

MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: February 19, 2019
TIME: 10:00 am
PLACE: DLNR Board Room
Kalanimoku Bldg.

Chairperson Suzanne D. Case called the meeting of the Commission on Water Resource Management to order at 10:23 a.m.

The following were in attendance and/or excused:

MEMBERS: Ms. Suzanne Case, Mr. Kamana Beamer, Mr. Michael Buck,
Mr. Neil Hannahs, Mr. Keith Kawaoka

STAFF: Deputy M. Kaleo Manuel, Dean Uyeno, Roy Hardy, Rebecca
Alakai, Ayron Strauch, Janet Hsiao, Queenie Komori-Chen

EXCUSED: Mr. William Balfour, Jr., Mr. Paul Meyer

COUNSEL: Cindy Young

OTHERS: Jonathan Scheuer, Ph.D., Kapua Sproat Ph. D., Paul Mancini, Stacy
Otomo, R.W. Bock, Wayne Tanaka, Hokuao Pellegrino, Audrey
McGauley, Meredith Ching, Rhiannon Terearii Chandler-Iao,
Yvonne Izu

All written testimonies submitted at the meeting are filed in the Commission office and are available for review by interested parties.

A. APPROVAL OF MINUTES

January 15, 2019 meeting

MOTION: (HANNAHS/BEAMER)

To approve the minutes.

Commissioner Buck recused because of absence from meeting.

UNANIMOUSLY APPROVED.

B. ACTION ITEMS

1. Approval of Chairperson's Appointment of Marvin Kaleo Manuel, as First Deputy Director to the Chairperson of the Commission on Water Resource Management

Chair Case – called upon Mr. Kaleo Manuel to provide background information on himself.

Mr. M. Kaleo Manuel – Aloha Chair and Commission. Its great to be in this position now and make the shift from DHHL to this Commission and with a solid team here at Commission on Water Resource Management; I really look forward to working with this Commission on moving and continuing to move a lot of the work that has already been done in the past (4) years under this administration in my capacity now as Deputy to Chair Case. I'm open to any questions you may have but I'm excited to work with this team and also with the community in the work that we do throughout the State to protect water resources for the public and the public trust for generations to come. There's a lot to learn and build on the foundation that's already been set with my work at DHHL. I think I bring a different perspective, so I've been told by staff this is the first time that a planner has been in this position; historically it's been attorneys and engineers working as Deputy. I enjoy the holistic, systemic change and how complicated and complex water can be and I think with that perspective, with my professional training and expertise, as well as my training from my cultural background, it will help to supplement the work that this commission is already doing in water resource management throughout the state. I look forward to the opportunity to work with all of you.

Chair Case – Thanked Mr. Manuel and requested for the record he provide a short summary of his background for the commissioners and the community.

Mr. Manuel – I am from Ka'ū, Hawai'i Island and grew up in Volcano, Hawai'i and went to school in Hilo and graduated at Waiākea High School. I received my undergraduate degree in Hawaiian Studies at Kamakākūokalani Center for Hawaiian Studies at UH Mānoa, focused on mālama 'āina and natural and cultural resource management and shifted into urban and regional planning and received master's degree in urban and regional planning with a focus on historic preservation and did work with the trail corridor, Ala Kahakai on Hawai'i island. I started my career at the Department of Hawaiian Home Lands as a planner in 2009 and worked my way up to become the Acting Planning Program Manager, managing a small team focusing on land use and environmental planning and preparing homestead lands throughout the state for residential, pastoral and agriculture homesteading, as well as the management of the whole land trust corpus. Within this capacity I acted as the point person on water issues for the department and helped to develop the water policy plan for the Hawaiian Homes Commission and helped to guide the commission in its management of its four water systems throughout the state and collaborated with a lot of staff statewide and did a lot of work with many different communities throughout Hawai'i, especially our beneficiary communities in water rights advocacy. I've also sat in front of this commission in that capacity and coordinating really well with the Commission on Water Resource Management and staff here. I believe I have a great professional working relationship with many of them and other agencies throughout the state like Department of

Ag, ADC on agricultural water systems and so forth. For the past ten years, I was with DHHL and now I'm in my official capacity here at Commission on Water Resource Management.

Chair Case – Thanked Mr. Manuel and made aware that DHHL testimony was received and asked commissioners if there were any questions.

Commissioner Buck – Over the last four years we've been pretty aggressive with implementing the water code, I wonder, in your perspective what do you see is the biggest threat to that during your tenure and how might you be address them?

Mr. Manuel – I don't think the commission has been too aggressive, in my opinion. I think you all have been doing a great and phenomenal job in the implementing the water code and a lot has to do with staff and resources to do it. I think one of the most important pieces is to continue to advocate for staff and the resources needed to protect this public trust resource; that's going to be the biggest obstacle in my opinion. In the couple weeks that I had with staff and understanding their workload and what it takes to move things through the process and provide adequate and proper process to get through setting instream flow standards, issue well construction permits and what that process entails, I think that's the biggest issue I see is working to continue to aggressively implement the water code. I also think that we're at a time now where there's going to be a potential shift in how we perceive water throughout the state of Hawai'i and with climate change discussions with impact that were seeing throughout the state; how do we incorporate that in a real way into the work that we do here and not be so reactive and start to think proactively about shifting that framework. I am really excited from the planning perspective, really looking at the Hawaii water plan framework which is before the legislature and potentially going to be funded. We are updating some of the key components of the Hawaii water plan that will set the path for the next 5-15 years and it could be even longer. I think those are some of the things I see coming before the commission in the next four years.

Commissioner Beamer – Mahalo Kaleo, for the record when our great-great, grand-greats are looking at the records and see how immersed you were in public trust, if you could elaborate on the role of public trust on this particular commission and what you see as our overall delegation and duties for CWRM?

Mr. Manuel – In my training, working for ten years at DHHL, I've focused on one public trust use of water but also protecting the other public trust uses, i.e., instream flow, stream habitat, making sure that every person in Hawaii has the water they can use for personal consumption and domestic needs and really being proactive with protecting our water resources. In my opinion, we loss the connection with the waiwai and the wealth that water brings to our people in Hawai'i in this 'āina and place that we live in. I believe that's the focus and lens that if we look at water in that way, that will always serve the public interest and public trust, and there are legal requirements that we must uphold as well under the water code. To me that's one of the strengths that it can bring to do this position is re-grounding ourselves in the cultural traditions here in Hawai'i and in an island setting, how we all work together to ensure that our needs, both current and future, are protected.

Commissioner Beamer – With your background in planning, having spent time on this commission this being my second term, we really can benefit from this holistic perspective and particularly trying to breakdown or integrate silos in our resource management around water and get closer towards a one-water approach; gaze your keen eye and expertise and help us make that bridge, I think its going to be really important for the future of water for Hawai‘i.

Mr. Manuel – Agreed, its something I enjoy doing; building bridges and taking the complex and moving pieces and trying to tie people together in positive ways that can have long-term impacts for the greater good. I look forward to that.

Commissioner Hannahs – Commend and thanked Mr. Manuel for his experience and bringing a holistic perspective into this water realm; sometimes it may make the job more difficult because you can see the whole playing field. Thank you and congratulations on your Obama fellowship, I hope you may bring some of that background experience and insight into the leadership role you play here with us. You spoke at the last hearing that was involved with T&C with regards to landowners who may not be from here or may not be familiar with the host culture customs and trying to find out the impacts of their actions. Is there a role that you can play with your background in helping our stakeholder base to understand our culture better and to know how to look at the databases and how to relate to community and practitioners to really understand some of the conflict before it even starts, by developing education and understanding?

Mr. Manuel – Yes. It is something I am excited about, to demystify that there is an opportunity for agencies to proactively work with applicants to understand their role and kuleana in Hawai‘i and how their use of this public trust resource is and could potentially affect traditional and customary practices of native Hawaiians or resources that they are actually using. We’ve started conversations with staff and working with support from Leimana DaMate and so forth that’s also been helping to support the commission staff. I think my experience with DHHL and looking through that kapa‘akai lens, we are going through that process ourselves and working closely with OHA and others, that’s a bridge that can be built and a way to connect, motivate and inspire applicants to take that extra step to learn about the impact they may or may not be having on resources and the people that are affected. That’s something we can work towards versus just being regulatory. We need to be more proactive in identifying those resources and how their project or the use of water can help support and uplift those in their community, that waiwai, and the community I think will have long-term impacts. To build better relationships within community, I believe, is something I can work on. It is a discussion and dialogue that is already happening now with the team we have and the commission.

Mr. Keith Kawaoka (DOH) – Welcome aboard and looking forward to the continuance of collaboration with you and the staff. As you know water quantity and water quality are mixed together so there’s a lot of needs out there we need to fill, and we’ve been doing it all through the years. I know it’s a little bit impatient for you to understand or learn what we do

(DOH) on the water quality side, what area(s) do you feel you need to get more up to speed on? I know there's a lot of things since you've been on the job.

Mr. Manuel – A lot is just understanding the history; the water culture has been around for a while and there are staff here with a lot of experience and I can learn a lot from them as well. Water quality is always something I'm interested in, that's not just about quantity but protecting water for health and safety purposes. I think that's definitely an area that I could beef up on and coordinate with DOH. Also, relying on the team here at the commission and building the team and bringing the resources is something I'm supportive of and trying to learn from what's already been done, not re-creating the wheel. Understanding the engineering components of systems and working with the engineers and hydrologists is something I'm excited to learn more about, getting to the science of that is something I can grow in and will help to supplement what I already bring to the table.

Chair Case – How do you see yourself making the transition from advocacy for the water commission to representing all of the stakeholders, constituents and practitioners that has business before the water commission; that's a big change but important for all of us and the record and our stakeholders and practitioners. Can you elaborate on that?

Mr. Manuel – Coming from DHHL and focused specifically on a subset of the larger public, the beneficiaries of the Hawaiian Homes Commission Act, was a role that I played in my former capacity. Now in this new capacity the obligation to the larger public sector has increased. I wear hats well and I know my function and role here at the commission and my obligation is to serve the public. But before that, even beyond the actors themselves, my job is to protect the resource, and that's the most important kuleana that we have in this position as a team here in this commission; it's about the resource above and beyond the users of that resource. I feel my work at DHHL supplements and adds value to the perspectives that I bring to what is already established here at CWRM. I feel they are very complimentary to one another and I have a very balanced approach as I've worked with the private sector, and numerous government agencies on the Federal, State, and County levels. I am very open to new ideas and ways to serve and feel there should not be any concern or confusion because I am in this capacity 110% to serve and protect water resources here in the State of Hawai'i for the public at large.

Commissioner Buck – One of my frustrations in this career is that we made water, a bold move in 1978, a public trust but we never developed an economic framework to support that public trust; via management of watersheds, having capacity to monitor and assess, looking in the future of climate change and pricing; that's something we've seen in our permitting and process, with really no economics sometimes where it should be. It's an issue that I'm interested in and I think it's important for sustainability, I hope in your capacity it is an issue that you think about.

TESTIMONIES:

Mr. Wayne Tanaka (OHA) – Strong support to the appointment of Mr. Manuel to the Deputy Director of Water. Over the years our staff has worked closely along the side and with Mr. Manuel on a number of water issues, including issues coming before the commission. Over that time he demonstrated substantial expertise in the water code in the case of public trust doctrine which we believe is essential to fulfilling the conditions of the commission. As a planner he also demonstrated a high level of objectivity, thoughtfulness and diligence in planning and advocating for the needs of DHHL. We believe these traits are also critical to the fulfillment of the commission's conditions. Most importantly he's demonstrated a clear commitment to the public trust and understanding the value of water resources including the rights and interests of native Hawaiians. He showed a careful balance between these competing needs for water in our islands and we believe this is particularly critical not just for upholding the commission's most important constitution mission but also in the light of climate change, so for those reasons we strongly support the appointment of Mr. Manuel to the Deputy Director.

Hoku'ao Pellegrino (President, Hui o Nā Wai 'Ehā (HNWE) / Wetland Kalo Farmer, Maui) – Organization established in 2003; mission is to advocate for the restoration and stewardship of a mauka to makai stream flow in the four streams in Nā Wai 'Ehā to protect the natural and cultural resources pertaining to traditional and customary practices of Native Hawaiians and initiating and educating an outreach program for the island of Maui. We believe that the person fulfilling this leadership position has an extremely important kuleana or purposeful role, which is to promote and lead in a responsible stewardship of one of our most important public trust resources. It is our expectation that this person adheres to and follows and enforces all rules, laws and regulations related to the Hawai'i State Water Code; in addition, HNWE expects that responsible stewardship of this water resource includes balance decision making and managing all regions within our diverse watersheds throughout Hawai'i. Lastly, in stewarding our water resources, the Hui expects this person have vast knowledge of the many different communities in Hawai'i and the ability to engage and collaborate with all community stakeholders in a transparent and respectful way. With that said, Hui o Nā Wai 'Ehā strongly supports the approval of Marvin Kaleo Manuel as the First Deputy of the Commission on Water Resource Management. Kaleo brings a plethora of knowledge and experience to the commission and will compliment the good work already being done by the commission staff. He has diverse educational background in natural and cultural resource management, planning, and has proven himself as being a strong, positive and well-respected leader in both the Hawai'i community and community at large. Kaleo is well versed in 'Ōlelo Hawai'i and has a strong background in Hawaiian culture both of which we feel are important characteristics that will greatly assist him in fulfilling his kuleana in this leadership position. He demonstrates confidence, diligence and has strong conviction in his work ethic. His personal and professional integrity is admirable, and he ensures that decisions around the protection and management and stewardship of our water resources are met with balance, utmost sensitivity and respect. Our organization has an active community membership with over 800 members, many whom are kuleana kalo farmers, diversified farmers, scientists, environmentalist, and concerned Maui residents as it relates to water resource management has a watchful eye not only over water issues in Nā Wai 'Ehā, but all across Maui. This decision that this body makes, especially that of a

leadership position such as the Deputy Director effects not only all of us, but the many generations to come who will call Hawai'i home and drink the life-giving waters of Kāne. We are confident that this next Deputy Director has the ability to execute on the hard task before him and we look forward to working closely with him and his staff of water experts as we have done over the last fifteen years and hope that the reason why our organization exists is to make all of your jobs easier in responsibly stewarding water resources in Hawai'i. Therefore, Hui o Nā Wai 'Ehā humbly ask that you approve Kaleo Manuel as the next Deputy Director of the Water Commission. Mahalo for your time and serious consideration.

Yvonne Izu - I want to congratulate you on your excellent choice for Deputy Director. Over the past number of years, I've been able to work with Kaleo in his capacity at DHHL and many of the things that has been said about him and the things that he hopes to do, building bridges, reaching out to the community, he's already done and I've already experienced that. One thing I appreciate about Kaleo is that he is always looking for solutions and always keeping the public trust in mind, understanding the resources and always coming with that traditional Hawaiian perspective but always looking for solutions. I look forward to continuing to work with him.

Kapua Sproat – (Professor-Richardson School of Law at UH Mānoa / Director-Ka Huli Ao Center for Excellence in Native Hawaiian Law)

In support of the affirmation of Kaleo Manuel as the First Deputy to the Commission. We have partnered very closely with Kaleo over the last several years in a series of water law and advocacy trainings, I Mana I Ka Wai, that was Kaleo's brain-child and his vision of how to co-power and bring DHHL water policy to life, on the ground and amongst beneficiaries. We've facilitated seven of the ten sessions over five different islands and had the pleasure of sitting with Kaleo at many different communities and learning from his significant experience in the areas of water resource management. I have now been appearing before this commission and working in partnership with your staff for more than twenty years. Over that time, I've lost track of the number of Deputies that I've been working with, I believe it's been at least seven; but in all that time I've never actually appeared before the commission to speak in support of a nomination but I'm here this morning because I believe Kaleo is exceptional and I think his appointment will benefit everyone here in Hawai'i nei. His wealth of experience in a number of areas has already been spoken to by a number of people and I've mentioned it in my written testimony. In addition, he brings the experience and "street cred" to this position and the commission which is a significant benefit. He has earned the reputation of being fair, solution oriented, approachable and proactive. Perhaps more importantly he's not conflict adverse. To be clear, he doesn't seek conflict out, but I have seen him in a myriad of situations including those where beneficiaries of the public trust resources either have questions or are unhappy with various options or policy positions and he is stellar. Handling those exchanges with composure, dignity and grace. There are not very many people who can survive in a room of disgruntled beneficiaries, let alone angry Hawaiians. I would sit next to Kaleo in any such meeting all day, everyday because I have complete confidence in his abilities to handle himself and be able to handle the situation. Finally, in addition to his formal western education and significant experience in the areas of water resource management, he also

brings culture education and training to this commission and is incomparable to anyone who has previously held this position. A few times I've witnessed an unfortunate situation that has devolved into conflict that could have been avoided completely if there had been more sensitivity or understanding, in that way Kaleo's appointment gives me hope for the future both as a native Hawaiian and as a litigator who has been tasked with navigating some of those things when they devolved. With that, Kaleo has my highest and unconditional recommendation and urge I you folks to support his appointment today.

Rhiannon Chandler-Iao – I have great respect for Kaleo and it's a joy to bring him onto this commission and as a person in this community he's going to make people feel better about coming to this commission. He makes everyone feel respected. Thank you for your consideration.

Chair Case – asked for a motion

MOTION: (BEAMER/HANNAHS)

To approve the submittal.

UNANIMOUSLY APPROVED.

- 2. Request Imposing a Fine Against the Landowner Bock Family Revocable Trust for Altering the Stream Without a Permit Required in HRS §174C-71 and HAR §13-169-50; Approve the After-the-Fact Stream Channel Alteration Permit (SCAP.5017.6) Application For the Installation of Two Culvert Structures and about 800 Feet of Channelization Subject to Special Conditions Including a Remediation Plan East Kuiaha Stream, Ha'ikū, Maui, TMK: (2) 2-7-012:254**

PRESENTATION OF SUBMITTAL: Rebecca Alakai

Commissioner Buck – On recommendation #4 you say the fine could be assessed for each day of the violation and in the future. Is that legal based on what I just heard?

Ms. Alakai – It's the standard language.

Commissioner Buck – As you say this has been going on for four years, and here we'll be fining someone for just one day for a four-year violation seems like a slap on the wrist; obviously there's a bill to rectify that.

Ms. Alakai – Yes there is a bill in the legislation to address this.

Commissioner Buck – But in your recommendation you say you're going to fine them for each day of the violation.

Ms. Alakai – Yes, we can clean up that language; it's a one-time fine.

Commissioner Buck – I hope anyone around is willing to support that bill in the legislature.

Chair Case – For future violations.

Commissioner Buck – Have we ever been in this situation? Obviously, this is a pretty blatant violation and you can see it from the satellite and went on for years, it's an extensive remediation plan. How do we know that its going to be done, is there a bond? And what is our role in assuring this remediation plan is actually completed, and what's the impact to the landowner if for some reason it isn't completed?

Ms. Alakai – Our SCAP is a two-year construction permit. They need to complete this in two years.

Commissioner Buck – What happens if it's not?

Ms. Alakai – Sometimes people ask for extensions and we give them.

Commissioner Buck – Have we ever required a performance bond?

Ms. Alakai – I'm not familiar with that.

Commissioner Buck – To assure that financials in order. It's a pretty extensive remediation plan because of the clearing, do we know the approximate value and what's that going to cost, and have you ever asked the applicant?

Ms. Alakai – No, I've never asked them.

Commissioner Hannahs – Have there been instances of flooding in this area?

Ms. Alakai – Downstream of property.

Commissioner Hannahs – Even in this highly vegetative state there's been flooding.

Ms. Alakai – The client says prior to development, there was no flooding on her property. After he cleared, graded and grubbed there were trees and silt and a rise in her stream bed and caused flooding and damage to her property, after he did all this.

Commissioner Hannahs – It's pretty predictable when you straighten and harden you'll increase velocity.

Ms. Alakai – Correct.

Commissioner Hannahs – Is it our normal practice to give approvals to the permit and then have them check about the flooding impacts or isn't it more logical to put that first? Even if the County hasn't responded, why don't we rattle their cage a little to make sure they take a look at this?

Ms. Alakai – That was a management decision. Our standard permit conditions say they need to be in compliance with the County but there were concerns with the flooding and there was no timeline with the performance on the flood development permit (FDP). So, there were concerns with getting that done and we're not even sure if the 2 to 1 slope is in compliance with the FDP. If the applicant wants to do his permits sequentially the burden is on him, rather than coordinating all at the same time and getting it done at one time.

Mr. Uyeno – Coming back to Commissioner Buck's question about making sure that the project gets done. So, any SCAP the applicant is supposed to file a start and end notice, and at that time provide photographs and as built plans prior to completion of the project, that's our way to check and make sure that everything is done in compliance with the permit. In response to Commissioner Hannahs' question; we have been in communication with the County. Typically, a permit applicant(s) would shotgun the permits as we have seen in the past, in this case for whatever reason this consultant is choosing to do it sequentially. That's up to them, as long as they are in compliance with both.

Commissioner Hannahs – If we have a concern about that could we direct them otherwise? Is that discretion left to them or do we have discretion?

Mr. Uyeno – The discretion is on them, we can't force them; we have no means to force them to comply with whatever county issues beforehand. It may come up that, if they are not in compliance with the County they have to come back to us to amend the permit application.

Commissioner Hannahs – But if we approve it, does it make it seem like we thought it was okay?

Mr. Uyeno – From our perspective on the issues and matters that we have jurisdiction over, the plan is in compliance, the flooding is not under our jurisdiction, so we rely on the County to review in those terms.

Chair Case – If we were to pass it as is, would it allow commencement of the remediation before that flood permit is up to date?

Mr. Uyeno – Per the conditions of our permit, they still need to be in compliance with any requirements of other government agencies before starting.

Commissioner Hannahs – They took us to the Supreme Court, they threw our last decision? What was our argument before the court?

Mr. Uyeno – The Deputy (AG) would be better suited to answer that question, as far as the details on that.

Deputy AG Cindy Young – There were (2) appeals filed with the Hawai'i Supreme Court because that's how the statutes reads. Basically, they appealed the decisions of the Commission to find a violation, a big one was a finding of a violation. There were some

other decisions that were part and partial to that decision the Commission made back in November. Those appeals are stayed at the Supreme Court at this time; because depending on what happens here at the Commission that may or may not address the Bock Trust issues, so we have a stipulation to stay the litigation until March.

Commissioner Buck - What was the nature?

Deputy AG Cindy Young – They are appealing the decision to fine a violation

Commissioner Hannahs – Is it reasonable to infer they think they did nothing wrong?

Ms. Alakai – They did not like the fact that this Commission denied their permit and was set to impose a fine, so they went to court on that.

Commissioner Beamer – In terms of the timeline, we asked them to file a final SCAP and RP, within six months, then they appealed to the Supreme Court (*Ms. Alakai commented – “at the same time”*) – and they turned in the plan a month late, is that right?

Mr. Uyeno – Basically the homeowner turned it in on time.

Commissioner Beamer – Why does it say it was turned in a month late? It’s on page 3 (*Commissioner Beamer read part of page 3 where it stated that*)

Mr. Uyeno – Initially the draft was submitted on November 9, 2018; so then we initiate our review of it, and some back and forth with the consultant, and the final plans were submitted on December 17, 2018.; but yes, the final was turned in a month late. I believe the recommendation initially back from November was that it just had to be turned in within six months

Commissioner Hannahs – Regards to SHPD, you said if we approve this, then their opportunity to review is foreclosed? Did I understand that correctly?

Ms. Alakai – An after-the-fact application, not that it gets approved or not, just the fact that there was an action done before the permit, that forecloses their opportunity to review

Commissioner Hannahs – So if we don’t approve it, would that allow SHPD to?

Ms. Alakai – It would still be an after-the fact action. They already did the work

Commissioner Beamer – If you go and do construction on the site, prior to notifying SHPD, SHPD has no authority after that to assess, fine, or

Ms. Alakai – I think their statute is, which because they were not given the opportunity to review.... It’s standard statutory language. We did not receive any written comment, I only discussed it on the phone.

Commissioner Beamer – Let me rephrase Dean, I'm trying to get a sense; is this applicant working in good faith and diligently and recognizing that this is a serious issue to fill in a stream?

Mr. Uyeno – Yes, and just so you are aware we have been talking for the months prior with the consultant trying to work out plans and trying to get exactly what we wanted to see in the plans itself. There have been a lot of back and forth. The timeline, to me, they submitted a draft that was pretty much close to final, just that it made our review on November 9th. We talked on the phone after that to make some clarifications exactly on how we want to see it laid out in the plan drawings to make it easier for the review process; having more detailed explanations on what exactly was being performed, and that resulted in the final being submitted on December 17th.

Commissioner Buck – Have you had precedence to approve the SCAP but make it subject first to approval by the County of Maui's flood development permit? We don't want to approve something that is going to harden the stream, that's going to increase flooding when the County might have some other ideas; because we know compared with the original nature of what the stream looks like versus even after this remediation, we are really increasing stream flow velocity and potential flood. I agree with Commissioner Hannahs that approval by the County of Maui on the flood issue should really be the first step before we actually approve the SCAP. We know we can increase flooding compared to what was before the violation.

Mr. Uyeno – We might want to ask the consultant that question, why there weren't processed sequentially. I'm always hesitant, unless its required by law, to put our permit condition on others because then we become the field, do we become the final permit as a result, where everything is contingent on our permit being contingent on everything else being completed.

Commissioner Buck – I'm not sure it's a precedence but this is a unique situation where we are actually approving a permit that we know is going to be hardening the stream flow.

DOH Representative Kawaoka – Rebecca you said this offense occurred several years ago?

Ms. Alakai – Yes, 2014 is when it began, when he first bought the property.

DOH Representative Kawaoka – As far you know, were there any permits County or State for this?

Ms. Alakai – None that we are aware of.

DOH Representative Kawaoka – And how did you get wind of this?

Ms. Alakai – A complaint.

DOH Representative Kawaoka – And how does this work if there is a permit, let's say a grading permit? Does the County notify you?

Ms. Alakai – No, frequently the grading is done outside the stream channel, but in this case, there was grading done inside the stream channel. There were no permits and running bulldozers in the stream is not right.

DOH Representative Kawaoka – In your opinion, this is a pretty blatant violation?

Ms. Alakai – Yes, he graded and grubbed and filled, no permits – no County or State permits.

DOH Representative Kawaoka – As far as DOH consultation, is it staff to staff communication?

Ms. Alakai – They are on our list of agencies that we contact, I don't think they commented on the first time this came before the Commission last May, and they didn't comment on this application.

DOH Representative Kawaoka – No specific reason or why they didn't comment. Whose land is this on? It's about over a mile away from the ocean?

Ms. Alakai – Private property and 2-1/2 miles away.

Commissioner Hannahs – I may have misunderstood you, but if a person proceeds without a permit and it's an after-the-fact condition, they don't have to have SHPD review, so it sounds like it's a good way to circumvent SHPD, is to go break the law, or violate.

Ms. Alakai – It does sound very awful.

Commissioner Hannahs – Do we have other alternatives, is Leimana's group consulted? What's our options? Cause we don't want to advise people to do the wrong thing and then have less review?

Ms. Alakai – Hard to answer that question, an after-the-fact, and then our approval process.

Commissioner Hannahs – Would you refer to SHPD on that?

CWRM Deputy Mr. Manuel – Yes, I think that's the bridge building between DOH and SHPD that we have to work through and where in the staff review process SHPD is involved? I have to review 6E and HRS and work with Alan head of SHPD to see if it's actually a firm response from his perspective and staff. That's something we can follow-up with.

Commissioner Hannahs – There's a lot going on here, but what was wrong, what is fixed by a remediation plan and what is not fixed?

Ms. Alakai – I don't know if the 2 to 1 slope fixes the flood storage capacity issue that are subject of the complaint. The complaint was that it used to have these nice meandering streams with wide areas to store water in heavy rains and that changed. So, does the 2 to 1 slope fix the flood storage capacity? I can't connect the dots, that's the flood development permit and that's the County.

Commissioner Hannahs – So you're asking us to approve a remediation plan that we're not sure remediates anything?

Ms. Alakai – It fixes our issues with mauka and makai connectivity. The County does flooding, DOH does water quality, Army Corps have their issues, FEMA has their No Rise Certification, each of these agencies have different pieces.

Commissioner Hannahs – So what is remediated is connectivity? And you're satisfied with that?

Ms. Alakai – Yes. Frequently the consultants would go to the other agencies first, and we're typically the last in line. In this case, we're the first in line so now we're struggling with, how do the other agencies get involved in our permit being approved; cause we're only approving the stream connectivity.

Chair Case – Technically speaking, I know you said that it's the condition for them to move forward in the plan, but I'm not sure the recommendation says that. Because the recommendation is to approve the permit subject to the following conditions, and the condition is that they have to apply for it and when they get it, submit a copy; but it doesn't actually say they can't start the work until you approve that. So, if that's what we intend, in other words if we're trying to say, the flood part is not our expertise, but we are concerned that the remediation plan properly address that because we have noticed that there are some flood questions here. I think what you're hearing is a level of discomfort in moving ahead with an approved plan that fixes our problem but doesn't fix the overall problems. If that's what we intend we probably want to change 3-B to make it a receipt of that, a condition to starting a remediation plan and if it doesn't, then we have to come back and review the plan.

Commissioner Buck – It's our permit that gets them to start to do the work; I'm assuming the county is more of an engineering focus and looking at the plan and using their expertise but its not like you can begin the work. It's as if we are the last stop.

Mr. Uyeno – I think it's the same thing, they need their permit to do the work, from that perspective of the flood development or changes in the flood plain.

Commissioner Beamer – Given the comments I'm hearing one option is we could defer until we have this flood permit in place and ask the applicant to come back.

Chair Case – Made request to hear from the applicant(s)

Attorney Mr. Paul Mancini (for Bock Family) – *Gave review and update of hand-out titled East Kuiuaha Stream Remediation Project; Bock Family Trust, February 19, 2019; which included, topography of stream and conditions in remediation plan stages.*

Chair Case – What is exactly is the remediation plan?

Mr. Mancini – When we started this, the commission's order was that the staff would work with the parties to get this done and we've worked with the parties over a number of months; it was done in collaboration and we appreciated the fact that the Commission made it helpful. Part of the implementation of this I think we want to do with the staff also. We would give a timeline of when all these other permits have been applied for and our expectations. But the process started out, I've been in Maui almost 50-years, I have not been involved in a remediation plan; Mr. Otomo has not been involved in a remediation plan, and we did not have a lot of guidelines, only read up on it. We put this in phases and asked what are we going to examine here, so there's interaction between the staff, consultant, and interested parties to make sure we're looking at the same thing before we go on. We looked at the condition of the stream, storm water detention, access to areas, and aquatic species all which was time consuming. The next step was a bit more difficult because we needed to look at and examine it and that required topographical survey and that took time, to do a topo and site inspections and to get a surveyor out there to understand what the existing conditions were that we're going to be modifying, that was the data collection phase. The next stage makes it extremely difficult, but you need preliminary drawings, analysis so the staff and engineers know what to deal with to move on; define what areas, what we're going to do in the slope in areas, how we're going to find the stream norm, that's what we're looking for here, what is the stream norm we're trying to recreate in this plan, and the engineer comes up with conceptual drawings. On each of these phases, there's a pause after the phases, it's to make sure we are all on the same wavelength. We don't want to move on unless we have a consensus that we're moving on to another phase. In the interactions with staff and the other parties, I did my best during the time to keep Audrey involved.

Commissioner Hannahs – This is all post Commission decision, none of this is when they first started...in creating the remediation plan?

Mr. Mancini – Correct. This is all "how" we got there. It was a collaborative effort. If we did it on our own it wasn't going to work, and it took a period of time to do that. Remediation plans are extremely complex. One of the more important parts of it is monitoring while it's being done, and after. *<Mr. Mancini summarized and explained the topography charts relating to the 100-yr storm, which was the basis of the goals of the remediation plan>* Explained that the goals are a series of tasks, but the ultimate goal is to create a greater carrying capacity in the stream, to create greater detention areas. Also summarized how in the near future the Commission and everyone else will continue to deal with this type of situation significantly because people aren't prepared for a 100-yr storm and what's going to happen in the future when it occurs. Migration of species is another major area and trying to mitigate the flow of the stream sediment. Those are the real purposes in all this. The point is that it's a complex and time-consuming process and

without the help of the staff we couldn't put it together. I think we all did our best to cooperate with everyone, I think Audrey will tell you. The implementation is something that will be difficult as we also talked about the permits necessary – *<Summarized page 3 of handout and the objectives of the plan for each area of the stream>*

Chair Case – I assume this was created by a licensed engineering company that prepared all this?

Mr. Mancini – This is from the topo, basically recreating the scene in the topo.

Chair Case – By a surveyor?

Mr. Mancini – No. It was reproduced graphically on the computer in coordination with us and Stacy Otomo, page 5 shows how he did it. *<Summarized page 5, 6>*

Chair Case – Stacy Otomo is a licensed surveyor?

Mr. Mancini – Yes.

Commissioner Buck – We are uncomfortable in the sequencing of the plan approval, unless we know that the flood issues are also addressed.

Mr. Mancini – *<referred to implementation and timeline page 17 of handout>* We have already dealt with the County flood development section at the Planning Department and the County has gone through some administrative changes over the last year and it's been difficult for the people processing flood zone permits for a long period of time. We've been talking with staff at the County and some concerns were similar to yours, should we get the flood zone permit first? What if there are changes? We've done a no rise calculation already and data necessary. The problem is, if we applied and didn't have an approval from CWRM would it be an abstraction and want us to go back? After talking with county more, it was agreed that it was better to get CWRM approval; and if there are any non-substantive changes, the staff could deal with it. If there are, we'll bring it back here, because clearly, we cannot start construction until we get all the permits; grading, flood development and if we need permits from DOH; all of that has to come together. We cannot start any of this until we prepare the permits, process through County (grading/flood permit) and we may need permit from DOH and US Army Corps of Engineers (USACE). We feel confident going through processing with DOH and USACE and will not be significant. Flood development permit may take a long while. We want to move this along as quick as possible and hopefully with the help of staff also that's why I'm hoping the implementation and monitoring will be done together, collaboratively. If CWRM is willing to grant the permit with the conditions as stated by the staff, we will prepare an implementation plan with timelines, tasks and goals to get it done; otherwise you got a process that could go on for an unreasonable amount of time. Mr. Bock wants to expedite it and Audrey as well. We all put a lot of time and effort and the last thing we want is delays, but the very last thing we don't want is for it to not work well. As implementation goes, we'll be back here. The plan is an abstraction, what you do in the ground and how it works is what's important. *<Made*

request for staff assist in the implementation plan> - We are doing this in good faith, and we just want a chance; this has been a torturous event for a lot of people, Mr. Bock, Audrey. We just want to move forward. With regards to Chair's point on the approval, we cannot start work until we have all the permits and I'd be happy to provide a timeline on those to get going until Commission finds we can close.

Commissioner Hannahs – Question, what was the basis of the arguments made upon appeal of our prior decision?

Mr. Mancini – It's difficult. I want to get this done. We believe there are a number of issues with regards to the procedures that happened. It is not productive for me to go through these now. I've talked to your counsel about it. We've been working through that, I don't think that should be a problem. If sometime you want me to come back and go through the procedural and protocol issues I can; that takes us away from what we're trying to do here today.

Commissioner Buck – What was this person thinking about? It was such a blatant violation, was he just not aware of the law? Again, how do we deal with the many new landowners that are moving in and they have property, how does something like this happen?

Mr. Mancini – You bring up an excellent point because we did as part of this, take a look at all the property owners in the area there. When people have problems, they tend to go self-help, they don't really understand what the nature of the problems are and the permits that are necessary. People use their intuition in what the problems are and in solving it. Did Mr. Bock make a mistake, yes, he made a mistake. If he knew what he knew today, would we be here today? No. And this is going to become, I believe in the future, more of a problem because people are harmed with the fear of the stream. We seen it on so many places on Maui in the last 2-3 years that have been devastated. Parts of my family had this same problem, that never happened before. Coastline properties are also being affected. I think the Commission will need to look at that in a broader perspective in the future as it will come up more and more.

Commissioner Buck – Is there more concern of his own property, or the house, or flooding from the stream?

Mr. Mancini – I think what you see many people do Mr. Buck, you take a look at what's in the stream and you see it blocked by trees, old automobile parts, and this property has been through a series of farms for decades; the Souza Farm, the Perreira Farm and pineapple before that, and when you look at the stream you would want to clean it up. Sometimes your clean-up isn't exactly what should've been done and then you get yourself in a hole which is devastating emotionally and financially. I wish everybody could take a look and have a consultant with them when they are looking to do something with a stream.

Commissioner Beamer – In your handout received, what phase are we in right now?

Mr. Mancini – We are down after stage five, we've submitted the plan to you. We're asking you to get the plan approved so we can move on to get the rest of the permits to do it. If we have a problem with any other permits as we go along, we'll be back telling you how we would like to fix it.

Commissioner Beamer – I appreciate your testimony. It would've been nice to have our staff review and have this with the submittal. It's great to have you here and to articulate these things. I heard enough myself, thank you.

Commissioner Buck – What I'm hearing you wouldn't have a problem if we put additional condition that no work shall be initiated under this permit until all county and federal permits are approved.

Mr. Mancini – I think you have to do that, I don't think you have an alternative.

DOH Representative Kawaoka – I think Chair this is an example because there's different regulatory requirements here, DOH, County and Commission, if this remediation plan includes all of that together because we don't want to do something in one area and cause harm in another area. You have not talked to DOH yet?

Civil Engineer Consultant-Stacy Otomo – We have not consulted with DOH but had preliminary discussions with USACE. But we fully recognize that we would have to go back to DOH as well. No, we have not approached DOH at this time. And based on the work area it was determined the NPDES permit is not required.

DOH Kawaoka – what kind of area are we talking about here? And how about 401 or other permits?

Mr. Otomo – 0.9 of an acre in all five remediation areas in total. We would have to approach DOH and get a response back from them.

DOH Kawaoka – I agree with you Chair about what is the remediation plan, what does it include and what's the timing of this? A lot of this will take a lot of time to process. So, you can't probably move on your remediation plan comprehensively until you get all the permits. I don't think we would want to do that either, get one permit in one area, and there's another permit still being reviewed.

Mr. Mancini – We agree collectively we need all the permits. I believe we have to give you notice each time we get a permit, so you understand our process.

Chair Case – We're trying to figure out if what we have to approve is full enough, if we circulate it to DOH and to SHPD and they don't comment, is our part of the remediation...

Commissioner Hannahs – I don't understand the logic, the County suggested you do this route without consulting the other?

Mr. Mancini – Initially, the County indicated we may want to file with them first because there may be some changes. If there's large changes to the dimensions of the plan, we would have to come back to you. We don't think there are, and we would like to come back to you and tell you what we'd like to do for change in that one or two areas. We need a template to walk through with DOH, USACE and by approving the remediation plan you give us that template.

Commissioner Hannahs – So if I'm understanding you correctly, the County wanted you to start with them?

Mr. Mancini – Initially, but the County doesn't deal with abstractions.

Mr. Otomo – I have a suggestion that maybe can resolve all of this. A lot of times when the County approves the grading permit, it's probably the simplest one to apply for and get approved. However, because there's other agencies and other permits involved, for example, my experience in the past is if we did work at the County right away they would not sign off on the grading permit until we have SHPD approval. If the commission wrote a letter to development services administration requesting that they don't approve the grading permit prior to Planning Development approval of the flood development permits, USACE approval, any State permitting requirements, and SHPD, then they would not issue a grading permit until all of those are satisfied. We've experienced that on past projects where they hold the grading permit until we get all the other necessary permits. That would satisfy the concerns.

Mr. Mancini – If there are necessary changes in these permits, we would be back. But if you did approve it, we would have step one covered and have a template as opposed to none. I think the other agencies would want to know if it's okay with CWRM. Some of them may ask us to go back. As Stacy indicated, the grading permit is submitted to a lot of agencies and SHPD takes a long while. It's helpful to us to have something approved by the CWRM.

DOH Kawaoka – An example is with County permits; for building a structure, the County will check with various other county and state agencies including us. Example for us is wastewater systems.

Commissioner Beamer – The County has asked you to start with them, but you determined it made more sense to start with us because of turnover and staffing?

Mr. Mancini – I had a discussion and they agreed with me that it would be good to get CWRM approval.

Mr. Otomo – We did have several conversations with the Planning Department. It's sort of a chicken and egg thing: permit first or get plan approval?

Chair Case – There is a chicken and egg thing. I just want to make sure our piece of it is complete.

Mr. Otomo – I think approval of the plan basically allows us to start the permitting process as we see it; and we cannot do the physical work until we secured all the necessary permits.

Chair Case – For staff, our piece of it is mauka/makai connectivity.

DOH Kawaoka – I want us to agree as a commission to the plan but DOH will have certain specific requirements that may or may not agree with the remediation. Like you said, it's a guide to go through the whole remediation. Your remediation could be different from DOH requirements.

Mr. Mancini – We have many different variables going on here. But it's helpful to us to have a product saying this is what we're going to do and to take a look at that, rather than coming back to you 1-1/2 years later. – Clarified – come back to you when those things need to be changed. That's why the process needs to be collaborative.

Chair Case – If DOH changes something that is different from what we approved then it would have to come back to us.

DOH Kawaoka – Without knowing the details of the project, we also have an enforcement side, not just permitting.

Chair Case – I just want to be really clear on what the remediation plan is that we're approving.

Mr. Mancini – It's the application that has been submitted to you in which staff has given you their recommendation for approval and that will then be the product that we submit to the other agencies.

Chair Case – What is it you take to the other agencies? I don't think it's clear enough for us.

Mr. Otomo – The set of plans (that's folded up) is the remediation plan, the engineered plans.

DOH Kawaoka – Remediation plan is also a work plan – what you're going to be actually doing, what type of work is performed, identifies specific tasks on schedule – That's what we look for in a work plan. Remediation plan is basically how you're going to mitigate damages caused, how you're going to make it better but also satisfying all the permitting? It differs from a restoration plan, restoration is how are you going to make it whole again? It's a huge task, you've done the damage so now you've got to mitigate it. Is it a plan, a work plan, its not a blueprint that's set-in stone. The drawings alone in my mind are not adequate. You got to have a description, narrative, schedule, consulting, timeline to do it. And if you don't do it, what we have on the enforcement side, is stipulated penalties.

Mr. Mancini – You bought up a good point, with the approval here, will move this implementation plan to do this with a timetable with what we are going to do with each agency.

DOH Kawaoka – It sounds like it's a comprehensive plan, I don't know Chair, if we can approve a plan without seeing the narrative too. It's a skeletal type of work. I don't think submitting a grading plan is adequate. You need to have the description of why you're doing this and rationale. Are you going to satisfy all the different permit requirements by doing this, not just satisfy the commission requirements?

Mr. Mancini – That's part of your conditions here, that we satisfy that and that's what the Chair was indicating. We cannot commence until we have all the permits in hand.

Chair Case – The remediation plan description, was that in your application?

Mr. Mancini – Page 4 of the staff report tells you in each area the work that needs to be done. I don't believe it identifies the elements in Stacy's C-1-7 of the submittal that has the work needs to be done.

Commissioner Hannahs – The disconnect I heard is in regard to connectivity. Most of the things in the remediation aren't directly related to connectivity, they're related to flood control and dealing with the velocity and how the water moves down and into retention basins. We need to see here's what we're going to do to deal with stream conditions so that stream species can move up and down stream, so water is connected. If that's our focus and we're looking at retention which is designed for flood and that's not our focus, why not let the County look at this and tell us it's okay, and we can pass on the issue of connectivity and in-stream flow standard?

TESTIMONIES:

Ms. Audrey McGauley (downstream property owner) – *presentation of flood damage, summarized comment letter in response to remediation plan that was put on CWRM website, waited six months for a remediation plan to be developed by Mr. Bock, summarized how coordination with County and State needs to be acted on quickly.* – I am frustrated at the time it is taking, literally a couple times a week I can't get in or out of my property when there's heavy rains. I really didn't know if I could make it this morning here because of the heavy rains last night. This has been going on for a couple years, and my frustration after six months of waiting for a plan is right there. With that being said, I do feel there is now in the last couple weeks a real jump to it attitude in moving getting this done. I believe Mr. Mancini is wanting to move things forward. I see how much Rebecca and her team has done to support and move forward on this project, I don't want to lose that oversight and that of the commission, because this can be dragging on forever. That's the reason why I am here; I do believe right now, DLNR has been of a support and with the County.

Commissioner Beamer – Are the pictures before the alterations? 2015?

Ms. McGauley – *<showed pictures of property and stream when its flooding>* This is after; before the alterations there were many lovely trees. Pictures are from 2016-17. A lot of work has been done on either side; an engineer assisted. When it's flooding, it's over 5-feet of water. There're still heavy amounts of silt. *<mentioned one house on property is being used as a rental and is dependent on the income received from it>*

Chair Case – Has this happened before stream clearing? The water went under the driveway?

Ms. McGauley – There's a 4-ft cement culvert that is being damaged because of water pressure and there's a lot of debris flowing down as well. The culvert is near the front of my driveway. All I've been focusing on is the area in front of the cottage, but what about the whole rest of the stream that runs through my property? *<showed and explained pics of area and the heavy debris flowing in the stream>*

Commissioner Buck – How far away did you plant the Royal Palm from your stream bank? I'm just curious to know how much the stream bank eroded since you planted the palm.

Ms. McGauley – I probably planted it too close, but if you look at the water mark, you can see the heavy erosion, at least a couple feet.

Commissioner Hannahs – How long have you lived on the property?

Ms. McGauley – 21 years.

Commissioner Beamer – Has the color or the water changed since the work on the stream? Did it used to flow that red?

Ms. McGauley – Before Mr. Bock owned the property on really stormy weather, yes it did, but I never had to empty my stream at all from silt, which is up and down stream and there's definitely more. I'm questioning the remediation plan, the largest retention area is adjacent to my property, I question whether how good that is because all the silt from the top of his stream down, is going to end up there; and if that retention area breaks the only answer for it is now a problem for me.

Chair Case – Mr. Mancini are these drawings here existing conditions which is post-work, in the proposed remediation, do you have something comparing it to what was there before using old topos?

Mr. Mancini – No, all we had of topos was existing today, and then creating the topo of what the remediation plan would be.

Chair Case – Comparing it to USGS topos or maps?

Ms. McGauley – That was one of my frustrations that I spoke up about. I asked if I can review it one more time but that was two years ago. The flood development plan is so much

more than what Rebecca's division is needing to have approved and based on the County's comment letter, it's pretty extensive. I think the plan is going to be changing a bit more.

Commissioner Hannahs – Before the work was done, are you familiar in Hawaiian stream biology <stream habitat>? Were they present before?

Ms. McGauley – I've become familiar. You'll see the fishes in the streams and little creatures, and there was a lot more noise in the stream than there is now with animals.

Commissioner Hannahs – So there were indications of connectivity then because you have the stream life present?

Ms. McGauley – Yes. My concern is the large retention area is right along my property line, why not put it in the hairpin turn? The flood development plan is going to ask about filling in all the retention areas; obviously the water has risen. *<showed more pics of property areas>*

Commissioner Hannahs – So your statement is that there is no proof that this plan will not create but cause greater problems, particularly with sedimentation flows and erosion, and in-stream boundaries are made to now include retention areas that are built upon filled in soil areas. You stand by that testimony?

Ms. McGauley – I do because from talking with the hydrologists, when you look at what's needed, to make a statement that Mr. Otomo's drawings will not cause more problems, there needs to be more information on that, like base flood elevation, retention flood elevation study. From my point of view, I don't know if this plan is going to work to prevent the flooding or not.

Mr. Mancini – Kurt Tanaka did an aerial on the subdivision it was not a topo.

Chair Case – How does the remediation compare to what used to be there that didn't seem to aggravate these flood situations?

Commissioner Beamer – There's historical topos for all of Hawai'i. That's what Chair is asking, on the historical topos for comparison matters.

Mr. Otomo – Audrey is right. Tanaka Engineers did a subdivision that was finalized in the early 2000s. On the subdivision map there are contour lines that are shown. We approached Kurt Tanaka to see if he would share his data with us and his comment was that, as far as the subdivision application, you're required to show contour, what he showed was taken from the aerial photograph, so he admitted that the contour lines were not accurate. When we did work back in 2017, there was an on-ground survey we compared and overlaid it to what Tanaka had and it was not consistent.

Chair Case – What about regular USGS maps?

Commissioner Buck – USGS contours are 40ft, you could easily look at that and expand it to get some idea on the analysis what it used to be like.

Mr. Otomo – The 40ft contours when you're doing scan analysis is very difficult, its like trying to guess what's happening between the contour lines. I sympathize with Audrey, I see the photos. For clarification, the drainage area at the bottom of Mr. Bock's property and Audrey's is a contributory area of 548 acres that drained into this area. Mr. Bock's property is 7-1/2 acres, so to pinpoint all of these issues from a 7-1/2 acre property that shares a 548 acre drainage basin, I think is quite unfair.

Chair Case – I do think that we're not the flood experts. I think that's our basic problem here. We probably want to go and talk about what the plan is here. In the chicken and egg. I'm not sure we want to be the first whichever it is because our approval would suggest its an appropriate plan when it seems like the real big issue here is flood control is what we're hearing and we're not the flood people.

Commissioner Hannahs – You kind of did affect that system. The stream alteration work affected it.

Mr. Otomo – For clarification, I want to go on the record by saying that the remediation plan is basically to try and bring what Mr. Bock did, to a more natural state because we don't have the pre-work topo versus what we have now. We're trying to make an engineering judgement as far as what would be a good solution to this. Its not meant to stop the flooding. Whatever that's coming through the 548 acres is going to continue going through the property.

Chair Case – I think that's the kind of statement that we would think you would want in a remediation plan. How did you come up with these drawings, what are you trying to accomplish and where did you get your information? It's just a set of drawings, how do we know?

Mr. Otomo – For the record, we did consult with staff and the agreement was to try and bring the channel to a more natural state.

Chair Case – I think there is concern about us being the first one in this chain. Our piece of it is not the big issue.

Commissioner Hannahs – The quantitative flow about the stream, the flowing through; you've scaled certain detention basins for cause. Where is that analysis?

Mr. Otomo – The whole purpose of the low-rise analysis is to show the County that the water surface elevation is not going to rise. We have the computer models that show that, the County does not accept it. It has to go through the long-hand FEMA calculation and that's what they accept.

Mr. Mancini – So as the lead agency you don't want to put a 100% stamp on the plan at this point in time, so I just ask you if you could put a preliminary stamp on it and bring it back from what results from all of that because its very helpful to us to tell the other agencies that we're going through the process, reviewed with staff and circle back after its finalized.

Chair Case – In order to consult with our attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities a motion was made to move into Executive Session.

MOTION: (HANNAHS/BUCK)

To move into Executive Session

UNANIMOUSLY APPROVED TO MOVE INTO EXECUTIVE SESSION

At 12:47 pm the Commission moved into Executive Session to discuss their legal options and consult with their attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities.

At 1:11 pm the Commission returned from Executive Session.

Commissioner Buck – Propose to defer item B-2; due to concerns with approving a plan with flood control type issues that we might not have the complete expertise, so we direct our deputy to write a letter to the applicant that shows we have reviewed this plan that meets our limited needs for stream connectivity but we look forward to the comments from the other relevant County, State and Federal agencies then we look forward to approving a final remediation plan upon their approval.

Chair Case – asked if there were any discussions

Deputy Ag Cindy Young – Is this so that the Commission can review the remediation plan that was submitted or are you asking for another plan?

Commissioner Buck – We have reviewed it here, we support the staff that it does address our issues of stream connectivity but we're not on record to say that it deals with all the flood control issues. We want to provide the applicant a letter that expresses that so when they go to the other relevant agencies for approval, at least they have that in their hand. We're going to defer the whole item at this point and you'll see that narrative in a letter from the Deputy with authority from the Chair to the applicant.

Chair Case – When it comes back to us, I would want to request this in a format that fits the narrative of what the plan is trying to accomplish and how it accomplishes that, including what the hydrology is, how do the drawings meet the goals of the plan?

Commissioner Beamer – In addition to the narrative, a flow chart should be included if there are simultaneous agencies that are being addressed.

Chair Case – asked for a motion

MOTION: (BUCK/BEAMER)
Item B-2 DEFERED
UNANIMOUSLY APPROVED TO DEFER

**3. Alexander & Baldwin, Inc. Application for a Stream Diversion Works
Abandonment Permit, Category 2 Diversions, Honopou, Pi'ina'au (Palauhulu), and
Wailuanui Streams, East Maui, Hawai'i**

PRESENTATION OF SUBMITTAL: Rebecca Alakai

Ms. Alakai – 1) Correction to page 1 on stream name for last 3-items on table, should read Wailuanui, not Palauhulu; 2) applicant is EMI and not Alexander & Baldwin; 3) Page 19 typo on picture

Commissioner Beamer – We've worked with the applicant and we're comfortable these diversions are in order, correct?

Ms. Alakai – Yes.

Commissioner Buck – Question on page 28, the comments from DOFAW

Ms. Alakai – They had habitat concerns for diversions and structures left in the streams; it was more habitat oriented; our response to that was - we are following the Commission's D&O, this is a kalo stream, so the goal is to put water back in the stream. Other streams in the D&O were listed as habitat streams.

Commissioner Buck – We're concerned with habitat in all streams, our decision was not to make unnecessary changes in the modifications if indeed we can satisfy both instream flow standards and habitat. Have the comments from DOFAW been addressed or are there still outstanding issues?

Mr. Uyeno – The main reason for waiting for the Commission's D&O is that we met with Clean Water Branch and started discussions with Forestry, but they were taking the position that everything needed to be removed completely so that's why we wanted to wait for the D&O. They're issues that lay with Land Division and the interaction between Land Division and the CWRM if anything further needs to be done as far as the leases. Really that's with the Land Board. Our position is that the Commission is taking its position on the status of the infrastructure. We're continuing to go through the leases in coordination with Land Division on the conversion of RP's to leases.

Commissioner Buck – I think the intent of the Commission in the D&O is that we want to move forward on the issue but we're not saying we have to remove everything all at once, but at least get modifications for what is needed to deal with the habitat and water diversion issues. – Rebecca that's not a correct statement that for taro streams we aren't also concerned about habitat.

Commissioner Beamer – Excused at 1:27pm

TESTIMONY BY APPLICANT: Meredith Ching, Alexander & Baldwin

When we committed to permanently abandoning the diversions on the taro streams seven years ago, we immediately acted to put as much as we could back in the streams by either opening or closing our diversion gates. And by our estimate, that's probably 90-95% of the stream flow. The last 5-10% of stream flow was not easy to put back because of filling grates or blocking off tunnels. There were 70 different diversions involved with these taro streams, so we're really grateful to CWRM staff for working with us on all these permitting needs since 2016. The diversions are different types, sizes and not all the same. Of the 70 diversions, work was completely done on 28 to return all the water, so the only thing that remains on those is the final paperwork to permanently abandon them. We got approval for another 15 and are in the field working on modifications of those diversions. This approval today would clear the way for us to also address another 15 diversions and ask for your support.

Commissioner Buck – If there are stream connectivity issues after our approval, do you feel like this is the last thing EMI or A&B has to do or are you still willing to participate in increasing connectivity?

Ms. Ching – There is connectivity taken into account in these modifications we're making but we also expect there's more to do to comply with the rest of the IIFS decision; it's to get the water back into the taro streams as fast as possible. We met with staff twice on additional items in IIFS decision and it's a work in progress.

Commissioner Hannahs – Commended Meredith in working with Nā Moku and creating transparency.

Ms. Ching – Mahi Pono is also responsible for that as well.

TESTIMONIES: Dr. Jonathan Likeke Scheuer – consultant to DHHL on water issues.

Apologized for not submitting comments in a timely manner as it fell over the holidays. The discussion here today answers the questions that we had in reviewing this because it is not our reading of the D&O that there were not to be any habitat values to the community kalo streams, so it is on the record. For the record, two things, our lands directly abut these two streams which are DHHL's concerns—we want water on these streams but when we have homesteaders on these lands we know that they want more than just water, they want healthy streams with stream species in them. We want any action that you take, that it be clear that part of the staff submittal is not overlooked. We're not asking for any delay, we're certainly standing with Nā Moku and want to move forward as quickly as possible. I am not convinced that if an applicant abandons an RP for a particular area whether the State would

have any hooks available to them to require them to do things, its in the staff submittal, and I don't know whether it's a correct reading or not.

MOTION: (BUCK/HANNAHS)
To approve the submittal as amended.
UNANIMOUSLY APPROVED AS AMENDED.

C. NEXT COMMISSION MEETINGS (TENTATIVE)

March 19, 2019 (Tuesday)
April 16, 2019 (Tuesday)

This meeting was adjourned at 1:31 pm.

Respectfully submitted,



RAE ANN HYATT
Secretary

OLA I KA WAI:



M. KALEO MANUEL
Deputy Director