs the tax payers a lot of money to have night meetings. I think they're very valuable especially if there are, you know, topics that you think are going to have a lot of folks come out and, you know, that need to work during the day. And I know a lot of you do work during the days too, which is one of the reasons we've had night meetings. But I know from my department, like, I'm not going to Molokai next week because that's a full day out of the office. So they don't get my productivity for that entire day, and plus there's the transportation cost and all of that. And those meetings are held during the day. It's really just, you know, my time, but you have a lot of staff over here. The hotel rooms are \$250 a night.

Ms. Gima: That's a different conversation just based off of the question I just asked about us being able to add something for the agenda. That's a different discussion. I mean, I think we've discussed that in the past.

Ms. Koanui Nefalar: Yeah, if...so, if, if I'm looking at the agenda, it says F2, agenda items for September 16th Lanai Planning Commission meeting, and that's what we're trying to do, put items on the September 16th planning commission meeting. If that wasn't the intention then maybe it shouldn't have been placed here?

G. NEXT REGULAR MEETING DATE: SEPTEMBER 16, 2015

H. ADJOURNMENT

Ms. Gima: Okay, we will wait to formally hear if we have a meeting or not next month. But, yeah, at this point, it is now 7:36 p.m. There is no further questions or discussion, and I am going to adjourn the meeting.

There being no further discussion brought forward to the Commission, the meeting was adjourned at approximately 7:36 p.m.

Respectively submitted by,

LEILANI A. RAMORAN-QUEMADO
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

PRESENT:

Joelle Aoki
Marlene Baltero
Stephen Ferguson
Kelli Gima, Chair
Stacie Lee Koanui Nefalar, Vice-Chair
Stuart Marlowe
Bradford Oshiro
Beverly Zigmond

EXCUSED:

Jarrold Barfield

OTHERS:

Clayton Yoshida, Planning Program Administrator, Current Planning Division
Kurt Wollenhaupt, Staff Planner
Mike Miyamoto, Deputy Director, Department of Environmental Management
Elaine Baker, Engineer, Department of Environmental Management
Richelle Thomson, Deputy Corporation Counsel