

1
2 LAND USE COMMISSION MEETING

3 HELD ON NOVEMBER 19, 2015

4 COMMENCING AT 8:30 A.M.

5
6 MAUI ARTS & CULTURAL CENTER

7 MCCOY STUDIO THEATER

8 ONE CAMERON WAY

9 KAHULUI, MAUI, HAWAI'I 96732

10 A10-786

11 OLOWALU TOWN LLC

12 and

13 OLOWALU EKOLU LLC

14 Motion for Extension (page 3)

15 and

16 SP94-336

17 COUNTY OF MAUI-LANAI SANITARY LANDFILL (Page 32)

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24
25 Before: Jean Marie McManus, CSR #156

1 APPEARANCES:

2 EDMUND ACZON, Chairperson
3 JONATHAN SCHEUER, VICE CHAIR
4 ARNOLD D. WONG, VICE CHAIR

5 COMMISSIONERS:

6 CHAD McDONALD
7 LINDA ESTES
8 KENT HIRANAGA

9 DIANE ERICKSON, ESQ.
10 Deputy District Attorney

11 STAFF:

12 DANIEL ORODENKER, Executive Officer
13 BERT SARUWATARI, Planner
14 RILEY K. HAKODA, Planner/Chief Clerk

15 BRYAN YEE, ESQ.
16 Deputy Attorney General

17 For the State of Hawaii
18 Office of Planning
19 MICHAEL HOPPER, ESQ.
20 Deputy Corporation Counsel
21 WILLIAM SPENCE
22 County of Maui Planning Director
23 Kurt Wollenhampt, Planner 5

24 For the County of Maui

25 JENNIFER LIM, ESQ.
ONAONA THOENE, ESQ.

For Petitioner A10-786

MICHAEL MIYAMOTO
ELAINE BAKER

1 CHAIRPERSON ACZON: Good morning. This is
2 the Land Use Commission meeting and continuation of
3 discussion on Docket A10-786 Olowalu Town LLC and
4 Olowalu Ekolu LLC, Maui.

5 We concluded the public testimony
6 yesterday. And we're ready to hear from Petitioner.

7 Ms. Lim, I understand that you have a
8 motion about an extension.

9 MS. LIM: Yes.

10 CHAIRPERSON ACZON: Would you like to
11 proceed on that?

12 MS. LIM: Good morning, Chair,
13 Commissioners. Thank you for being here again today.
14 And on behalf of the Petitioner, we do make a motion
15 consistent with the letter that we submitted
16 yesterday morning which is to request that the
17 Commission, for our benefit, the Applicant's benefit,
18 to extend the time frame for the acceptance or
19 nonacceptance off the EIS from 30 days provided by
20 law to an additional 15 days as provided by law under
21 HAR 11-200-23 subsection (d).

22 The 30 days provided by law indicates, as
23 several of the Commissioners mentioned yesterday,
24 that if a decision isn't made within that 30-day time
25 frame, then the EIS was automatically deemed

1 accepted.

2 Now, as the Applicant's representative,
3 automatically deemed acceptance sounds like kind of a
4 wonderful opportunity for us, but, frankly, we know
5 this Commission well enough and the public well
6 enough to know that deemed accepted is never going to
7 happen here because the Commission wants the
8 information.

9 We believe that it will benefit us to give
10 the Commission extensive and sufficient information
11 so that you can make the right decision here.

12 The EIS itself stands on its own, that's
13 correct; however, it's a very technical document.
14 Was prepared over several, several years, and a lot
15 of misinformation and a lot of confusion comes with
16 any comprehensive document that covers an entire
17 master plan for a new town.

18 It's a difficult document to digest,
19 notwithstanding the fact that it's been available for
20 public review for several weeks.

21 So this isn't like an EA for entrance onto
22 a highway. This is a significant document, and that
23 is why we would like the opportunity to have the
24 additional 15 days, again, for the Commission to more
25 thoroughly digest the document, for the public to

1 have more opportunity to review the document, and
2 really for us to be able to come back before the
3 Commission at a future meeting within the next couple
4 of weeks and address technical questions, and put on
5 a presentation regarding the information that's in
6 the EIS.

7 I can continue.

8 CHAIRPERSON ACZON: Go ahead.

9 MS. LIM: Specifically in our letter we
10 mention some very specific reasons why -- I just gave
11 you the big picture why we are asking for this
12 request.

13 To delve deeper, when the Office of State
14 Planning filed on Monday afternoon a statement and
15 concluded a statement with a sentence recommending
16 that the Commission not accept the EIS, that was a
17 big disappointment to us. And coming as late in the
18 game as it did, we had to very quickly say, what can
19 we do here? You know, even the Office of State
20 Planning, which has had this document since early
21 October before the Commissioners see the document --
22 we wanted to make sure that the Office of State
23 Planning as well as the County of Maui had even more
24 opportunity to review and comment.

25 Getting that letter on Monday afternoon, we

1 said, there's concerns, and we want to make sure that
2 we have got an opportunity to address those concerns.
3 And specifically, in the Office of State Planning's
4 letter -- I'll reserve comment on the validity of
5 their statement -- but one of their statements is
6 that the traffic report hasn't had enough public
7 review. The Draft TIAR that was in the Draft EIS
8 2012 had plenty of public review, but the Final
9 TIAR -- and it's really not a final TIAR, just
10 another TIAR appended to the Final EIS, Office of
11 State Planning said, hold on. The public should have
12 more time to look at this document.

13 If the Commission believe that that's a
14 valid concern, as Applicant we don't back away from
15 the opportunity for there to be additional public
16 review on that that TIAR. We think it can only
17 benefit the Applicant and the Commission in making
18 the right decision.

19 So the document that was published today on
20 the LUC website and in October, and then published
21 again statewide through Office of Environmental
22 Quality Control, that document includes the TIAR that
23 the Office of State Planning says should have more
24 opportunity for public review.

25 So this additional 15 days will provide

1 even more time for people to read through such a
2 technical document should have. That's one of the
3 reasons we said in our letter, we stand by that and
4 ultimately benefit for the public and Commission
5 decision-making and as beneficial for the Applicant.

6 Secondarily, from the time that we filed
7 the EIS with the Commission on the 26th until Monday,
8 hundreds of letters of testimony were submitted.

9 We also became aware of a very active
10 social media campaign, and there was a lot of
11 information, a lot of perhaps misinformation,
12 concerns being expressed by the public.

13 So an area of concern that comes up time
14 and time again is marine water quality. What is
15 happening with the reef? What's happening with the
16 coral? That's in the EIS. The document does stand
17 on its own, I grant that.

18 But our marine water quality expert had to
19 go somewhat suddenly to Samoa for some work or
20 research project -- I don't know what -- and can't be
21 here yesterday or today. And he'll be back in the
22 country soon. We would really like the opportunity
23 to make him available to the Commission for
24 questions.

25 There's just been too many issues coming

1 up. We're seeing it in the social media regarding
2 the reef. And we would like the opportunity to have
3 him respond to those.

4 And then just in general, the tremendous
5 amount of public comments, the fact that we were here
6 all of us, except for Commissioner McDonald yesterday
7 for a long, long day hearing nothing but public
8 testimony has really compromised our ability to put
9 on a case.

10 And from a due process perspective we
11 really do want that opportunity, and we believe that
12 these 15 days will again provide the Commission more
13 time to review, but also give us an opportunity at
14 the next hearing to be able to put on our case and
15 respond to some of the issues that have been raised.

16 So we do request that you would grant us
17 this opportunity for the additional 15 days prior to
18 making the decision ultimately on whether or not the
19 EIS is acceptable.

20 CHAIRPERSON ACZON: Mr. Hopper, any
21 comments from the county?

22 MR. HOPPER: Thank you, Mr. Chair.

23 Should the Commission grant, the county
24 would not object if the Commission wanted to grant
25 the 15-day extension. We would want to clarify if

1 we're going to be -- if there is additional
2 information submitted by the Applicant, we would want
3 an opportunity before the action today to provide our
4 position on the information. And we're not sure if
5 the Commission wants today to hear from parties or if
6 there is additional information provided, wait until
7 that time.

8 So with that clarification, we appreciate,
9 but as of now, if the Commission would like to extend
10 time, the county would not object to that.

11 CHAIRPERSON ACZON: Mr. Yee.

12 MR. YEE: The Office of Planning would
13 support the request for additional 15 days for the
14 various reasons explained by Ms. Lim, including
15 additional time to respond to the many varied
16 comments, as well as the Office of Planning's letter
17 as well as to -- and to have their marine expert
18 physically here to explain the contents of the EIS.
19 Thank you.

20 CHAIRPERSON ACZON: Thank you, Mr. Yee.
21 Commissioners, any questions for the Petitioner?
22 Commissioner Estes.

23 COMMISSIONER ESTES: I too have been
24 concerned about the Office of Planning's letter when
25 we got it, but in your testimony today you're talking

1 about Monday. You said on Monday, and in your
2 written testimony you're talking Tuesday afternoon.
3 Which was it?

4 MS. LIM: I misspoke. It was Tuesday
5 afternoon. I've been traveling and I'm a little
6 mixed up on days and times.

7 I apologize, it was Tuesday afternoon.
8 Yeah, yesterday was Wednesday.

9 COMMISSIONER ESTES: I'm just asking the
10 Office of Planning, since I'm an old person and I
11 like to get my information and be able to digest it,
12 how come that came in so late?

13 MR. YEE: Thank you. And I would have gone
14 into this a little more.

15 We had argument or -- but we certainly
16 apologize for the fact that it came to the LUC so
17 soon before the hearing.

18 It was frankly a rapidly evolving position
19 that occurred in the office. It was not something we
20 had thought -- we had not originally conceived an
21 opposition until there was another look at some
22 issues that came to our attention. And when that
23 happened, on that day, we had had meetings and then
24 decided to basically -- that afternoon -- so the
25 decision occurred that afternoon, and unfortunately,

1 you know, I apologize it came so late, certainly
2 wanted to give the Petitioners more time as possible
3 prior to any time to respond. That would have been
4 our goal, and unfortunately didn't happen in this
5 case.

6 But once we sort of reached that decision
7 that we had concerns, we didn't feel that we could
8 not explain that, so that was the dilemma we faced.
9 Sorry it came late, but we didn't feel we could hold
10 it back because of that.

11 I will say, technically, the Office of
12 Planning's letters are actually part of the comments
13 that you receive, and you're allowed to receive
14 public comments all the way up to the actual date of
15 the hearing, which was yesterday, of course.

16 Now, the Office of Planning views its
17 responsibilities above and beyond that. So I am not
18 using that as an excuse for what we did. But just
19 because, I'm aware -- to explain the technical, our
20 technical rights as I fight to the death. Thank you.

21 COMMISSIONER ESTES: I got it. You had a
22 huge overriding weight to put it in writing.

23 MR. YEE: Not a moral wrong committed, not
24 arguing English.

25 CHAIRPERSON ACZON: Anything else,

1 Commissioners?

2 VICE-CHAIR SCHEUER: I just, for the
3 record, have a different take on this matter, because
4 at least based on the written record, and I was
5 somewhat surprised by Mr. Yee's statement that this
6 was an evolving position. Almost everything in OP
7 letter were things addressed over a year ago to you
8 in their comments in their April 2012 letter.

9 So to me they restated some of the
10 comments. So to me it's like based on written
11 record, not particularly surprising, yes, it would
12 have been nice to have the statements beforehand, but
13 I find some of the other reasons that you're seeking
14 a 15-day extension compelling, but I didn't
15 necessarily find Office Of Planning's based on the
16 written record, Office of Planning's opposition to
17 the completion of it as surprising because there were
18 comments made that one could easily interpret were
19 not satisfactorily answered in the Final EIS

20 MS. LIM: May I respond?

21 CHAIRPERSON ACZON: Yes.

22 MS. LIM: I appreciate the point that you
23 just raised but I respectfully disagree.

24 There's two ways I want to address your
25 question. First all, there was no suggestion nor

1 could there be a suggestion that the traffic impact
2 record that would be in the Final EIS should somehow
3 go for additional public review. That's not the way
4 chapter 343 works, as you know. Time for review and
5 public comments is at the draft stage, then the final
6 comment document comes out, there's no second bite of
7 the apple. If you feel the comment is
8 unsatisfactorily addressed, then you sue, you
9 challenge. If in fact the document is accepted.

10 So the Office of State Planning did not say
11 -- I mean the traffic report that was made part of
12 this Final EIS has had public review in the same way
13 that every document that's in a Final EIS has public
14 review. So this was not that the Office of State
15 Planning had not written their comments on the Draft
16 EIS, to then suggest that we should go due a
17 supplemental Draft EIS, I acknowledge that those
18 (inaudible) record appear in Office of State
19 Planning's letter, but I struggle to find any other
20 legal framework to fit what it is that they're
21 suggesting.

22 How else do we get additional public
23 review? We got it because it's published out there
24 for public review for several weeks. If we receive
25 these additional 15 days that will be another couple

1 weeks that the document has public review.

2 It is unclear what the OP is asking, but
3 they're certainly asking for supplemental Draft EIS.

4 So I don't think it's fair to say that
5 they're repeating a request that they made before
6 with respect to the TIAR.

7 On the second point regarding
8 archaeological information, that information is in
9 the EIS. It always was in the EIS. So that's
10 somewhat confusing as well.

11 But so that is my response, and if the
12 Office of State Planning, if we're going to fully get
13 into argument on it, there is legal support both the
14 Pele decision clearly states beyond a shadow of a
15 doubt that there's no requirement for an AIS even to
16 be accepted or included in the EIS. But in fact in
17 case the AIS were accepted. The document in this
18 FEIS, is thorough analysis and compilation of all
19 those prior EISs. No there's no absence of
20 information here.

21 The Office of State Planning has decides
22 that as a policy, I don't know if they want to see an
23 AIS included in the EIS, very nice, but it's beyond
24 the scope of the law.

25 But the thing that is driving the request

1 for extra 15 days is not actually the substance of
2 that, so that we have more time to respond, we did
3 respond. I think the letter that we submitted
4 yesterday morning response, they had no legal basis
5 for the two things that they're saying, and that
6 letter sets forth why, but the Office of State
7 Planning in their letter on Tuesday says we think
8 that there should be more public review on the TIAR.

9 So this extra 15 days will allow for more
10 public review on the TIAR. That's a new comment, and
11 we certainly, if the Commission is willing to give us
12 that time, that will give the public more time to
13 look at the document, the Commission more time to
14 look at the document.

15 So it is a new comment and that is actually
16 why we're making the request. It's not to respond to
17 what they said, you know, to fight about what they
18 said, it's just hear a very influential agency here
19 as member of the public, but the agency decision,
20 they think that there should be more public review
21 before decision making.

22 Okay, you know, if an influential agency
23 before this Commission says that's a good idea, the
24 Applicant is going to say, yeah, we agree that's a
25 good idea, whatever it is that will help us to get to

1 a decision that everybody can be comfortable with.
2 That's all I have to say on those points.

3 CHAIRPERSON ACZON: Anything else,
4 Commissioners? Commissioner Estes.

5 COMMISSIONER ESTES: Do we need a motion at
6 this time?

7 CHAIRPERSON ACZON: Yeah. What is the
8 pleasure of the Commission?

9 COMMISSIONER ESTES: I move that we grant
10 the extension.

11 CHAIRPERSON ACZON: Any second?

12 COMMISSIONER HIRANAGA: Second.

13 CHAIRPERSON ACZON: Motion is made by
14 Commissioner Estes and seconded by Commissioner
15 Hiranaga. Any discussion?

16 VICE-CHAIR SCHEUER: Mr. Chair, could we
17 just review for the benefit of the Commissioners and
18 the public and Petitioner and everybody here how the
19 process will flow should we grant this motion?

20 EXECUTIVE DIRECTOR: Mr. Vice chair, should
21 this motion be granted, we will recess the
22 proceedings and take them up on a later date to be
23 determined, and we would have to do some calculations
24 with regard to what the 15 days would be, how long it
25 would take and draft depending on how the Commission

1 decides and work backward from there.

2 We would take up the Petitioner's request
3 to approval of the Final EIS at that time. This
4 motion would not be dispensed with that decision.

5 VICE-CHAIR SCHEUER: I believe, just to
6 restate what I understand, if this motion passes,
7 then this proceeding is done for today, we come back
8 sometime within the 15-day window to Maui, then we
9 actually have a discussion over whether or not to
10 accept the FEIS or not.

11 And at that hearing we will also have
12 opportunity for public testimony and we need to do it
13 in time to actually have an order drafted after that
14 within the deadline; is that correct?

15 EXECUTIVE OFFICER: That's correct.

16 CHAIRPERSON ACZON: Might need a special
17 meeting to do that.

18 EXECUTIVE OFFICER: It will require a
19 meeting that is not currently on the Commission's
20 schedule.

21 CHAIRPERSON ACZON: Any other questions?
22 Commissioner Estes.

23 COMMISSIONER ESTES: So if we pass the
24 motion now, everything on this stops. We don't hear
25 anything more from them today. Is that what you're

1 saying to me?

2 CHAIRPERSON ACZON: That's correct. So you
3 can ask questions now or discuss.

4 COMMISSIONER HIRANAGA: Mr. Chair, so I
5 guess I have several questions.

6 CHAIRPERSON ACZON: Go ahead.

7 COMMISSIONER HIRANAGA: Regarding the
8 document, so is it appropriate to pose those
9 questions to the Petitioner at this time so that they
10 can prepare answers that they're unprepared to answer
11 at this time when we return, or it seems like we're
12 going into the body of the process.

13 CHAIRPERSON ACZON: I think it's more
14 appropriate to do that at the next meeting so we
15 don't do piecemeal discussion.

16 COMMISSIONER HIRANAGA: I'm not sure what
17 the protocol is.

18 COMMISSIONER ESTES: I'm not interested in
19 stopping this or cutting off questions, so maybe I
20 should withdraw my motion for awhile.

21 CHAIRPERSON ACZON: If that's your --

22 COMMISSIONER ESTES: Well, Commissioner
23 Hiranaga has questions. I'll be glad to withdraw
24 that motion if that will give him an opportunity to
25 get answers to those questions.

1 CHAIRPERSON ACZON: Commissioner Estes
2 withdrew her motion. Kent.

3 COMMISSIONER HIRANAGA: I'll withdraw my
4 second.

5 CHAIRPERSON ACZON: What is the pleasure of
6 the Commissioners?

7 COMMISSIONER HIRANAGA: It wouldn't just be
8 me. I'm sure other Commissioners have questions, but
9 I think since we're here, rather than wait to ask the
10 questions, you're not prepared to have answers, then
11 not ready to answer 15 days to come up with that. Is
12 that appropriate at this time?

13 CHAIRPERSON ACZON: Let me hear from the
14 other Commissioners first, then take a short break.
15 Commissioner Wong.

16 VICE-CHAIR WONG: The only thing I'm
17 concerned with is I'm very forgetful, tell you the
18 truth, and I might forget what Commissioner Hiranaga
19 stated here if the Ms. Lim answers it. So I just
20 want everything done all at once, totally together.
21 And if Commissioner Hiranaga has anything that should
22 be answered now, but if you can answer it now, and
23 then you I might forget, and might have to ask the
24 question again.

25 So I'm not sure of a procedure on this. So

1 I would like I guess motion for executive session to
2 ask the legal advice about this issue.

3 COMMISSIONER McDONALD: Second.

4 CHAIRPERSON ACZON: Motion by Commissioner
5 Wong to go into executive session, seconded by
6 Commissioner McDonald. You missed yesterday.

7 VICE-CHAIR SCHEUER: Mr. Chair, what is the
8 request for going into executive session?

9 CHAIRPERSON ACZON: To ask legal counsel --

10 VICE-CHAIR SCHEUER: I'm not trying to be
11 difficult, regarding --

12 VICE-CHAIR WONG: All the legal issues, if
13 we have a motion or not, and the question what other
14 legal issues we can do on this issue, that we go into
15 executive -- whether we still continue question or
16 not, the legal issues that we need to make sure
17 everything is clear.

18 VICE-CHAIR SCHEUER: Just to restate in
19 terms of are we following proper procedure, we need
20 to discuss with counsel. Thank you.

21 CHAIRPERSON ACZON: Any other discussion?
22 There was a motion and seconded. Those in favor say
23 "aye". Opposed.

24 COMMISSIONER ESTES: No.

25 CHAIRPERSON ACZON: Motion carries.

1 (Executive session.)

2 CHAIRPERSON ACZON: We're back on the
3 record.

4 Commissioners, what was the pleasure of the
5 Commission.

6 COMMISSIONER ESTES: I move we grant the
7 extension as requested.

8 COMMISSIONER HIRANAGA: Second.

9 CHAIRPERSON ACZON: The motion has been
10 made by Commissioner Estes and seconded by
11 Commissioner Hiranaga to grant a 15-day extension.

12 COMMISSIONER HIRANAGA: So I'm going to
13 pose several areas of concerns and I'm not requesting
14 that you respond to them at this time. Provide an
15 opportunity to prepare answers when you return.

16 I guess my initial concern is my
17 recollection with this project was put forward to the
18 Maui Planning Commission during the Maui Island Plan
19 process. Makai lands were not part of the
20 presentation.

21 Of course, this is just my memory. This
22 occurred maybe perhaps five years ago, so that's why
23 I want clarification when you look at the record at
24 that time, but I see that the makai lands not
25 included in the urban growth boundaries, but don't

1 recall you initially opposing makai lands to be
2 included in the urban growth boundary.

3 And so my recollection was that those lands
4 were going to be designated park or open space, and
5 were going to be donated to the County of Maui. I'm
6 just relying on my memory.

7 So I just want clarification on that,
8 because I guess for the record, it's in the record, I
9 did support this project during the Maui County
10 Planning, but makai lands were not included. And one
11 of the tipping points was the fact that I thought
12 that the makai lands would be dedicated to the county
13 for open space park, and also used for storm water
14 retention basins.

15 So I want confirmation as to what was
16 presented during those Maui Planning Commission
17 hearings.

18 Also, my recollection from those meetings
19 was that the predevelopment storm runoff was going to
20 be substantially more as far as retention detention
21 more than ten percent as indicated in your
22 engineering report. I thought it was going to be
23 100 percent. And so -- and I think that was one of
24 the tipping points was that you were going to retain
25 or detain 100 percent of predevelopment and post

1 development storm runoff which would definitely, I
2 think, benefit the ocean.

3 I wanted clarification on that.

4 I guess those are the two main ones.

5 I'm a little surprised with the proposed
6 removal of the existing lower Honoapi'ilani Highway
7 north and south of the project area, which basically
8 I guess is the road which goes inland from the shore,
9 starts inland from the shore from Olowalu Village and
10 goes out to where you can start seeing the ocean
11 again as you head north.

12 I don't believe that was represented during
13 the Maui Island Plan Review. I thought that the 50
14 highway was going to be used as a secondary roadway,
15 re reduce the speed limit to encourage those that are
16 commuting to West Maui would be using the proposed
17 upper Pali Puamanu bypass road.

18 But now it's indicated that those sections
19 of the Honoapi'ilani Highway will be removed, and
20 that creates a large concern for me as indicated from
21 the testifier that was with the Surfrider.

22 How do you get to those surf spots at
23 Olowalu just north of the general store? I mean,
24 that's, I think, one of the most popular surf spots
25 on the west side or south side. So I think maybe

1 perhaps more detail as to what your plans are.

2 I guess those probably are the three
3 largest areas of concern that I would like
4 clarification on. I'll yield it to the other
5 Commissioners, and maybe I'll have a couple more
6 after they're done.

7 CHAIRPERSON ACZON: Commissioners?
8 Commissioner Wong.

9 VICE-CHAIR WONG: You know, there is
10 there's a lot of discussion yesterday, reading the
11 EIS it was apparent -- well, I don't know if it's
12 apparent, but there's certain issues on cultural
13 rights that was not covered in terms of fishing and
14 all those other issues of cultural practitioners.
15 And I hope that within this 15 days we can get more
16 information on that. That's all I just hope will
17 happen. Thank you.

18 CHAIRPERSON ACZON: Commissioner Scheuer.

19 VICE-CHAIR SCHEUER: You know, speaking in
20 favor of the motion, I realized in a sense I delayed
21 proceedings yesterday by asking a number of questions
22 of the public witnesses, but the questions I asked
23 inquiry about the past on water resources and past on
24 nearshore environment, particularly whether there is
25 sufficient information in this document to give the

1 LUC a sense of our constitutional and statutory
2 obligations to protect. My understanding is the
3 scope of traditional and customary practices in this
4 area and defend them.

5 I'm hoping within those 15 days that there
6 will be some responses that are very clear, not just
7 for our benefit but, you know, yesterday was a good
8 day, but it was a heavy day. And I hope that this
9 Petitioner will come forward in a way that might,
10 obviously not completely, but address some of that
11 heaviness that was in the room.

12 VICE-CHAIR WONG: Chair, I just wanted to
13 know that after you gain all this information it was
14 just mind boggling to see the amount of houses going
15 to be put up and maybe the amount of people in there
16 and if I remember that area that when I go to
17 Lahaina.

18 There's only one road in and one road out.
19 So hopefully the traffic information will cover what
20 happens if there's a big wild brush fire right by the
21 entrance or exit. What happens to the people? Or if
22 there's some major catastrophic issues, how are those
23 people being taken care of?

24 So those issues I'm just concerned with and
25 hopefully will be answered during that time period.

1 CHAIRPERSON ACZON: In the hope that the
2 Petitioner can answer those questions during the
3 15 days extension. Commissioner McDonald.

4 COMMISSIONER McDONALD: I too am speaking
5 in favor of the motion. Again, I understand that the
6 approval of the motion is for the benefit of
7 Petitioner, but I also understand that there was a
8 lot of public testimony that was given that I missed,
9 and I apologize for that. It's going to allow me the
10 opportunity to review the transcripts and review the
11 issues that were raised by the public.

12 CHAIRPERSON ACZON: Any further discussion,
13 Commissioners?

14 COMMISSIONER HIRANAGA: Just a couple more.
15 You know, perhaps it's in the exhibits of the EIS but
16 I have not had a chance to read the entire document,
17 but the placement of the proposed wastewater
18 treatment plant on the far north end of the property,
19 and of course public testimony voiced concerns about
20 overflow and impacts to those spots and, you know,
21 I'm not sure -- hopefully all are extremely popular
22 surf spot. The waves are overhead there's
23 approximately 60 people in the water, and, you know,
24 and more cars because lot of people are just watching
25 or, you know, their kids are playing in the shoreline

1 as you surf, so placing the wastewater treatment
2 plant directly above the surf spot is a concern.

3 And also similar to what is happening in
4 Honokowai with the West Maui Wastewater Treatment
5 Plant is the odors. You're placing nine treatment
6 plants upwind of your proposed development. I'm not
7 sure how wise that is.

8 And my final comment is my personal
9 experience, and this is just nothing -- I'm not
10 keeping a tab or -- but it seems like Olowalu has
11 been experiencing a higher number of brown water
12 incidents with the rains recently in the past several
13 years, and it's probably coming from Olowalu Stream,
14 but I'm not sure. Again, it may be in the document,
15 but I'm just curious if that is true. And I don't
16 know if you have been keeping track of how many brown
17 water events there has been in Olowalu.

18 We had one about three or four weeks ago,
19 and it didn't seem like it was raining that hard and
20 that long for that type of incident. So I'm not sure
21 if it's not -- sugarcane is no longer being
22 cultivated, so there is exposed land. I've sort of
23 noticed the brown water events are increasing. So
24 just a concern.

25 CHAIRPERSON ACZON: Any other further

1 discussion? If there is no further discussion, Mr.
2 Orodenker, please poll the Commission.

3 EXECUTIVE OFFICER: Thank you, Mr. Chair.
4 Motion on the floor is to grant the Petitioner's
5 motion for 15-day extension for approval of the Final
6 EIS.

7 Commissioner Estes?

8 COMMISSIONER ESTES: Yes.

9 EXECUTIVE OFFICER: Commissioner Hiranaga?

10 COMMISSIONER HIRANAGA: Aye.

11 EXECUTIVE OFFICER: Commissioner McDonald?

12 COMMISSIONER McDONALD: Yes.

13 EXECUTIVE OFFICER: Commissioner Scheuer?

14 VICE-CHAIR SCHEUER: Aye.

15 EXECUTIVE OFFICER: Commissioner Wong?

16 VICE-CHAIR WONG: Aye.

17 EXECUTIVE OFFICER: Commissioner Mahi is
18 here. Commissioner Cabral is absent.

19 Chair Aczon?

20 CHAIRPERSON ACZON: Aye.

21 EXECUTIVE OFFICER: Mr. Chair, the motion
22 passes unanimously.

23 CHAIRPERSON ACZON: Thank you we're going
24 to take a ten-minute recess for the next docket

25 MS. LIM: Chair, I'm so sorry, just point

1 of clarification. Petitioner Applicant is very
2 appreciative of the Commission giving us this time to
3 provide more information to respond to the issues
4 you've raised and the public raised. We are
5 extremely appreciative of that.

6 As far as the presentation format, what we
7 had anticipated was that we would bring certain
8 witnesses, and in fact when I say witnesses, they're
9 the experts that prepared the reports in the EIS and
10 the experts who we had identified are exactly those
11 experts who prepared the reports that those of you
12 who do have questions.

13 They were reports related to those
14 questions. For instance, wastewater treatment plant
15 and location of that and the drainage and cultural
16 issues. So we would still like to bring those
17 witnesses for the next meeting and allow the
18 opportunity for the Commission to direct questions
19 directly to them if that is --

20 CHAIRPERSON ACZON: I think it's proper to
21 just work with the Executive Officer with those
22 logistics. If you have any, just consult with our
23 Executive Officer.

24 MS. LIM: Okay, fair enough. And is that
25 the same for my request now to be able to submit in

1 writing similar, to the letter that we submitted on
2 November 7th, identifying the informants with the EIS
3 standards for us to submit something in writing prior
4 to the next meeting?

5 CHAIRPERSON ACZON: That will be fine.

6 MS. LIM: That's acceptable?

7 MS. ERICKSON: I think he meant it's
8 acceptable for you to contact the Executive Officer.

9 MS. LIM: Thank you for the clarification.

10 CHAIRPERSON ACZON: Commissioner Scheuer.

11 VICE-CHAIR SCHEUER: Let me make some
12 remarks that I think are addressing the concerns that
13 the public are expressing.

14 Where we are now in the proceeding once we
15 adjourn, we will be done with Olowalu today. We will
16 go to the Lanai Sanitary Landfill issue.

17 The Petitioner, when we come back to Maui,
18 will have the chance to present their witnesses and
19 experts and other information, but the entire scope
20 of their presentation will be limited to what exists
21 already in the new document. They're not able to
22 bring in additional information related like, here's
23 another expert. The question at hand is was what's
24 in the FEIS satisfactory under the Administrative
25 Rules.

1 So if they submit additional documents
2 issues to us after consultation with Executive
3 Officers, it's only going to be in terms of what they
4 believe that's in the document and respond to the
5 questions that have been raised over the last day.

6 VICE-CHAIR SCHEUER: I'm done, Mr. Chair.
7 I'm more than happy to talk with individual members
8 of the public after we recess.

9 CHAIRPERSON ACZON: We are not accepting
10 any more testimony. Does that answer your question,
11 Ms. Lim?

12 MS. LIM: Entirely. Thank you very much.

13 (Recess taken.)
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1 SP94-386 County of Maui-Lanai Sanitary
2 Landfill.

3 CHAIRPERSON ACZON: Good morning. This
4 is the November 19, 2015, Land Use Commission meeting
5 on Docket No. SP94-386 Department of Environmental
6 Management, County of Maui, Lanai Sanitary Landfill
7 to consider the Applicant's request for a 15-year
8 time extension.

9 Will the parties please identify themselves
10 for the record.

11 MR. MIYAMOTO: My name is Mike Miyamoto for
12 Department of Environmental Management which oversees
13 solid waste position.

14 MS. BAKER: Elaine Baker, civil engineer,
15 Solid Waste Division, County of Maui

16 MR. HOPPER: Michael Hopper with Department
17 of Corporation Counsel. With me is Will Spence with
18 the County of Maui Department of Planning, and Kurt
19 Wollenhempt staff planner with Maui planning.

20 MR. YEE: On behalf of Office of -- Deputy
21 Attorney General Bryan Yee on behalf of Office of
22 Planning.

23 CHAIRPERSON ACZON: Thank you.

24 Let me update the record in this docket.

25 On October 6, 2008, the Commission mailed

1 its Decision and Order granting a permit time
2 extension until September 13, 2014.

3 On January 29, 2014, the Applicant filed a
4 timely request for time extension for SP94-386 with
5 the County of Maui Department of Planning.

6 On August 19th, 2015, the Lanai Planning
7 Commission considered the Applicant's request and
8 recommended approval of the request after
9 deliberation at its meeting.

10 On September, 8, 2015, the LUC received a
11 copy of the County of Maui's Department of Planning's
12 letter to the Maui Department of Environmental
13 Management recommending the approval of a time
14 extension to the LUC's Special Permit, 94-386.

15 On November 2nd, 2015, the LUC received the
16 decision and the record of the Planning Commission's
17 proceedings on the Applicant's proposed amendment.

18 On November 5th, 2015, the LUC received the
19 Lanai Planning Commission's agenda via e-mail.

20 On November 10, 2015, the LUC mailed the
21 November 18-19, 2015 agenda notice to the parties,
22 statewide and Maui County mailing lists.

23 Let me briefly describe our procedure for
24 today on this docket.

25 First I will call for those individuals

1 desiring to provide public testimony to identify
2 themselves. All such individuals will be called in
3 turn to our witness box where they will be sworn in
4 prior to their testimony.

5 After completion of the public testimony
6 the portion of the proceedings, we will receive any
7 public comments from the State Office of Planning.

8 After we receive public comments from the
9 State of Office Planning, the Applicant will then
10 make its presentation.

11 After the completion of the Applicant's
12 presentation, the Commission will conduct its
13 deliberations.

14 Any questions on our procedure for today?
15 Thank you.

16 Is there anyone in the audience that
17 desires to provide public testimony in this matter?

18 EXECUTIVE OFFICER: Mr. Chair, surprising
19 nobody signed up today to testify.

20 CHAIRPERSON ACZON: Give a little break.

21 Mr. Yee, please provide Commission the
22 comments of the State Office of Planning

23 MR. YEE: This is simply an extension of an
24 existing special permit. Accordingly, the Office of
25 Planning has no position on the case.

1 CHAIRPERSON ACZON: Any questions for Mr.
2 Yee? County Mr. Hopper.

3 MR. HOPPER: I know that DEM has a
4 presentation -- I know the Department of Environment
5 Management -- I'm not sure if the Department of
6 Environment Management wants to add its comments to
7 the Planning Commission when it considered the permit
8 as well, so I'm not sure if Kurt would want to
9 provide any comments or may be able to answer
10 questions that the Commission maybe able to answer,
11 because he was there. But I don't think we have any.

12 CHAIRPERSON ACZON: You've have opportunity
13 to do that during their presentation.

14 MR. MIYAMOTO: I'll turn the presentation
15 over to the project engineer, Elaine Baker.

16 CHAIRPERSON ACZON: We will do the
17 presentation after the Commissioners' questioning.

18 Commissioners, any questions for Mr. Yee?
19 You may proceed with your presentation.

20 MS. BAKER: Well, the presentation will be
21 short. This is an extension request for an existing
22 Special Use Permit. We recently did a capacity study
23 at the landfill, and it's estimated the landfill has
24 another 15 years of life. Actually 14 now since this
25 permit expired in 2014 and we're hearing it in 2015.

1 So we requested the permit to cover the estimated
2 remaining life of the landfill.

3 MR. MIYAMOTO: The permit is not for any
4 expansion of the existing facility stay on the
5 existing footprint, and as Ms. Baker mentioned, we
6 just did more detailed engineering studies and it
7 shows by air spaces we have about 14 more years.
8 That's it.

9 CHAIRPERSON ACZON: Commissioners, any
10 questions for Applicant?

11 VICE-CHAIR WONG: Chair.

12 As we know for landfills in general, from
13 my knowledge, that it takes approximately five to
14 seven years to restart a new process of looking for a
15 new landfill. Have you started that process yet?

16 MR. MIYAMOTO: Yes, we have. We've been in
17 discussion with the new owners of the Lanai area and
18 we have several sites we are looking at, also an
19 engineering study going onto look at possible
20 alternatives, whether some kind of waste facility,
21 some kind of transfer station that then ships the
22 waste to Oahu for processing and H-Power.

23 VICE-CHAIR WONG: So the other question is,
24 I know there's a lot of construction right now at the
25 hotels. So are you doing any reuse or resetting of

1 those materials, or is it just straight C and D
2 landfill going straight to the landfill?

3 MR. MIYAMOTO: We work with the landowner
4 that they're recycling as much as possible, using
5 some of their lands down in Miki Basin area to do
6 pulling out metals, trying to crush as much rock as
7 they can, certainly reuse the concrete.

8 So they're doing as much recycling and
9 actually shipping a lot of the waste off island
10 because we're limited on what we can accept at the
11 land base.

12 VICE-CHAIR WONG: No other questions.

13 CHAIRPERSON ACZON: Any further questions,
14 Commissioners? Commissioner Scheuer.

15 VICE-CHAIR SCHEUER: Good morning. The
16 second condition of the Special Use Permit is that
17 there's full compliance with all applicable
18 governmental requirements. And then there is, on the
19 record comment letter or some kind of comment from
20 the State Department of Health suggesting that a
21 MPDES permit may be required, and that the Applicant
22 should be contacting the Clean Water Branch for
23 further clarification.

24 Could you elaborate on what the status is
25 of that?

1 MS. BAKER: We do have an existing MPDES
2 permit for Lanai landfill.

3 VICE-CHAIR SCHEUER: So that comment was
4 made without cognizance that that MPDES was in place?

5 MS. BAKER: I'm thinking sometimes the
6 comment is standard language and that's probably a
7 standard comment.

8 VICE-CHAIR SCHEUER: Okay. And sorry,
9 Condition No. 3 relates to -- I believe it's
10 Condition No. 3 relates to nonpotable water use and
11 the information that we have references that an
12 agricultural water source is used for the dust
13 control at the landfill.

14 Do you know what that agricultural land
15 source is, water source is, because water is an issue
16 on the island.

17 MS. BAKER: Yes. From one of the fields
18 nearby provide by Palama.

19 VICE-CHAIR SCHEUER: But from what system,
20 what part of the water system is it being provided?

21 MS. BAKER: Their agricultural system. It
22 is from a field across the highway.

23 VICE-CHAIR SCHEUER: One of the subjects in
24 earlier issues before this Commission was over their
25 use of potable versus nonpotable water.

1 MS. BAKER: Well, I'm not familiar with any
2 nonpotable water sources near the landfill, so that's
3 a limitation.

4 CHAIRPERSON ACZON: Any further questions
5 for the Applicant.

6 VICE-CHAIR WONG: Mr. Chair, I have a
7 question about the votes that was taken. Was it for
8 this issue? So what was the votes by the Planning
9 Commission on this?

10 MR. WOLLENHEMPT: The votes -- my name is
11 Kurt Wollenhempt. I'm the planner taking this over
12 from a previous planner who left.

13 During the voting process there were four
14 votes in the alternative for the extension, and there
15 was one commissioner who did not make a vote. He
16 understood that by not voting on this, by being
17 silent on the issue, that her vote would be accounted
18 in the affirmative, according to Lanai Planning
19 Commission rules, therefore, that made the vote five
20 in the affirmative.

21 There were a couple of other Commissioners
22 however that had concerns about this project
23 regarding time extension, and that has to do with the
24 deliberations as they were going through the update
25 of the Lanai Community Plan.

1 They have been given a number that the
2 landfill would have a sunset life approximately 2020.
3 So they were then curious as to why the department
4 would now recommend 2029.

5 Well, upon further review, the CPAC had
6 information that I believe was from the Harding
7 Lawson study done in the late 1990s. Concurrently
8 with this project there was a Brown Caldwell study
9 done in 2011, then also the A-Mehr topographic study
10 that would have the most current information that
11 showed the landfill actually has capacity to 2031,
12 therefore, that's why the Department of Environmental
13 Management and the Planning Department are confident
14 in recommending longer extension to 2029.

15 So that is the reason that you have this
16 vote on a matter that you seemingly would think might
17 have been unanimous. So there was some discussion as
18 to the actual life span.

19 MR. HOPPER: May I have an opportunity to
20 comment -- just to comment?

21 I understand Mr. Wollenhempt's explanation
22 but the actual substantive effect of a silent vote is
23 as follows: Lanai Planning Commission Rules, under
24 Section 12-401-25 entitled voting, subsection C
25 states at follows:

1 Unless the present member is disqualified
2 from voting pursuant to Section 12-401-25 if there is
3 silence or refusal to vote it shall be recorded as an
4 affirmative vote.

5 That section 12-401-25 is a disclosure as a
6 conflict of interest which was not done in this case.

7 From time to time members, understanding
8 that their silence is affirmative vote will be silent
9 on voting issues. This rule predated my time with
10 the county, but it's pretty common in all county
11 boards and commissions that I've advised, and I think
12 it is designed to avoid inaction leaving to either
13 automatic approvals or automatic denials in certain
14 cases because it requires that you vote for or
15 against. But if the vote is silent, that's
16 considered affirmative vote in favor of the proposed
17 action. And I wanted to have that clarified.

18 VICE-CHAIR WONG: So how many people are on
19 the Planning Commission panel?

20 MR. HOPPER: Nine.

21 VICE-CHAIR WONG: So you would need five to
22 pass this, out of their Commission?

23 MR. HOPPER: Correct.

24 VICE-CHAIR WONG: The other question is was
25 there anyone besides those that voted no, any public

1 against this extended expansion on the land?

2 MR. HOPPER: Maybe Mr. Wollenhampt can
3 answer that.

4 MR. WOLLENHEMPT: There was testimony --
5 and this has to do with the sunset life of the
6 landfill -- by a former member of what was the Lanai
7 Community Plan Action Committee, and he was concerned
8 about why there was a discrepancy between 2020, which
9 was in now the Draft Community Plan, currently being
10 reviewed at the council level, and a recommendation
11 that we were going to be requesting a time to 2029.

12 So there were I believe two people who were
13 concerned about this. And consequently that is why
14 we had some dissension among public members.
15 However, there was preponderance of people who very
16 much understood that an extension of the existing
17 Lanai landfill was critical to the operation of waste
18 management on the island. So that was the public
19 discussion.

20 VICE-CHAIR WONG: Mr. Yee, I have a
21 question on the state side.

22 In terms of a vote, one person that
23 abstained, what is the state laws regarding that
24 issue?

25 MR. YEE: So my understanding is that the

1 vote that was Commission was four people affirmative
2 said yes, one person refused the vote, three persons
3 said no and one person excused.

4 So under county rules, apparently the
5 refusal to vote constitutes affirmative vote. State
6 boards do not have such a rule. So at the state
7 level, a refusal to vote would count as abstention or
8 nonvote.

9 I would think, however, that the
10 interpretation -- this is not an opinion from the
11 attorney general's office, simply a view of on behalf
12 of it -- is of the Office of Planning, there is an
13 appropriately pass ordinance or rule but has the
14 force and effect of law, that that would be, that we
15 would then accept the county's interpretation of
16 their own votes, even if differs from state process.

17 COMMISSIONER ESTES: This is just because
18 I'm curious.

19 If I'm on the Maui Planning Commission and
20 I want to abstain, and I don't want it counted either
21 as yes or no, what if I get up and walk out of the
22 room? How does that is that counted?

23 MR. HOPPER: If you're not present to vote
24 then your vote is not counted. I mean I suppose you
25 could do that, but you could potentially have quorum

1 problems or other issues. You could always not be
2 able to make the meeting at that point too.

3 This is -- again, I think every single
4 County of Maui Board and Commission that I know of
5 have this rule in place. I mean you can't force
6 somebody to be present, but I believe the rules are
7 valid in saying that if you're present for voting and
8 you say nothing, and it's recorded that you are
9 there, that there's not a separate right to abstain
10 that you may have at state boards, inaction is
11 considered an affirmative vote.

12 And unless there's a case where the person
13 has a conflict of interest, like financial interest,
14 and they disclose it and say I cannot vote on this
15 because of this interest, that's the one exception.

16 And the rules are passed by the Lanai
17 Planning Commission themselves. They were passed by
18 the Commission.

19 COMMISSIONER ESTES: I'm not challenging
20 the rule. I just want to know if I'm ever in that
21 position.

22 MR. HOPPER: Understood. You make a good
23 point.

24 COMMISSIONER HIRANAGA: So I served on
25 three county boards and commissions in the past, and

1 I did not read the minutes, but typically there is no
2 roll call, it's all in favor say aye, opposed, nay.
3 If there's a split vote, the chair may ask for
4 raising of hands.

5 So the not voting I think in my case, my
6 experience, is with intent, the commissioner or board
7 member is aware that abstaining is an affirmative
8 vote, but they may want to go on record as having not
9 voted so that it's kind of like an aye with
10 reservation.

11 They're aware that by not voting no, that
12 the motion will pass, but they do that with intent
13 for reasons unknown to me. But I have seen it
14 happen. So that's my experience at the county level.

15 So the person who did not vote, I'm sure
16 fully realized the consequences of not voting. And I
17 don't know this person, but I would be looking at how
18 many aye's there were and how many nays there are.
19 That's just me.

20 CHAIRPERSON ACZON: Commissioner Wong.

21 VICE-CHAIR WONG: I have a question on our
22 votes today, and the votes of the Planning Commission
23 if we do vote yes or no. So I would like to move
24 into executive session about our vote, about the
25 legality of our votes.

1 CHAIRPERSON ACZON: There is a motion.

2 VICE-CHAIR WONG: The ramifications of our
3 vote.

4 CHAIRPERSON ACZON: Any second?

5 COMMISSIONER McDONALD: Second.

6 VICE-CHAIR SCHEUER: A couple more
7 substantive questions.

8 VICE-CHAIR WONG: I retract the motion.

9 CHAIRPERSON ACZON: Thanks. Commissioner
10 Scheuer.

11 VICE-CHAIR SCHEUER: Just a couple more
12 that have to do with in terms of whether the landfill
13 corporation meets all legal requirements. The
14 redemption opportunity recycling site lease was
15 revoked by Lanai Company. Am I understanding that
16 correctly?

17 MR. MIYAMOTO: Yes. The land that we were
18 using was within the city limits and the new owner
19 other plans, so he terminated the lease for the land
20 and we are using it as high 5 landfill redemption.

21 VICE-CHAIR SCHEUER: So no other facility
22 on island where that occurs?

23 MR. MIYAMOTO: The new owner has
24 established a new location at their convenience.
25 They're running it and no longer involved in their

1 high five, also doing some kind of recycling on their
2 problem.

3 VICE-CHAIR SCHEUER: No recycling, just a
4 county running the lease facility at this point?

5 MR. MIYAMOTO: Yes.

6 VICE-CHAIR SCHEUER: Thank you for that
7 clarification.

8 Last question in terms of the study that
9 was done to determine future capacity used historical
10 number for waste ways generation?

11 MS. BAKER: It used the number from the
12 previous year. It compared the topography of the
13 landfill in 2014 with that of 2015 with the actual,
14 so it then was able to determine the volume of fill
15 within that period of time of one year.

16 And then project at that same rate of fill,
17 from the final grade, the plan showing the final
18 grade, it could have then estimate a remaining life
19 based on that rate of fill of the previous year
20 between 2014 and 2015.

21 VICE-CHAIR SCHEUER: So obviously they're
22 going through a whole bunch of renovation, probably,
23 I assume might be generating additional construction
24 demolition, the kinds of waste having there is these
25 fairly ambition plans with future development on the

1 island.

2 Can you say more about how reasonable it is
3 to take 24 team members to project those out?

4 MS. BAKER: The landfill is limited to 20
5 times a day because it's exempt from groundwater
6 monitoring wells based on it being in a dry climate.
7 And it's restricted to only take no more than 20 tons
8 per day.

9 So there really isn't variation due to
10 construction on the island, and that except
11 construction waste has been shipped directly to DBD
12 lands on Oahu.

13 VICE-CHAIR SCHEUER: So the historic
14 numbers are under 20, and if there is a cap at 20 --

15 MS. BAKER: Yes, with the small community
16 landfill exemption.

17 VICE-CHAIR SCHEUER: Thank you.

18 VICE-CHAIR WONG: Move for executive
19 session for asking legal counsel issues about the
20 votes and legalities of what may happen.

21 CHAIRPERSON ACZON: Is there a second?

22 COMMISSIONER McDONALD: Second.

23 CHAIRPERSON ACZON: It has been moved by
24 Commissioner Wong and seconded by Commissioner
25 McDonald to go into executive session. All those in

1 favor say "aye", opposed? Motion carries.

2 (Executive session.)

3 CHAIRPERSON ACZON: We're back on the
4 record.

5 Commissioners, what is your pleasure?

6 VICE-CHAIR WONG: Chair, the issue of the
7 votes for the Commission, I'm very unclear how intent
8 of that and effects votes. I want to remand this
9 issue back to Maui County and get them to get a clear
10 vote instead of absentee vote.

11 CHAIRPERSON ACZON: Are you making a
12 motion?

13 VICE-CHAIR WONG: Yes, motion to remand.

14 COMMISSIONER HIRANAGA: It's not an
15 absentee vote, it's a silent vote, because the person
16 was present, wasn't absent.

17 CHAIRPERSON ACZON: Commissioner Wong.

18 VICE-CHAIR WONG: Whatever he stated. He
19 said.

20 CHAIRPERSON ACZON: Is there a second?

21 VICE-CHAIR SCHEUER: Second.

22 CHAIRPERSON ACZON: Moved by Commissioner
23 Wong and seconded by Commissioner Scheuer to remand
24 this to the Maui Planning Commission.

25 MR. HOPPER: Mr. Chair, I understand you

1 have a motion and in deliberation, but executive
2 session there are additional issues as far as based
3 on the minutes that indicate the intent of the
4 member, at least of the member made aware of the
5 consequences of the silent vote.

6 I'm uncertain the purpose of remanding
7 based on the Commission's rules, trying to think of
8 how procedurally that would be handled based on the
9 Commission rules you have five approval and it would
10 be sent down. I don't understand, the Commission
11 would deny the permit, but I would like an
12 opportunity, albeit it briefly, to point to the
13 portion of the minutes that does indicate that.

14 CHAIRPERSON ACZON: Go ahead.

15 MR. HOPPER: In the minutes, page 20 of the
16 minutes there is a discussion, and at the end of the
17 discussion Mr. Gima is explaining the vote. It
18 appeared that there were four votes. And then he
19 says on the record, yeah, Aoki abstained. By
20 abstaining your vote is a yes, okay. There is
21 inaudible comment. And then Mr. Gima said well, then
22 its pass because it's pass now because you abstained
23 that's a yes. So the motion was pass.

24 That is what was clarified on the record.
25 I suppose we can do additional clarification. If

1 your issue is that this rule is illegal in someway,
2 we would question that because the Lanai County
3 Commission, under county charter, does have authority
4 to adopt its own rules with respect to its own voting
5 process.

6 So I wanted to get that on record and
7 understand we're a bit uncertain as far as the
8 process moving forward with the Commission, because
9 this will be the first time that a vote of this
10 nature would be considered inadequate given the
11 Commission's rules and that would legally be the
12 understanding of the Commissioners at the time based
13 on the minutes.

14 CHAIRPERSON ACZON: That's duly noted.
15 Commissioners, discussion on this motion?

16 VICE-CHAIR WONG: Chair, I guess the reason
17 I'm looking into this because of, you know, HRS 92-15
18 and also 85-11 11 regarding Commission votes and also
19 what is abstention on our vote means. So I just
20 don't feel comfortable because, you know, from what I
21 gather when I was -- when I took the high school
22 civics long time ago is that, you know, constitution,
23 federal, state and then county, so the rules are set
24 up that everything follows that order and this is
25 more restrictive.

1 So that's the issue I have.

2 CHAIRPERSON ACZON: Commissioner Estes.

3 COMMISSIONER ESTES: I opposed motion. I'm
4 going to go with the Lanai Planning Commission did.
5 I see no reason to remand it.

6 CHAIRPERSON ACZON: Commissioners? Any
7 further discussion?

8 COMMISSIONER HIRANAGA: I have a question.
9 Trying to flip through the minutes quickly, Mr.
10 Hopper. Were you the Corporation Counsel present at
11 that particular meeting?

12 MR. HOPPER: Ms. Richelle Thomson was
13 present at that meeting. I did speak with her for
14 this meeting, did bring up this issue, gave us the
15 AG's opinion and the opinion was based on a state
16 board that did not have a rule. So we believe that
17 it was applicable, nonetheless, we provided staff
18 with that information and hoped that that issue had
19 been resolved prior to this meeting so we didn't have
20 to have a meeting if it was remanded. That was what
21 our understanding. I wasn't actually present at the
22 meeting, but did review the minutes and discussed
23 with the deputy who was present at the meeting what
24 went on at the meeting.

25 COMMISSIONER HIRANAGA: Any other staff

1 present? Kurt.

2 MR. WOLLENHEMPT: Yes.

3 COMMISSIONER HIRANAGA: Looking at the
4 minutes. The chair calls for the vote -- the chair
5 called for the vote, raised hands, I guess four
6 raised their hands in favor and two I guess raised
7 their hands in opposition. And then you have the
8 query to Ms. Aoki. There is no real clarification
9 from the chair to the commissioner that she
10 understands that failure to vote is considered
11 affirmative vote, but it says inaudible.

12 Your first-hand observation of what did Ms.
13 Aoki understand the ramifications of her inaction in
14 her abstention?

15 MR. WOLLENHEMPT: I did attend the meeting
16 there, and as did people in Department of
17 Environmental Management.

18 In looking at, of course, the record, you
19 also have to -- if you were there in person, we don't
20 have a video transcript of it, but you also see body
21 language. Commissioner Aoki, in my opinion, was
22 fully aware and fully briefed that her silence, her
23 refusal to vote was indeed going to be in
24 affirmative, and, in fact, I believe I remember that
25 it wasn't as if she was opposed to it, it was just

1 she didn't want to give any reasons for this not
2 voting.

3 So from, in my opinion, from having been
4 there, she was fully aware of what her action of not
5 voting would result in.

6 COMMISSIONER HIRANAGA: Now that you
7 mention it, Waste Management was there, Mr. Miyamoto
8 you were there?

9 MR. MIYAMOTO: Yes, I was.

10 COMMISSIONER HIRANAGA: What was your
11 impression?

12 MR. MIYAMOTO: Very similar to Kurt's
13 impression. The one person that abstains, her
14 husband is an employee of our facility, that's why
15 she didn't want to vote on the facility, vote on the
16 proposal action there, and he made it clear that she
17 needed to vote, and by being silent by their rules it
18 would be taken in the affirmative.

19 COMMISSIONER HIRANAGA: So I guess the
20 entire --

21 MR. WOLLENHEMPT: Commissioner Nefalar,
22 that Commissioner actually has a husband working with
23 the Department, however Commissioner Aoki does not
24 have any connection. I just wanted to make sure we
25 were not --

1 MR. HOPPER: The silence was not for
2 conflict of interest. There was another commissioner
3 that did not participate in the vote. That's what
4 you're stating?

5 MR. MIYAMOTO: Yes.

6 MR. HOPPER: And yet we obviously don't
7 want to get into the intent of the people that were
8 there. It's not all stated, all we have for you is
9 on the record that are that member was silent as far
10 as the vote and under the rules that was the
11 consequence, and I don't think we can properly give
12 you much more than that as far as the commissioner's
13 intent if it's not on the record, because we don't
14 have that on the record, but that's what we have at
15 this point, I think.

16 COMMISSIONER HIRANAGA: Mr. Chair,
17 question. So these minutes are not verbatim because
18 commissioners sometimes talk out of turn or not speak
19 into speak into the mike and discussions going on.
20 This is the best -- do you have a court reporter?

21 MR. HOPPER: This is based on the recording
22 just like here, obviously I think occasionally
23 there's something that you can pick up on the
24 microphone, so they may have said something, but it
25 appears that it wasn't audible in this case. These

1 are verbatim minutes based on recording of the
2 meeting. There's not a court reporter, but just like
3 the Maui Planning Commission generally they would
4 have a recorded meeting, then the staff would type
5 that up afterwards, based on the recording.

6 COMMISSIONER HIRANAGA: I guess my question
7 was inaudible, like it's a word, but she had said a
8 sentence inaudible?

9 MR. HOPPER: Again, I wasn't there, but
10 that's what the note is.

11 MR. WOLLENHEMPT: By explanation, the
12 system is not as sophisticated as here. We passed
13 one microphone in the audience and it clanks, and
14 then we have an answer, everyone's microphone is all
15 going all the time, and there was a bit of back and
16 forth during that period.

17 COMMISSIONER HIRANAGA: Thank you.

18 CHAIRPERSON ACZON: Resume discussion,
19 Commissioner McDonald.

20 COMMISSIONER McDONALD: Personally I have
21 an issue with the motion to remand. I understand
22 Commissioner Wong's concern with HRS 92-15 and also
23 understand that the Lanai Planning Commission has
24 adopted its own rules. There may be inconsistencies
25 with what is stated in HRS 92-15, so I suggest maybe

1 county kind of take a look at the Lanai Planning
2 Commission or the Commission in general understanding
3 the objectability of those rules as it correlates to
4 HRS 92-15. Again, I do have an issue with remanding
5 the case back to the Lanai Planning Commission.

6 CHAIRPERSON ACZON: Commissioner Scheuer.

7 VICE-CHAIR SCHEUER: So just to be clear
8 about my support motion, I haven't spoken about any
9 other substantive concerns. I don't have any
10 substantive concerns that I want to address on
11 remand, solely related to the relationship of this
12 vote, compliance with the state law, and then any
13 precedent effect that this might have for future
14 actions where we take on a Special Use Permit.

15 CHAIRPERSON ACZON: Any further discussion?

16 COMMISSIONER HIRANAGA: So I will not be
17 supporting the motion before -- echo the suggestion
18 from Commissioner McDonald's testimony, County of
19 Maui take a look at the state statute to see if they
20 have any exposure regarding their administrative
21 rules that support the Commission.

22 VICE-CHAIR WONG: I want to retract the
23 motion.

24 CHAIRPERSON ACZON: It's your pleasure.
25 Mr. Scheuer.

1 VICE-CHAIR SCHEUER: I will retract my
2 second.

3 VICE-CHAIR WONG: It's also not about the
4 issue about landfill, it's just about that
5 legalities, nothing else for, that's why I made the
6 motion to remand.

7 CHAIRPERSON ACZON: I understand. What is
8 the Commissions pleasure?

9 COMMISSIONER ESTES: I move that we approve
10 the extension of the landfill.

11 CHAIRPERSON ACZON: Any second?

12 COMMISSIONER McDONALD: I'll second the
13 motion. Request an affirmative amendment to the
14 motion as I understand it from Commissioner Estes is
15 to approve the Planning Commission's 15 year time
16 extension request.

17 I also want to include revisions,
18 non-substantive revisions to Condition No. 1 and 3.

19 Regards to Condition No. 1, expiration and
20 replace with expiration, and in Condition No. 3,
21 deletion of the phrase "nonpotable" and replace it
22 with "nondrinking" to coincide with Department of
23 Health's definition of "nondrinking" I believe that
24 was also in the Planning Commission's recommendation.

25 CHAIRPERSON ACZON: Commissioner Estes, are

1 you acceptable?

2 COMMISSIONER ESTES: I accept that, and
3 thank you for cleaning up my language.

4 CHAIRPERSON ACZON: Okay. Commissioners,
5 discussion?

6 COMMISSIONER McDONALD: For the record,
7 I'll second it.

8 CHAIRPERSON ACZON: Discussion?
9 Commissioner Wong.

10 VICE-CHAIR WONG: I just have to give to
11 state no problem with the extension, just that issue
12 about the rules, and I hope that the Lanai Planning
13 Commission and others will try and conform to state
14 and also the AG's opinion. So that's -- I just want
15 to put that on record.

16 COMMISSIONER McDONALD: Commissioner Wong,
17 again, I do appreciate retraction. Just looking at
18 the current body we have here, might cause some
19 problems, so I do appreciate it.

20 CHAIRPERSON ACZON: Motion is made by
21 Commissioner Estes and seconded by Commissioner
22 McDonald to approve the 15-year extension of the
23 landfill. If there is no further discussion, Mr.
24 Orodenker, please poll the Commission.

25 EXECUTIVE OFFICER: Thank you, Mr. Chair.

1 Commissioner Estes?

2 COMMISSIONER ESTES: Yes.

3 EXECUTIVE OFFICER: Commissioner McDonald?

4 COMMISSIONER McDONALD: Yes.

5 EXECUTIVE OFFICER: Commissioner Wong?

6 VICE-CHAIR WONG: Yes.

7 EXECUTIVE OFFICER: Commissioner Scheuer?

8 VICE-CHAIR SCHEUER: What happens if I say
9 nothing?

10 Yes.

11 EXECUTIVE OFFICER: Rascal Scheuer says
12 yes. Commissioner Hiranaga?

13 COMMISSIONER HIRANAGA: Yes.

14 EXECUTIVE OFFICER: Chair Aczon?

15 CHAIRPERSON ACZON: Aye.

16 EXECUTIVE OFFICER: Mr. Chair, the motion
17 carries unanimously.

18 MR. HOPPER: We will take a look at those
19 rules as stated, at the very least the rules are okay
20 try to make sure on record that the individual
21 abstains, makes it clear on the record that they do
22 understand so we don't have this inaudible.

23 CHAIRPERSON ACZON: Thank you.

24 The next agenda is Executive Session to
25 consult with the Commission attorney on questions and

1 issues for getting the Commission's power, duties,
2 privileges and liabilities including, but not limited
3 to, D.R. Horton, Lanai Partners' appropriate action,
4 if any.

5 The chair will accept a motion to go into
6 executive session.

7 VICE-CHAIR WONG: So moved.

8 CHAIRPERSON ACZON: Second?

9 COMMISSIONER McDONALD: Second.

10 CHAIRPERSON ACZON: It's moved by
11 Commissioner Wong and seconded by Commissioner
12 McDonald to acknowledge we go into executive session.

13 All in favor say "aye", opposed? Motion
14 carries.

15 (The proceedings ended at 10:20 a.m.)
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CERTIFICATE

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, JEAN MARIE McMANUS, do hereby certify:

That on November 19, 2015, at 8:30 a.m., the proceedings contained herein was taken down by me in machine shorthand and was thereafter reduced to typewriting under my supervision; that the foregoing represents, to the best of my ability, a true and correct copy of the proceedings had in the foregoing matter.

I further certify that I am not of counsel for any of the parties hereto, nor in any way interested in the outcome of the cause named in this caption.

Dated this 19th day of November, 2015, in Honolulu, Hawaii.

JEAN MARIE McMANUS, CSR #156