

LAND USE COMMISSION
MEETING MINUTES

February 19, 2009 – 9:30 a.m.

**Maui Beach Hotel
Elleair Ballroom
170 Kaahumanu Avenue
Kahului, Maui, Hawaii**

COMMISSIONERS PRESENT: Thomas Contrades
Vladimir Devens
Lisa Judge
Duane Kanuha
Normand Lezy
Ransom Piltz
Reuben Wong

COMMISSIONERS ABSENT: Kyle Chock
Nicholas Teves, Jr.

STAFF PRESENT: Orlando Davidson, Executive Officer
Bert Saruwatari, Staff Planner
Riley Hakoda, Staff Planner
Holly Hackett, Court Reporter
Walter Mensching, Audio Technician

CALLED TO ORDER

Chair Kanuha called the meeting to order at 9:42 a.m.

APPROVAL OF MINUTES

Commissioner Piltz moved to adopt the February 6, 2009 meeting minutes. Commissioner Lezy seconded the motion. The motion was unanimously approved by voice vote.

TENTATIVE MEETING SCHEDULE

Executive Officer Davidson provided the following:

- The March meetings will be held on Oahu.
- The first meeting in April will be in Kona and tentatively include Bridge Aina Le'a.

APPROVAL OF FORM OF ORDER

A92-686 AMFAC PROPERTY INVESTMENT CORP., A Hawaii Corporation, and HOUSING FINANCE & DEVELOPMENT CORPORATION, STATE OF HAWAII (Maui)

Chair Kanuha stated that this was a meeting on Docket No. A92-686 Amfac Property Investment Corp. and Housing Finance & Development Corporation (Maui) to approve the form of the order.

APPEARANCES

Scott Radovich, Esq., represented Petitioner
Howard Hanzawa, VP-Kaanapali Land Management Corp.
Michael Hopper, Esq., represented the County of Maui Department of Planning
Ann Cua, County of Maui Department of Planning
Bryan Yee, Esq., represented State Office of Planning
Abe Mitsuda, State Office of Planning
Mary Alice Evans, State Office of Planning

PUBLIC WITNESSES

There were no public witnesses.

Chair Kanuha called on Executive Officer Davidson to discuss the corrections to the order. Mr. Davidson advised that the clerical errors had been addressed, that condition 22 had been corrected, and the order had been clarified to reflect that amendments to Conditions 8 and 10 apply only to Pu'ukolii Mauka and not to Pu'ukolii Triangle. Copies have been provided to the parties. There were no questions for the Executive Officer.

Commissioner Judge moved to approve the order as amended. Commissioner Piltz seconded the motion. There was no discussion. The Commission was polled as follows:

Ayes: Commissioners Contrades, Devens, Judge, Kanuha, Lezy, and Piltz
Abstain: Commissioner Wong

The motion passed with 6 ayes, 1 abstention and 2 absent.

CONTINUED HEARING

A05-760 PUKALANI ASSOCIATES, LLC (Maui)

Chair Kanuha stated that this was a continuation of the meeting on Docket No. A05-760 Pukalani Associates, LLC to consider the reclassification of approximately 87.702 acres of land currently in the Agricultural District to the Urban

District at Kula, Makawao, Maui, for an urban residential community of approximately 165 single-family residential homes, together with community recreational facilities at TMK Nos. 2-3-09: 07 and 64.

Mr. Yee asked Chair Kanuha when it would be appropriate to introduce the exhibits that were submitted after the hearing. Chair Kanuha advised that they would be introduced prior to Petitioner's rebuttal.

Mr. Yuen asked if the Commission wanted the Petitioner to do final argument at this hearing or at the time of decision making. Chair Kanuha stated that the intent was to do as much as possible and that another opportunity for a final closing would be given prior to the Decision and Order.

APPEARANCES

William Yuen, Esq., represented Pukalani Associates, LLC

Sharon Wright, Pukalani Associates, LLC

Michael Hopper, Esq., represented the County of Maui Department of Planning

Ann Cua, County of Maui Department of Planning

Bryan Yee, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Mary Alice Evans, State Office of Planning

PUBLIC WITNESSES

1. James T. Sato

Mr. Sato testified that he opposed and disagreed with the Petition. He read from his submitted written testimony. He mentioned a Maui News article regarding the water conservation measures and problems incurred during drought periods.

Mr. Sato also mentioned concerns with sewage and chemicals found in well waters.

There were no questions by the parties and Commissioners.

2. Gretchen Ladley

Ms. Ladley testified that she lives on Iolani Street. Her concerns were with traffic issues that she felt were overlooked at the previous hearings. She stated that traffic patterns in the neighborhood would change and there would be increased traffic on her street. She expressed that the Commission should understand the impact on residents in the Iolani Street area.

Commissioner Judge had a question regarding traffic on Pukalani Avenue and access to Haleakala Highway and if there was any community discussion on this matter.

Ms. Ladley answered the access method to Haleakala Highway and that the community was not well organized.

There were no other questions by the parties and Commissioners

3. Steve Duarte

Mr. Duarte testified that his property borders the proposed subdivision. He shared the same concerns as Mr. Sato. Impacts on traffic and water resources need to be considered, as well as the moratoriums on water usage during drought periods. He opposes the project.

There were no questions by the parties and Commissioners and no other public witnesses.

SUBMISSION OF EVIDENCE

Chair Kanuha asked Maui County Planning Department if it wished to move its amended exhibit list into the record. Mr. Hopper moved to have his amended exhibit list, which now included Exhibit 4-Maui's Energy Code, into the record.

There were no objections to this submittal.

Chair Kanuha asked the Office of Planning for submissions. OP asked to have Exhibits 11 & 12 submitted into evidence.

There were no objections to this submittal.

Chair Kanuha then asked Mr. Yuen for submissions. Mr. Yuen responded that he had Exhibits 38-44 to move into evidence.

There were no objections to this submittal.

CONTINUED HEARING

PUKALANI ASSOCIATES, LLC.

Mr. Yuen called Sharon Wright as a witness.

First he asked Ms. Wright if Charles Maxwell had been engaged to prepare a cultural survey on the area proposed for reclassification. Ms. Wright answered that he had been retained for the EA. Mr. Yuen then asked what Mr. Maxwell's findings were. Ms. Wright replied that there were no findings that warranted any further cultural investigation but that the Applicant agreed to do a monitoring plan for the project. Mr. Yuen then asked if there were any findings of a cemetery or burials on the property. Ms. Wright answered there were no such findings.

Mr. Yuen asked Ms. Wright to respond to Commissioner Lezy's questions regarding the owners of Pukalani Associates and their financial condition. He asked her to comment on who the owners were, their financial condition and their holdings in Hawaii. Ms. Wright named the members of Pukalani Associates, LLC and mentioned that they have several holdings in the Islands which were submitted as exhibits, as was their balance sheet.

Mr. Yuen referred to Ms. Wright's resume, Exhibit 41 and asked that she be admitted as an expert witness in construction and development management.

Chair Kanuha asked if the County had any objections. They had none.

Chair Kanuha asked OP if they had any objections. Mr. Yee asked for a definition of "development management". Mr. Yuen replied that Ms. Wright manages projects through the permitting and entitlement process which is part of the development process. Mr. Yuen asked that Ms. Wright be qualified to comment both on the construction and permitting aspects of developments. Mr. Yee had no objections.

Mr. Yuen then proceeded to have Ms. Wright address the Conditions proposed by Maui County. He asked Ms. Wright to comment on proposed Condition 13. Ms. Wright stated that the Petitioner would like to have the entire condition removed since they believe that Kauhale Lani is already classified as single family residential in the Makawao-Pukalani community plan.

Mr. Yuen then had Ms. Wright address the OP proposed conditions. First, he had her comment on Condition 6. Ms. Wright stated that their concern was over the last sentence which asked the Petitioner to coordinate the utilization of R1 water. She stated that no R1 water is available for this project.

Next Mr. Yuen had Ms. Wright explain the concern about proposed OP Condition 12 regarding highways. Ms. Wright said that the Petitioner would like to take out the second sentence of the Condition where it restricts the Petitioner from proceeding with the development of the project until DOT reviews and agrees with the proposed traffic improvements and mitigation. She said that the Petitioner felt this Condition was too restrictive and that they should be allowed to continue working on the project while simultaneously resolving concerns.

Mr. Yuen asked Ms. Wright to comment on proposed OP Condition 15. She stated that the Petitioner wished to have this removed completely since the cultural survey revealed that there were no native access rights discovered on the property.

Ms. Wright was then asked by Mr. Yuen to comment on proposed OP Condition 16. She stated that the Petitioner wished to have this condition removed and have the energy conservation condition that the LUC applied to A&B and Shopoff dockets in its place.

Mr. Yuen asked Ms. Wright to comment on the infrastructure deadline in proposed OP Condition 19. She responded that the last four words of the condition were too restrictive. She said that the Petitioner had some entitlement to continue and preferred to seek a full ten year term once the government approvals were received.

Mr. Yuen asked Ms. Wright to comment on proposed OP Condition 20. She stated that the Petitioner objected to this condition altogether and would like to have it removed.

Mr. Yuen then asked Ms. Wright to explain what actions had been taken since the last hearing with Mr. Philip Rowell to resolve traffic study concerns raised by the January 21, 2009 letter from the DOT. Ms. Wright stated that they had met with the DOT Maui Division to formulate a plan to respond to the concerns raised by the letter. They have and will be obtaining additional data that the DOT had been requesting and will be meeting with them again to review and begin working on mitigation measures for the area. Another meeting will then be held in Honolulu with the author of the letter, DOT-Maui and the Petitioner's representatives in an ongoing process to address this concern. She was confident that a satisfactory agreement could be reached with DOT in this matter.

Mr. Yuen then had Ms. Wright comment on the energy conservation condition proposed by OP to describe Petitioner's research on "green building" efforts. Mr. Yuen had Ms. Wright describe Hawaii builder efforts to comply with LEED building standards. Ms. Wright stated that there is a large developer named Actus who is doing LEED building on Oahu. They have produced 5 LEED-Gold Standard homes in Hawaii. She referred to Exhibit 43. She stated that there are just over a thousand homes nationwide that have Silver or better ratings as of the list submitted in January 2009. Ms. Wright said that imposing a burden to build LEED-Silver rated homes on a subdivision that is not building homes is very restrictive. She explained that Actus is a military builder and has designed four duplexes that have received the LEED-Gold rating. However, she stated that Actus is not a typical builder. They are a mass home builder contracted to do large scale projects. Because of this, they are able to produce their product at a mass-production rate that a single home owner cannot match. She stated that Actus estimates that LEED standards can cause an estimated 5% increase in its hard construction costs.

Mr. Yuen asked Ms. Wright to comment on the LEED rated home built on Maui. Ms. Wright stated that Towne Development, a regional home builder with operations outside of Maui including Arizona, Milwaukee and other parts of the Mainland, designed and built a single-family custom LEED-Gold Standard home in the Wailuku Heights area of Maui as a research and development project. She said that they ended up spending over a million dollars to construct the home which far exceeded their budget.

Mr. Yuen asked Ms. Wright to comment on if she foresaw problems for individual homeowners achieving the LEED standards. She replied that the economies of scale are not available to the homeowners at Kauhale Lani and that it might cost an additional \$100,000 to the homeowner to build a LEED rated home. Design and construction, certification, and other costs would be higher for an individual homeowner. Mr. Yuen

asked Ms. Wright to further comment on the LEED point categories involved in the rating system. Ms. Wright explained that there is a point value assigned to different categories to achieve the certification. For a category like location, Kauhale Lani is not located in an area to earn points since it is in a rural area, not in close proximity to community resources or transit services. There is a sustainable site selection section that Maui County R2 zoning precludes Kauhale Lani from obtaining selection points.

Ms. Wright also mentioned difficulty in gaining water efficiency points. Since R1 water is not available for re-use, it is not possible to score any points in this category. Low rainfall and ground recharge restrictions are also factors. She went on to energy and atmosphere points and stated that these require materials which are not required for homes in the Pukalani area and would add to construction costs. Ms. Wright continued on the Materials and Resources and stated that when a “cut list” for a project is done, it is on a mass production scale. If it is not done properly, there is a chance the error could also add to production costs.

Ms. Wright commented that the indoor air quality design requirements call for features that are not necessary since the homes are expected to use the natural ventilation in the area.

Mr. Yuen asked Ms. Wright about what Pukalani Associates proposed with respect to sustainable development. Ms. Wright replied that Pukalani Associates supports sustainable design and construction. However, since they are developing finished lots, and not constructing homes, the Petitioner feels that the LEED-Silver rating is too restrictive. They would prefer seeing the Building Industry of Hawaii “Built-green checklist” which is a self-certification checklist proposing an environmentally friendly building guide since it is more suitable to local conditions. The Petitioner is willing to provide information to the lot buyers on ways to achieve energy conservation measures.

MAUI COUNTY

Mr. Hopper asked Ms. Wright if she had any objections to the proposed County conditions other than Condition 13. Ms. Wright stated she had no objections. Mr. Hopper then referred to the Maui County urban growth boundaries. He asked Ms. Wright if she had a plan in the event the project is not within the Maui County urban growth boundaries. She replied she did not.

Mr. Hopper then questioned Ms. Wright in regards to LEED compliance. He asked Ms. Wright how R2 zoning would preclude LEED sustainable site selection. She replied that the homeowner cannot control the zoning for density. The site selection for the project was determined to be R2 to conform to the surrounding area. The homeowner is unable to gain LEED points since they are limited to choosing what is available in the project.

Mr. Hopper asked that the aspects of LEED compliance as they relate to density be explained. Ms. Wright referred to a site selection checklist that had been submitted into evidence. She explained that since the homeowner is limited in what they can select for a site, certain LEED points cannot be gained.

Mr. Hopper asked if there were other residential zoning categories which would not preclude the sustainable site selection points. Ms. Wright could not answer but said that relative to Kauhale Lani, requests for R1, R2, and R3 zoning were submitted. R2 was determined to be the appropriate density based on the surrounding neighborhood. Ms. Wright referred to the site selection checklist and indicated that there are points on the checklist that the homeowner cannot obtain. To obtain certification, points would have to be sought from other means which may not be available or may be too costly to adopt.

Chair Kanuha declared a recess at 10:40 a.m.
The meeting resumed at 11:03 a.m.

Ms. Wright was asked to clarify how density would affect LEED. She explained that with the current zoning, they expect to be able to get 4-5 units per acre. Higher density would mean having to get more units per acre to attain higher credits.

STATE OFFICE OF PLANNING

Mr. Yee referred to Petitioner's Exhibit 39 and asked if the properties listed belonged to the Principals of Pukalani Associates, LLC and not by Pukalani Associates LLC, itself. Ms. Wright acknowledged that they did.

Mr. Yee asked Ms. Wright if she agreed to the rest of the proposed OP conditions other than what was mentioned in her rebuttal. Ms. Wright answered that she did.

Mr. Yee then referred to Condition 12 regarding highways. He asked if the concern was to continue the development of the project while the DOT was continuing its review and approval of the TIAR. Ms. Wright stated that they would proceed with the change in zoning application on the county level. She anticipated that the approval of the TIAR would be obtained before the approval for the change in zoning.

Mr. Yee asked Ms. Wright about Condition 15- "What would happen if an access right was discovered subsequent to this process which was not previously identified?" Ms. Wright replied that the normal process would be to contact SHPD. Ms. Wright also mentioned that the Applicant has an archaeological monitoring program in place and that their cultural assessment study did not indicate any access rights.

Mr. Yee asked if it was Ms. Wright's understanding that if Condition 15 existed and an access right was subsequently discovered, that she would be required to preserve that access right. Ms. Wright did not know.

Mr. Yee then asked Ms. Wright about Condition 19- infrastructure deadlines. Ms. Wright commented that the project would begin when all governmental approvals were obtained. She said that she could control the submittals but not the approvals. Mr. Yee asked if she could control the timing of her submittals. She replied that she could and her intentions were to do so in a timely manner.

Mr. Yee then referred to Condition 16 on energy conservation and asked how the LEED research for the project had been done and if a cost breakdown was available for her estimate that a LEED-Silver standard home could cost a \$100,000 more than a non-LEED home. Ms. Wright stated that her research was from information available to the public as well as her construction management experience. She also stated that she did not have a cost breakdown and that the \$100,000 was an estimate- a LEED qualified builder, architect, certified inspector, and designer are necessary to do this work. These were the additional costs that would be incurred to produce a LEED home.

Mr. Yee inquired about the cost for a LEED architect. Ms. Wright replied that it might cost \$20,000 to 30,000 based upon previous discussions with five Hawaii based architects. Mr. Yee asked who the architects were. Ms. Wright could not answer and said that she would submit their names.

Mr. Yee asked about the builder cost. Ms. Wright replied that it was an estimate only since there were no LEED certified builders and that it was based on what builders normally markup in the construction industry. She also mentioned that additional personnel costs were involved but was unable to provide details at the moment. She said that she could provide the details later.

Mr. Yee asked Ms. Wright about the location of the project and the park that was part of the Kauhale Lani subdivision. Ms. Wright responded that Parcel 38 was to be a passive park. She also answered that there was a school in the area. Mr. Yee asked about how many LEED points were unattainable due to the site location of the lots. Ms. Wright stated that she had not calculated the amount.

Mr. Yee asked about the use of natural ventilation in the homes. Ms. Wright referred to OP Exhibit 6- the LEED checklist and stated that homes using natural ventilation were anticipated in the subdivision. Air conditioning is not common among homes in the area, and it was possible that the homeowners could not afford the air conditioning systems. Mr. Yee asked additional questions about materials and their cost to determine how the conclusion that it would be costly to implement LEED standards was arrived at. Ms. Wright explained that the materials to qualify and gain the points added to the costs.

Mr. Yee asked about Actus building to LEED-Gold standards and economies of scale. Ms. Wright replied that Actus built five gold standard homes in Hawaii and she believed the LEED standards for certification were established in 2008. The issue of economies of scale being realized even if LEED standards were not involved was acknowledged but Ms. Wright mentioned that their project was not of a mass-production scale.

There was no redirect by Petitioner. The County had no questions.

QUESTIONS BY THE COMMISSIONERS

Commissioner Judge questioned Ms. Wright about the cost for the LEED home built by Towne used in the PowerPoint presentation. Ms. Wright answered that the figures were obtained from confidential discussions and she was not at liberty to discuss them. She could not provide information to clarify whether or not the \$1 million was in addition to the original costs but would have to refer back to her notes.

Commissioner Judge also asked about why Parcel 38 could not remain in the State Agricultural District since it was going to be a passive park. Ms. Wright stated that it was included in the Petition to remain consistent with the Community Plan and the intent is to keep it open space; though the original application included 3 residential lots for Parcel 38 which have subsequently been removed. Ms. Wright said she would need to ask the Applicant for a decision to reconsider leaving the parcel in agriculture. However, at the time of the application, it was decided to submit both lots to be classified urban.

Commissioner Wong questioned the Petitioner regarding the Maui County condition relating to the urban growth boundaries. Ms. Wright explained that the project is within the Community Plan boundaries and unless these boundaries were changed, would be within the urban growth boundary.

Commissioner Wong then asked about the Actus project and the associated costs involved with LEED compliance. Ms. Wright explained details of her earlier testimony of how constructing a LEED certified home would be more expensive for the average homeowner. Commissioner Wong asked whether the homebuyers for these lots could afford the additional energy conservation costs since they were already purchasing homes in the million dollar range. Ms. Wright answered that items like solar water heating would be attractive to homeowners but because the energy industry is constantly changing, consumers need to be encouraged, but not required, to build to an energy conservation standard. Ms. Wright was not authorized to agree to a condition like solar water heating being required but would ask the Petitioner if it was acceptable. Ms. Wright would not have a problem accepting a condition mandating that the Petitioner provide educational material on energy conservation and sustainable design to the homebuyer since the Petitioner supports this concept.

Commissioner Wong asked Ms. Wright about how the encouragement for energy conservation be enforced. She responded it was her understanding that they would need to report back to the Commission, and at the County level, if adopted, enforce it through the building permit energy compliance code. Commissioner Wong asked if photovoltaic system should be required. Ms. Wright replied that since the industry is changing and it would be too restrictive to require photovoltaic; there are other alternatives that are being developed which could be used instead to conserve energy.

Chair Kanuha had a question regarding the Park and what County zoning designation the Petitioner would be applying for. Ms. Wright answered that it was single family in the Community Plan and that they are working with the County to make it a park. Chair

Kanuha asked if changing the designation to a park or open space would make it inconsistent with the Community Plan. Ms. Wright answered that open space was not required for park designation and that parks were allowed in other areas.

CLOSING STATEMENTS

PETITIONER

Mr. Yuen stated that Pukalani Associates, LLC was petitioning to reclassify Parcel 38 and 64 into the Urban District for their proposed subdivision and park. He then summarized Petitioner's position that the development met all of the LUC re-districting criteria. He stated that leaving the Park parcel agriculture may require the need for a Special Use Permit for development of a Park and that the Petitioner was working with the DOT and County Public Works to solve traffic and connectivity concerns. He further stated that arrangements had been made to handle wastewater and sewage from the project. He added that Petitioner disagreed with the OP condition regarding energy conservation measures and preferred the energy conservation condition imposed by the Commission in the Waikoloa Mauka, Shopoff and A&B dockets that encouraged voluntary compliance with energy conservation measures instead of mandating measures which could significantly increase the costs of homes.

MAUI COUNTY

Mr. Hopper stated that the County of Maui supports approval of this Project subject to 13 conditions. The primary reason for the support is that the single family designation is in the Community Plan and is appropriate for the long-term growth plan. He asked that Condition 12 be considered for the Park to be kept in open space and not be improved with habitable structures. This would be consistent with the representation made to the Commission and the County would have no objection if this Condition were imposed by the Commission. He further explained that since this project is planned to be single-family in the Community Plan, there would be an inconsistency at the State and County Plan level if it were left in Agriculture. If there were a need to subdivide it in the future for street improvements, it would be prohibited due to conformity requirements in the Maui County subdivision ordinance. Park use is permitted for single family designation and as long as Condition 12 was in place, the area would remain open. Mr. Hopper also added that there were no source reservation credits granted for this project and that the records should accurately reflect this in relation to Condition 6. Mr. Hopper then referred to County Condition 13 and advised that there is an update process to the Maui General Plan which includes the Maui County Urban Growth Boundaries which parallels the decision-making considerations that the Commission would make in regards to the project. He felt that Condition 13 fulfilled the requirement to be consistent with past requirements of projects in regard to the Maui Island and General Community Plans.

Commissioner Contrades excused himself at 12:06 p.m. and returned at 12:09 p.m.

Commissioner Judge asked for clarification on the Park issue. Mr. Hopper deferred to Ann Cua. Ms. Cua said that the Maui subdivision ordinance process requires conformity between the Community Plan and zoning. In the past years, there have been subdivision cases where there was no conformity and people were precluded from subdividing. To prevent this from occurring, the Petitioner is submitting the petition in its present form to conform and remain consistent with County requirements. This practice allows handling subdivision requests after the land use entitlement or development permit process begins.

Commissioner Wong excused himself at 12:11 p.m. and returned at 12:13 p.m.

Commissioner Judge asked for clarification from witness Sharon Wright what her understanding of the conformity was. Ms. Wright explained how the Petitioner would work with the County to handle the County requirements under the Maui subdivision ordinance. The Applicant is in agreement with the condition that no habitable structures would be on the Park parcel.

Mr. Hopper stated that with the current condition in place, the County was confident that the area would remain designated for park use and that the Urban designation offered more flexibility for park use. Commissioner Judge said that she wanted to be sure the representations made before the Commission would continue to remain true into the future.

Chair Kanuha asked if the County condition envisioned no further subdivision of the parcel. Mr. Hopper replied that no further residential subdivision would be permitted.

STATE OFFICE OF PLANNING

Mr. Yee stated that OP had no objection to the petition providing certain conditions were approved.

On Condition 12 regarding highways, Mr. Yee said that it was not the intention of OP to prohibit the applicant from engaging in zoning approval processes while the TIAR was being reviewed and approved. The concern was that the TIAR was inadequate and the Petitioner needed to work with the DOT on measures to mitigate traffic concerns for the project. Mr. Yee stated that OP's intent was that planning for the mitigation measures occurred before the actual development of the project and would work on the language of this condition.

On Condition 15 regarding access rights, Mr. Yee stated that this condition was included to protect access rights in case they were discovered. He stated that SHPD is not the general authority on access rights and that if access rights were identified, they would need to be protected.

Mr. Yee stated that according to Administrative Rule 15-15-78, there is an infrastructure deadline that required substantial completion within 10 years; otherwise, the project should come in as an incremental district review. His position was that the

infrastructure should be totally completed within 10 years from the date of the decision and order. Condition 20 regarding an automatic Order to Show Cause was suggested by Mr. Yee. He cited HRS 205-4.5 (g) where the word “shall” is part of the statute. His position was that the wording of the statute should be followed to allow for a mandatory Order to Show Cause to gain compliance with the infrastructure deadline so that projects are completed on a timely basis.

Mr. Yee then referred to the energy condition. He stated that the standard to be applied to a building is important at the outset. He added that the Petitioner did not have information available to accurately inform the Commission as to what costs could be expected and how the LEED process accurately increased the construction costs. The impact of building an energy efficient structure on the developed lot over the long term on Hawaii’s environment needed to be assessed. The difference between this project and the A&B project was that these homes would cost substantially more and target a different segment of the market so that including energy conservation features was appropriate. He summarized by stating how efforts to become more energy efficient are being adopted and what the role of the LUC in this process might be. The entitlements that are granted to the Petitioners add value to the property and imposing the conditions for houses to be more energy efficient with enforceable standards help to reduce the effect that the homes would have on the environment. He felt that the LUC could make judgment calls on when these conditions should be applied if appropriate.

Chair Kanuha declared the evidentiary portion of the proceedings complete subject to the filing of reports or information requested at the hearing. He then directed the parties to draft their individual proposed findings of fact, conclusions of law and decision and order based upon the record of this docket and serve the same upon each other, and the Commission. Alternatively, the parties could file stipulated findings.

Mr. Yuen stated that it was his intention (with the approval of the County of Maui and the Office of Planning) to pursue the submission of either a partial or fully stipulated proposed findings of fact, conclusions of law and decision and order in this matter. Maui County and OP agreed to support the Petitioner’s effort.

Chair Kanuha directed the parties to file their stipulated proposed findings of fact, conclusions of law, and decision and order with the Commission no later than the close of business on Friday, March 27, 2009. If there was only a partial stipulation, the objecting party would serve upon the other parties, any exceptions no later than the close of business on Friday, April 10, 2009. Responses to exceptions are to be filed no later than the close of business on Friday, April 24, 2009.

Mr. Yee had no objections but asked for clarification of when to file the additional, non-stipulated documents. Mr. Hopper asked if both stipulated and non-stipulated proposals should be submitted on March 27, 2009. It was agreed that stipulated and non-stipulated proposals would be filed on March 27.

Mr. Hopper had no objections but asked that electronic filing be considered due to the time constraints involved.

Mr. Yuen had no objections and confirmed the filing dates for stipulated and non-stipulated proposals on March 27, exceptions to the proposals on April 10, and rebuttals on April 24.

Chair Kanuha asked Ms. Hackett when the transcripts for the February 19, 2009 hearing could be ready. She replied that they would be ready by next week.

Chair Kanuha declared a recess for lunch at 12:43 p.m.

The meeting reconvened at 1:57 p.m.

ACTION

SP08-402 DEPARTMENT OF ENVIRONMENTAL MANAGEMENT, COUNTY OF MAUI (Maui)

Chair Kanuha announced that this was an action meeting to consider a special use permit for a portion of the existing Hana Landfill and an encroachment area on approximately 20.005 acres of land within the State Land Use Agricultural District at Hana, Maui, Hawaii

APPEARANCES

Michael Hopper, Esq., represented the County of Maui Department of Environmental Management

Cheryl Okuma, Director, County of Maui Department of Environmental Management

Tracy Takamine, Division Chief of Solid Waste, County of Maui Department of Environmental Management

Mich Hirano, Planner, Munekiyo & Hiraga, Inc., consultant to the County of Maui Department of Environmental Management

Paul Fasi, County of Maui Department of Planning

There was no public testimony in this matter.

Bert Saruwatari, staff planner, provided a synopsis of the staff report, including a summary of the Special Use Permit application, the background of the Hana Landfill, and staff recommendations. There were no questions on the staff report.

Cheryl Okuma, Director of the County of Maui Department of Environmental Management, provided a background of the Hana Landfill, including the basis for the Application and the Applicant's efforts in pursuing the necessary land use entitlements. She noted that the purpose of the Application was to achieve a consolidation of currently State-owned land into what is currently the Hana Landfill site and to realign the landfill's boundaries to consolidate and accommodate a detention/retention basin, existing monitoring wells and groundwater monitoring wells, and the landfill

encroachment area. She added that there would be no physical expansion of what is currently the existing landfill.

Ms. Okuma then addressed the background of the Hana Landfill. She noted that the landfill has operated since 1969, and that in 1984 the Board of Land and Natural Resources (BLNR) issued an Executive Order placing the management of the landfill to the County. She pointed out that the landfill accepts residential municipal solid waste and receives approximately 4 tons per day. She related that based on a consultant's opinion, the landfill is estimated to reach capacity in 87 years, or 2096. She also discussed the meetings before the Hana Advisory Committee and the Maui County Planning Commission on the Application. She noted that the County went through a solid waste management plan process that was just completed. This process is mandated by State law and requires that every county review and revise their existing solid waste plan. She related that they received Department of Health (DOH) approval confirming that the County did comply with the requirements. In that plan, she noted that Hana Landfill is being considered as a stand-by landfill, active but used only when needed. For that reason, she explained that they would still need the DOH operating permit and other land use permits for the landfill. She added that there was also a desire on the part of the Solid Waste Committee that was involved in the planning to increase the recycling rates from 30 percent to 60 percent. Another suggestion was consideration of a convenience center and/or transfer station at the landfill.

Ms. Okuma pointed out that another reason for the Application was that they did not have the DOH permit to operate the Hana Landfill or to operate the proposed recycling center. In order for the County to apply for the DOH permit, she acknowledged that they were required to have conforming land uses, which meant they needed to obtain the proper land use permits.

Following her presentation, Ms. Okuma requested that proposed Condition No. 7 be amended be read (additions underscored; deletion stricken):

7. That the Applicant shall begin construction of the landfill ~~expansion~~ stormwater drainage retention basin within three (3) years from issuance of the Land Use Commission's decision and order. Construction shall include any improvements necessary to operate the landfill pursuant to all applicable laws and regulations.

She noted that there was some confusion at the Planning Commission meeting through the public testimony that was provided. She clarified that they were not seeking an expansion of the area where municipal solid waste is received.

She also requested that proposed Condition No. 19 be amended to read (addition underscored; deletion stricken):

19. That a recycling program begin immediately thereafter permits are issued and/or the Department of Health grants approval. Recycling ~~shall~~ may

include but not be limited to: glass, aluminum, plastics, batteries, newspapers, cardboard, appliances and oil.

She explained that there may be factors beyond their control, and if recycling of these commodities were made mandatory, they would not be able to comply with the condition. She elaborated that they would need to work with the DOH to get approval for these various commodities. They would also need to look at how they would manage recycling that commodity and the cost of such recycling. She also would be amenable to the phrase “if practicable” within the condition.

The Office of Planning had no comments on the Application.

Commissioner Judge asked why the requested amendments were not done at the County planning level. Mr. Hopper clarified that for the County Special Use Permit, the change to Condition No. 19 was made. He added that there was some disagreement as to the wording of the minutes and exactly what action the Planning Commission took. He noted that the County believed the intention of the Planning Commission was to have the word “may” also be reflected in their recommendation on the State Special Use Permit.

Commissioner Devens noted that there was a question that came up in another case on how far the LUC could modify the conditions of a special use permit that came up for consideration by the LUC. Upon questioning by Commissioner Devens, Mr. Hopper pointed to subsection 205-6(d), HRS, which authorizes the LUC to impose additional restrictions as may be necessary or appropriate in granting the approval of a special use permit. He also referenced section 205-6(e), HRS, which authorizes the LUC to approve, approve with modification, or deny a special use permit. He noted that in this situation, the LUC would be able to approve with a modification with the proposed language.

Commissioner Devens then asked Ms. Okuma whether she had any objections to the recommendations to the conditions contained in the staff report. She stated that she had no objections. She was then asked to respond on the status of the land acquisition. She stated that the land acquisition would involve getting an Executive Order issued by the BLNR. She did not have any information on that and she has not heard anything back from the DLNR or the BLNR on the matter.

Commissioner Lezy echoed Commissioner Devens’ comments. He noted that a question did arise as to whether in consideration of a Special Use Permit, the LUC has the power to relax conditions that were recommended by the County Planning Commission versus imposing more restrictive conditions. Executive Officer Davidson explained that the two sections in chapter 205, HRS, cited by Mr. Hopper provided two different justifications for conditions depending on the circumstances. One talked about the limitations in terms of the restrictions as may be necessary, while the second provision in chapter 205, HRS, empowered the LUC to approve with modifications if it deemed the change more in the nature of a modification or clarification. He acknowledged that the County’s position was that in this case, the County Special Use

Permit issued by the Planning Commission five minutes after the State Special Use Permit did have the language in question, and that was why the County was asking for something in the nature of a clarification. He noted that anything beyond this would require the LUC to consult with its attorney.

Commissioner Lezy then inquired whether it was the expectation that the current footprint of the Hana Landfill would be used during its projected 87-year capacity. Ms. Okuma responded in the affirmative. She noted that how fast the landfill filled up was dependent upon how successful they were in upping their recycling rates. Commissioner Lezy then asked whether she knew when the landfill would be placed on a stand-by basis. She responded in the negative. She added that they would need to look at the details and work with the DOH. She noted that the notion of a stand-by landfill was their concept and the DOH has not worked with that kind of concept. Commissioner Lezy questioned whether any definition had been given to the concept of stand-by. Ms. Okuma pointed out that if they were successful in increasing their ability to divert waste away from the landfill and to recycle as much as they can, there would be less pressure and need on actually having to use the landfill, so that it could conceivably be used in an emergency or in situations where market conditions were such that recycling was discouraged. Finally, Commissioner Lezy asked whether there were other alternatives discussed for the disposal of municipal waste in Hana. Ms. Okuma responded in the negative.

Commissioner Wong asked Ms. Okuma to clarify what efforts have been made to reduce the amount of material going into the landfills other than recycling. Ms. Okuma noted that the County continues to pursue increasing the recycling rates. She pointed out that the County currently recycles at about 30 percent, which is higher than the national average. She added that the Solid Waste Plan includes other recommendations that the Solid Waste Committee looked at, including waste-to energy technologies. She explained that the plan is a general conceptual plan, a blueprint of recommendations. Commissioner Wong then asked whether there would be any problem with doing a comprehensive study on waste-to-energy. She noted that was taken into account as a recommendation of this plan. She added that they would be looking at a feasibility study if they could get that funded through the council. Finally, Commissioner Wong asked whether a condition that required the County to explore these alternative methods of reducing disposal at the landfills would present a problem. Ms. Okuma responded that the plan was an effort of community representatives and reflected their efforts in working with the Applicant and its consultants to come up with recommendations, and part of that already included a desire to look at waste-to energy technologies. She noted that it was a question as to how they would proceed on not only that recommendation, but on all of the other recommendations which have a cost to them. She further explained that they were looking at how to prioritize these projects and programs and how they would sequence them.

Commissioner Piltz questioned whether it would be a practical matter to put a waste-to-energy plant in Hana. Ms. Okuma pointed out that at this point in time, they could not even answer that question. She believed that questions of where these facilities would be placed and how to do it were matters that a feasibility study would

answer. She also noted that there were economies of scale issues to consider in the case of Hana, which because of its size would generate only a certain amount of waste. In response to Ms. Okuma's earlier comments that a transfer station at the Hana Landfill was a recommendation in the plan, Commissioner Piltz asked whether they were considering trucking waste out of Hana to the Central Maui Landfill. She responded that it was a recommendation that has not been decided upon.

Commissioner Devens commented that he was comfortable with characterizing the requested modification to proposed Condition No. 7 a clarification/restriction. He then asked Mr. Hopper to indicate where in the record the LUC could rely upon to characterize the requested modification to proposed Condition No. 19 a clarification/restriction as well. Mr. Hopper pointed out that the County believed that was what was recommended by the Planning Commission. He referred to the Planning Commission July 22, 2008 minutes, beginning on page 58, which reflected discussions on the motion regarding the State Special Use Permit action and immediately thereafter discussions on the voting on the County Special Use Permit. Mr. Hopper explained that the County believed the record reflected the intentions of the Planning Commission to give the Applicant the flexibility after Ms. Okuma explained that having flexibility within proposed Condition No. 19 was important. While he noted that the Planning Commission took action on the County Special Use Permit in accord with Ms. Okuma's comments on Condition No. 19, he acknowledged that with respect to the Planning Commission's action on the State Special Use Permit, it appeared to be a bit more vague as to what was the exact recommendation. He added, however, that it did appear the Planning Commission made a recommendation, and that they intended for the LUC to look at the conditions it had placed on the County Special Use Permit and refer to those conditions as guidance for conditions that the LUC would impose.

Chair Kanuha called a recess at 2:35 p.m. The Commission reconvened at 2:45 p.m at which time Commissioner Devens moved to go into executive session to consult with the LUC's counsel on issues pertaining to the LUC's power, duties, privileges, immunities, and liabilities. Commissioner Wong seconded the motion. The Commission exited executive session at 2:58 p.m. and reconvened the meeting.

Commissioner Wong asked Mr. Hopper whether it was possible for the Applicant to withdraw the Application and to straighten it out at the County level and then come back to the LUC with a clean Order. Mr. Hopper stated that he had spoken to the Applicant about that issue but felt that based on the record, there was adequate information for the LUC to change the wording of proposed Condition No. 19 from "shall" to "may." He believed that the Planning Commission would not feel that it would be an efficient use of their time if the matter was remanded. However, if the LUC was inclined to approve the "shall" wording, he requested that the LUC remand the matter and allow the Planning Commission to clarify its intent of Condition No. 19 with respect to the State Special Use Permit. He noted that by mandating that the Applicant's recycling program include the various items listed, due to the potential impossibility of compliance, the Applicant would have to apply for an amendment to the condition.

Commissioner Judge questioned whether the LUC could pass the Application with one condition going back to the Planning Commission for clarification. She believed that the LUC would have to take that condition out. She expressed concern that the LUC could not do what the Applicant was asking. Mr. Hopper clarified that they were asking for action at this time, whether it was to approve the Application with the requested modifications to proposed Condition Nos. 7 and 19 or to remand the matter to the Planning Commission. Mr. Hopper added that if the LUC approved the Application without the requested modification to Condition No. 19, the Applicant would not be able to comply with the condition and therefore it would have to seek an amendment to the condition, which would require review by the Hana Advisory Committee and then the Planning Commission. He noted that it would be less cumbersome to go back to the Planning Commission for the sole issue of their clarification of Condition No. 19.

Commissioner Wong asked whether another alternative was to withdraw the Application. Mr. Hopper responded that he needed to speak to the Applicant; however, because this was under the scrutiny from the DOH as far as timeliness issues, he believed that withdrawing would start the process over again.

Commissioner Judge suggested that a deferral would be more appropriate to obtain clarification on Condition Nos. 7 and 19.

Commissioner Devens asked Mr. Hopper to clarify what the Applicant was requesting. Mr. Hopper pointed out that if the LUC could not grant the requested modification to Condition No. 19, the Applicant was recommending that the matter be remanded to the Planning Commission.

Commissioner Piltz moved to remand the matter to the Planning Commission. The motion was seconded by Commission Devens.

Commissioner Lezy offered a friendly amendment to the motion to include clarification of Condition No. 7. Commissioner Piltz accepted the amendment to his motion and clarified that on the matter of the remand, the Planning Commission review Condition Nos. 7 and 19. Commissioner Devens seconded the amendment to the motion. Commissioner Judge clarified that what the LUC was requesting in this amended motion was for the Planning Commission to review and confirm that the requested modifications to Condition Nos. 7 and 19 reflect the intent of the Planning Commission and are confirmed by the record as established by the Hana Advisory Committee. The Commission was polled as follows:

Ayes: Commissioners Piltz, Devens, Contrades, Lezy, Wong, Judge, and Kanuha.

The motion passed with 7 ayes and 2 absent.

Chair Kanuha declared a recess at 3:25 p.m. The meeting reconvened at 3:45 p.m.

**SP97-390 DEPARTMENT OF PUBLIC WORKS & WASTE MANAGEMENT,
SOLID WASTE DIVISION, COUNTY OF MAUI (Maui)**

Chair Kanuha stated that this was an action meeting to consider a third amendment to the State Land Use Commission Special Permit to allow for continued operation of the Central Maui Landfill on approximately 70.5 acres of land in the State Agricultural District at Maui Tax Map Key 3-8-003 Por. 004, Por. 020, & 025, Pu'unene, Maui, Hawaii

APPEARANCES

Michael Hopper, Esq., represented the County of Maui Department of Environmental Management
Cheryl Okuma, Director, County of Maui Department of Environmental Management
Tracy Takamine, Division Chief of Solid Waste, County of Maui Department of Environmental Management
Robin Loudermilk, County of Maui Department of Planning

PUBLIC WITNESSES

There were no public witnesses.

Chair Kanuha called for the Staff report. Riley Hakoda, staff planner, provided a synopsis of the staff report, including a summary of the Special Use Permit application, the background of the Central Maui Landfill, and staff recommendations. At the conclusion of the Staff report, Chair Kanuha asked the Commissioners if there were any questions.

Commissioner Lezy noted that the Maui Planning Commission letter dated October 31, 2008 requested a twenty year time extension to the Permit and not the ten year extension mentioned in the Staff report. Mr. Hakoda stated that he would have to review that document.

MAUI COUNTY

Ms. Cheryl Okuma testified on the name change to the Department of Environmental Management and provided a brief history of the permit request. She explained that the coordination that occurs between the County of Maui Landfill and Ameron is the result of a long standing relationship between the mining activities of Ameron and the landfill needs of Maui County. She also commented on the importance of obtaining approval for the special permits since there were Department of Health requirements imposed upon her Department that the permit approvals were needed to satisfy. She added that the current landfill was nearing its capacity and that added to the urgency of obtaining the Special Use Permits. Her department had two long range recommended concepts that were trying to be adopted; one was to increase the recycling rate for solid waste from 30% to 60% and to examine and take advantage of various

waste to energy technologies. If successful, these concepts would extend the useful life of the landfill by several years. Ms. Okuma was able to submit a copy of the 2008 annual report to LUC staff which resolved one of the concerns in the Staff report.

Ms. Okuma testified she was present at the Maui Planning Commission meeting where the permit was discussed and that the application submitted to the LUC was for a twenty year extension till October 31, 2028.

Chair Kanuha asked if the Commissioners had any questions.

Commissioner Judge asked Ms. Okuma if she had any objections to changing the wording of Condition 13 from “non-potable” to “non-drinking” water. Ms. Okuma replied that she did not.

Commissioner Judge asked Ms. Okuma if she had any objections to changing Condition 14 to monitoring wind-blown debris to “daily basis.” Ms. Okuma answered that she did not. Commissioner Judge then asked if a Condition similar to Condition 18 that had been applied to the Hana landfill regarding waste diversion could be applied. Ms. Okuma responded that she would have to give that condition some consideration before agreeing.

Commissioner Lezy asked Ms. Okuma what measures were being taken at the Central Maui Landfill to develop alternatives to solid waste disposal. Ms. Okuma responded that recycling efforts at the landfill were about 30% and that efforts to increase this recycling amount were underway; as well as efforts to use proven waste to energy technologies. Funding limitations inhibit their efforts and the present landfill is required to handle current operations. Commissioner Lezy asked if a reclassification of the land use would be better than using a Special Permit. Ms. Okuma replied that it would probably be better if the Planning Commission addressed that suggestion.

Commissioner Wong asked Ms. Okuma if a comprehensive feasibility study for constructing a waste to energy power plant had been done. Ms. Okuma replied that money was not available in their current budget to do such a study. The solid waste management plan has a waste to energy component but its implementation is still being worked on. Ms. Okuma testified that the application process for the permits was done in a timely manner and if the permits were not obtained, the Department of Environmental Management could not continue to operate as normal. If they did, it would be in violation and they would be subject to fines and penalties.

Commissioner Judge asked Ms. Okuma how long the current phase of the landfill that is being used was expected to last. Ms. Okuma responded that the current phase IV A&B had an approximate capacity to last 4 years and that it was opened in 2005. Phase A was shut down in 2006 or 2007. At that time Phase B was under design and construction.

Commissioner Judge asked what the finished height of the original Maui landfill

was authorized for. Ms. Okuma referred to Tracy Takamine to answer this question. Mr. Takamine answered that it was for 365 feet “mean sea level”. He stated that this was close to what it had been permitted for and did not know if this was the original authorized height or not. Commissioner Judge commented that visual concerns about the landfill were related to considering the Hana Condition 18 requirements for the Central Maui landfill. Mr. Takamine commented that Condition 18 would not be feasible for Central Maui since the Hana landfill was at a different “mean sea level” and abiding to Condition 18 in regards to the Hana location was achievable. The same requirements for Condition 18, if applied to the Central Maui landfill were not physically possible. Although mitigation landscaping measures are being used, the landfill cannot be concealed from view. Litter fences are also being used, but these will not block the view of the landfill.

Commissioner Wong asked Mr. Takamine if he had any idea what a waste to energy feasibility study would cost. Mr. Takamine stated that it would be very costly to do such a study-costing several hundred thousand dollars. Commissioner Wong asked Ms. Okuma how much the Department of Health fines would amount to. Ms. Okuma answered that they could be substantial but could not answer.

Commissioner Piltz asked about an incident which occurred during the construction of the landfill where a protective membrane was improperly installed. Mr. Takamine responded that his understanding was that a particular phase of the landfill had been constructed without the plans being approved by the Department of Health. The opening of this portion of the landfill was delayed by several years till corrections to the construction were made to satisfy the DOH requirements. Ms. Okuma testified that the landfill would be constructed in compliance with all requirements and that the permits were necessary for construction to begin.

There were no further questions.

Commissioner Judge made a motion to approve Special Permit SP97-390 with three amendments.

1. Condition 13- to use “non-drinking water” in place of “non-potable water” for grading, dust control and irrigation of the landfill.
2. Condition 14- that the applicant shall ensure that wind blown debris around the landfill, particularly those in the public view will be removed “on a daily basis”.
3. Extend the permit for ten (10) years to October 31, 2018.

Commissioner Piltz seconded the motion.

Commissioner Lezy commented that he supported the motion but believed that the process being followed was not in the spirit of a Special Use Permit. He felt it was more in line with using a District Boundary Amendment.

Commissioner Wong commented that he supported the motion but asked that a

requirement for a feasibility study be considered and included in the motion.

Commissioner Judge declined to include the feasibility study requirement due to concerns about the County's fiscal ability to comply.

There was no further discussion.

The Commission was polled as follows:

Ayes: Commissioners Contrades, Devens, Judge, Kanuha, Lezy, Piltz and Wong

The motion passed with 7 ayes and 2 absent.

SP77-271 AMERON HAWAII (Maui)

Commissioner Kanuha stated that this was an action meeting to consider a sixth amendment to the Land Use Commission Special Permit to allow for the continued operation of a cement quarry on approximately 208.9 acres located within the State and County Agricultural Districts at Maui Tax Map Keys 3-8-001 Por. 001, 3-8-003: Por. 004, Por. 020 & Por. 021, Pu'unene, Island of Maui, Hawaii

APPEARANCES

Michael Hopper, Esq., represented the County of Maui Department of Environmental Management
Cheryl Okuma, Director, County of Maui Department of Environmental Management
Tracy Takamine, Division Chief of Solid Waste, County of Maui Department of Environmental Management
Robin Loudermilk, County of Maui Department of Planning
Michael Munekiyo, Munekiyo & Hiraga, Inc.
Eric Yoshizawa, V.P. Ameron Hawaii

PUBLIC WITNESSES

There were no public witnesses.

Chair Kanuha called for the Staff report. Riley Hakoda, staff planner, provided a synopsis of the staff report, including a summary of the Special Use Permit application, the background of the Ameron petition area, and staff recommendations. At the conclusion of the Staff report, Chair Kanuha asked the Commissioners if there were any questions.

Commissioner Wong asked Mr. Hakoda if there were requirements placed upon the Applicant when the quarry was shut down to restore the premises. Mr. Hakoda responded that the operations on the site shift from mining to landfill use based on the

approval of the previous special permit before the Commission without a need for restoration.

There were no further questions on the Staff report.

Chair Kanuha called for the Petitioner's report. Mr. Munekiyo had a PowerPoint presentation for the Commissioners.

The County had no comments or questions.

Commissioner Judge suggested substituting "non-drinking water" for "non-potable water" in Condition 11.

Commissioner Devens asked Mr. Munekiyo if the 2008 annual report had been filed. Mr. Munekiyo answered that the last annual report had been filed in September, 2007. The 2008 report would be submitted within the next couple of weeks. Commissioner Devens asked if there were any objections to the suggested six (6) month time limit for Condition 15. Mr. Munekiyo responded that there were none.

Commissioner Judge asked Mr. Munekiyo if windbreaks and landscaping along Pulehu Road in regards to Condition 14 had ever been done. Mr. Munekiyo referred the question to Eric Yoshizawa, V.P. Ameron Hawaii to answer this question.

Mr. Yoshizawa explained that his company had meetings with the Planning Department about Condition 14. It was determined that the screen plantings would need to be on the roadway to be effective and that the lands where the screen would need to be located were outside of their lease area. Commissioner Judge asked if this issue could be addressed in the annual report. Mr. Munekiyo acknowledged it would be.

Commissioner Judge made the motion to approve the sixth amendment to Special Permit SP77-721 with amendments.

On Condition 11: To use "non-drinking water" instead of "non-potable water" in Condition 11.

On Condition 15: To include "within six (6) months of the Land Use Commission's Decision and Order approving the Special Use Permit amendment."

Commissioner Piltz seconded the motion.

Commissioner Lezy commented that both permits that were before the Commission reflected how well the County landfill operation worked with Ameron's. His concern was that a District Boundary Amendment would be more appropriate than a Special Use Permit since it would allow for public input but had no problem voting in favor of the amendment.

There was no further discussion.

The Commission was polled as follows:

Ayes: Commissioners Contrades, Devens, Judge, Kanuha, Lezy, Piltz and Wong

The motion passed with 7 ayes and 2 absent

UPDATE OF LEGISLATIVE MATTERS

This matter was deferred.

ADJOURNMENT

Chair Kanuha adjourned the meeting at 4:40 p.m.