ENVIRONMENTAL, AGRICULTURAL, AND CULTURAL PRESERVATION COMMITTEE

Council of the County of Maui

MINUTES

October 15, 2019

Council Chamber

CONVENE: 1:36 p.m.

PRESENT: VOTING MEMBERS:
Councilmember Shane M. Sinenci, Chair
Councilmember Tasha Kama, Vice-Chair
Councilmember Kelly T. King (left at 3:08 p.m.)
Councilmember Michael J. Molina
Councilmember Tamara Paltin
Councilmember Yuki Lei K. Sugimura (arrived at 3:39 p.m., left at 3:42 p.m.)

EXCUSED: VOTING MEMBERS:
Councilmember Alice L. Lee

STAFF: David Raatz, Supervising Legislative Attorney
Kasie Apo Takayama, Legislative Analyst
Nicole Siegel, Committee Secretary

Zhantell Lindo, Council Aide, Molokai Council Office (via telephone conference bridge)
Denise Fernandez, Council Aide, Lanai Council Office (via telephone conference bridge)
Mavis Oliveira-Medeiros, Council Aide, Hana Council Office (via telephone conference bridge)

ADMIN.: Richelle Thomson, Deputy Corporation Counsel, Department of the Corporation Counsel
Jordan Hart, Deputy Director, Planning Department (EACP-33)
Rowena Dagdag-Andaya, Director, Department of Public Works (EACP-33)
Jordan Molina, Deputy Director, Department of Public Works (EACP-33)

OTHERS: Zack Williams (EACP-22)
Shay Chan Hodges (EACP-22)
Lucienne de Naie, Conservation Chair, Sierra Club (EACP-22, 33)
Jasee Law (EACP-22)
Joss Akoi (via telephone conference bridge, Hana Council Office) (EACP-22)

John Longmire (via telephone conference bridge, Hana Council Office) (EACP-22)
Others (3)

PRESS: *Akaku: Maui Community Television, Inc.*

CHAIR SINENCI: *. . .(gavel). . .* Aloha mai kakou. Will the Environmental, Agricultural, and Cultural Preservation Committee please come to order? It's Tuesday, October 15, 2019, and it is 1:36 p.m. I'm Shane Sinenci, your Committee Chair. And before we go on, may I please ask that we silence all cell phones or noisemaking devices? Thank you.

COUNCILMEMBER KING: You forgot to remind us…

CHAIR SINENCI: Today, this afternoon, we have in the Chambers with us, our Committee Vice-Chair, Ms. Tasha Kama. Welcome.

VICE-CHAIR KAMA: Aloha, Chair.

CHAIR SINENCI: Aloha. We also have from Lahaina, Councilmember Tamara Paltin.

COUNCILMEMBER PALTIN: Aloha auinala, Chair.

CHAIR SINENCI: Aloha auinala.

COUNCILMEMBER PALTIN: From Napili.

CHAIR SINENCI: Napili side. Okay. Mahalo. And from Upcountry, mauka, Mr. Michael Molina. Aloha.

COUNCILMEMBER MOLINA: Hey. Aloha, Mr. Chairman.

CHAIR SINENCI: Aloha. And Chair King, from South Maui. Aloha, Chair.

COUNCILMEMBER KING: Aloha from the beach side.

CHAIR SINENCI: Yes. Thank you. From Department of Corporation Counsel, we have Richelle Thomson. Aloha. *. . .(feedback from audio system). . .* Administrative representatives…okay, everybody, stand and uwehe, no.

UNIDENTIFIED SPEAKER: *. . .(inaudible). . .*

CHAIR SINENCI: Okay. Could we ask that our District Offices mute their…thank you. We're…for our Administrative representatives, we're expecting Ms. Michele McLean, Director of Department of Planning; and Ms. Rowena Dagdag-Andaya, Director,

Department of Public Works. For Staff, we have Ms. Kasie Apo Takayama and Nicole Siegel. In our District Offices, in the Hana District Office, we have Mavis Oliveira-Medeiros; Lanai District Office, Ms. Denise Fernandez; and Molokai District Office, Zhantell Lindo. Okay. So, Members, today, we have two items scheduled, EACP-22, Protection and Preservation of East Maui Streams, a continuation of our last meeting last Monday. And we also have EACP-33, Amending the Section 18.080.020 [*sic*], Maui County Code, Relating to Preliminary Plat Preparation and Submission. For testimony, any individuals wishing to testify, please sign up at the desk just outside the Chamber door. If testifying from one of the remote testimony sites, please sign up with District Office Staff. Testimony will be limited to the items on the agenda today. Pursuant to the Rules of the Council, each testifier will be allowed to testify for up to three minutes per item. When testifying, please state your name and the name of any organization you may be representing. Pursuant to the Rules of the Council, if you are a paid lobbyist, please inform the Committee. Staff, we have established a connection to the Council District Offices. Ms. Apo Takayama, can you please call the first testifier to the podium please?

. . . BEGIN PUBLIC TESTIMONY . . .

MS. APO TAKAYAMA: Chair, the first testifier is Zack Williams, testifying on EACP-22.

MR. WILLIAMS: Aloha. My name is Zack Williams. I'm from Lower Nahiku in East Maui. I'm a kalo farmer down there. So, I just wanted to touch on a few things. I didn't read the EIS before I came in here, but just upon reading it, the things that jumped out to me right away were the stream I live on, which is Makapipi, was restored…supposed to be restored according to CWRM to a 100 percent stream flow and remove the diversions. So, so far, since the 17 years of litigation that we went through, and 4 years since then fast forward, there's been nothing done except for opening a sluice gate, right. And that doesn't even give us mauka-to-makai connectivity because there's not actually enough water because our watershed is mostly groundwater. In Kuhiwa, which is the next stream to the east of us, the easternmost stream the EMI ever took water from, they drilled wells. And so, even out of their tunnels, my friend who's a USGS hydrologist came, and we measured some of the water flows this summer out of the tunnels that they're inadvertently taking straight into their ditch system, is equal to the base flow for all of Makapipi Stream, which is like upwards of a million gallons a day, and that was in the longest drought I've seen in my entire life. So, that was the base flow at the lowest point I've ever seen it. And since the end of May, we've had mauka-to-makai connectivity only five days. If it wasn't for the punawai, our kalo on the State land that we're farming, and my neighbor's land, would be completely dry. And the taro patches on our actual aina are…have been fallow for more than a 115 years, and there is no water in the eastern auwai because it's dependent upon Makapipi Stream that have water in it, right. So, when you go up as well, you look at the po`o wais, the ancient structures where you can tell where the water level was in ancient times, it's more than double what it is in a typical flow state right now. So, the fact of the matter that EMI's argument is that we've restored water and we've done enough, there hasn't been any type of study or any

accountability. And the fact that we're talking about giving these same people who have essentially been taking this water and reaping the benefit, right, while we suffer for a 100…more than a 100 years, it was finished in 1904, the Makapipi Ditch, that part of the flume system, it's just…it's kind of absurd, you know, 'cause I'm over here just fighting, like to try and farm kalo, you know. And we're kiaaina, you know, I don't get paid to do this. And these guys, kia kala, you know, once their money runs out, their interest runs out, they run out, they're gone. We're still on the aina, you know, trying to bring the people back, you know, and the oopu, I mean the native habitat. One other thing I want to touch on was…I looked at this, I thought that Hanawi Stream--sorry, guys, I'm going to go a little more--the Hanawi Stream was supposed to be 90 percent restored, but they're saying here that Hanawi, Kapaula, and Paakea, so those three streams I know for sure, those are the adjacent valleys that I live next to. The alaloa connects all of those. I was at Hanawi yesterday, and in my life, I thought the hihiwai was gone since I was a kid, and I actually found some yesterday. And they're saying now that they can only give like--if I'm reading this, right--20 percent I think of the water to that river because there's no kalo farmers, but it's one of the only places that we still have hihiwai, oopu, there's three species, the alamoo, the nakea, and the nopili that I saw yesterday in Hanawi Stream. And then Kopiliula too, all our moi, all our anae, that's all our resources. If you look at the TMKs, what the State didn't steal from my neighbors, the kanaka oiwi, the koa aukele is these people, they're the ones that still have one-acre parcels, kuleana parcels, in these valleys where nobody lives 'cause it's one wahi pana, you know, and they're not here to tell you that, but we need to malama that.

CHAIR SINENCI: Mahalo, Zack --

MR. WILLIAMS: Yeah.

CHAIR SINENCI: --for your --

MR. WILLIAMS: Sorry. E kala mai.

CHAIR SINENCI: --testimony.

MR. WILLIAMS: Yeah.

CHAIR SINENCI: Any questions for the testifier? We have a question from Ms. Paltin.

COUNCILMEMBER PALTIN: Thank you, Chair. Hey, Zack, how's it going? I just was wondering if…so, when you said that they were supposed to remove the diversion, then restore 100 percent to Makapipi --

MR. WILLIAMS: Yeah, that's one of the ten streams.

COUNCILMEMBER PALTIN: --is there consequence if you were to go and remove the diversion yourself?

MR. WILLIAMS: I'm sure there is, yeah. And we're trying to play this game, right, because I've just…we've had good faith for so long. And my neighbors that had intention to farm, they died waiting. You know, they never even saw the water. You know, that's why I'm standing here. It's like we drove out. It's one big-losing-money thing, but it's like we got to do it 'cause the next seven generations need to know they can stay home and be mahiai, and you don't got to work State or County, you know. Sorry to --

COUNCILMEMBER PALTIN: So…

MR. WILLIAMS: --rant on, but it's just like…but, yeah --

COUNCILMEMBER PALTIN: So --

MR. WILLIAMS: --so…

COUNCILMEMBER PALTIN: --basically, to clarify, you're saying that they shouldn't be getting more water when they're not meeting their current --

MR. WILLIAMS: Just --

COUNCILMEMBER PALTIN: --impositions?

MR. WILLIAMS: --for Nahiku, they should condemn that part of the system, 100 percent shameful. We are the most eastern, right? So, if we're supposed to get 100 percent, why has there been no study, and into who can bid the job to fix the water issue, or even a scientific study to say, what is actually going on in Nahiku, why is there no mauka-to-makai connectivity, what about the resources that I know for sure are there, they're living in the springs just barely holding on. I mean because it's…there's not a financial gain, you know, but there's something way bigger than that at play and at risk here if we just keep going on with business as usual, and we need to look into before we allocate 30 years of our water resources to these same people who have been stealing it, at least…the least we could do is look into a study of how we can make pono solutions, right? And I think condemning that side of the…the ditch system isn't too much to ask for when CWRM already said 100 percent, right? Opening the gate is not cutting it. And I could take everybody in one huakai, and we could go look at all the ancient kalo fields, and you could plain as night and day, black and white, you can see with the water we have, there's no way the people could have been farming on the level they were 'cause it's just not possible.

COUNCILMEMBER PALTIN: So, you're --

MR. WILLIAMS: So…

COUNCILMEMBER PALTIN: --saying you want a study, but what about them not meeting the current…

MR. WILLIAMS: I mean if that's what they need to prove, I would be happy if they just condemn it, because I know in my heart like just from seeing being on the aina, that what they're doing is affecting us downside, right? Whatever they did, when they took that water, they never planned on giving it back. That's why their springs go straight into the weir. And the kahawai, what they're saying is 100 percent, they just opened the sluice gate, you know, but they're still…like Makapipi itself has five other tributaries. And so, they're taking from those other five other tributaries right into the ditch. There's no gate. All they could possibly do is dump it in the next river. And that still doesn't help us in our watershed, yeah, 'cause that's at 1,500 feet elevation. I live at 200 feet. And so, even if it makes it to where you drive the Hana Highway, I think the Makapipi right there is about a 1,000 feet above sea level, there's water almost every day, but when you go down another 500 feet, there's no more water in the river anymore. And…

COUNCILMEMBER PALTIN: You want the State to condemn it?

MR. WILLIAMS: Whoever has the power, the BLNR, Suzanne Case, are you listening? I mean like she…I feel like if you have the permits to put stuff up on Mauna Kea, just to use that for example, then we could at least get a permit to condemn that side of the diversion system that we've all agreed it is not in use, the people should be getting it, the native habitat should be getting it. You know, we're trying to actually farm. I don't know what Mahi Pono is doing, but I'm a kalo farmer, like real life, in the flesh --

COUNCILMEMBER PALTIN: So, by --

MR. WILLIAMS: --you know what I mean.

COUNCILMEMBER PALTIN: --condemning mean just restore mauka-to-makai stream flow and --

MR. WILLIAMS: Yeah, like --

COUNCILMEMBER PALTIN: --not --

MR. WILLIAMS: --let's --

COUNCILMEMBER PALTIN: --stop diverting?

MR. WILLIAMS: --blow the thing up like it shouldn't be there, like there's a giant…it's six-feet-wide, if not eight-feet-wide, fill it in, you know what I mean, like do something. Get…let's get the Army Corps of Engineers to make some sort of possible solution where it's just not leaching the groundwater. Because right now, even there's a tunnel that goes from Kuhiwa Well, which was the last lease was to Maui Land and Pine in the '90s, and they had a pump, right, so, they're pumping water, they actually, their tunnel goes under the kahawai of Makapipi. If you were to go there right now, there's still more than a million gallons of water a day coming out of Kuhiwa system, and it's just

inadvertent groundwater that's leaching out into EMI system, and then if you go to Hanawi, which is not even one more mile past Makapipi, the ditch system is dry, completely dry 'cause it's full of Job's tear, Clidemia, the pigs are in it, the thing is a 115 years old, it leaks everywhere. They've never done a study to figure out how much water they're actually losing from the base of the headwater in Koolau to out in town. I mean the problems just go on and on and on, right? To me, it's --

CHAIR SINENCI: Member…

MR. WILLIAMS: --like let's pave over it or get rid of it.

COUNCILMEMBER PALTIN: Yeah --

CHAIR SINENCI: Do you have…

COUNCILMEMBER PALTIN: --thank you.

CHAIR SINENCI: Just --

MR. WILLIAMS: But --

CHAIR SINENCI: --for…

MR. WILLIAMS: --I'm not a scientist either.

CHAIR SINENCI: Zack, so, inside this lease, it says that in the first chapter of the executive summary, it says the Nahiku community, which through the MDWS draws between 20,000 to 45,000 gallons per day --

MR. WILLIAMS: Right.

CHAIR SINENCI: --depending on weather, directly from the EMI Aqueduct system. And so, it will also allow the continued provision of water to approximately…what…but that was…so, of a couple other people listed in this lease is the Nahiku community.

MR. WILLIAMS: Right.

CHAIR SINENCI: So, you…you're saying that…

MR. WILLIAMS: I'm saying I don't want to take the water away from the community. I know exactly…so, where the intake is that I'm actually talking about in the flume, the Nahiku community pipe is a six-inch blue HDPE pipe that's right there. I would never want my neighbors to not have water, you know.

CHAIR SINENCI: And…

MR. WILLIAMS: That's --

CHAIR SINENCI: And --

MR. WILLIAMS: --a no-brainer, right?

CHAIR SINENCI: --Members, the Makapipi Stream is the furthest --

MR. WILLIAMS: East.

CHAIR SINENCI: --east.

MR. WILLIAMS: Yeah.

CHAIR SINENCI: So, this is one of the first ones that there would be --

MR. WILLIAMS: Right.

CHAIR SINENCI: --continued diversions --

MR. WILLIAMS: Right.

CHAIR SINENCI: --from, and that one goes down through the Nahiku community. We had one more question from Chair King.

MR. WILLIAMS: To me, that's a easy --

COUNCILMEMBER KING: Thank you --

MR. WILLIAMS: --fix though.

COUNCILMEMBER KING: --Mr. Williams. So, did…I just want to find out, did you submit any comments too on the EIS?

MR. WILLIAMS: On the EIS, I haven't written my testimony yet --

COUNCILMEMBER KING: Okay.

MR. WILLIAMS: --but I'm going to --

COUNCILMEMBER KING: You're going to. Okay. So --

MR. WILLIAMS: --try and make it more succinct.

COUNCILMEMBER KING: --if you could help us out, because we're going to be making some comments --

MR. WILLIAMS: Okay.

COUNCILMEMBER KING: --by supplying the parts that you just testified on like, you know, you testified on the streams that were supposed to be completely restored and that they're not, and if we could have that testimony from you --

MR. WILLIAMS: For sure.

COUNCILMEMBER KING: --that addresses those specific areas --

MR. WILLIAMS: Right.

COUNCILMEMBER KING: --in a summary, that would be helpful --

MR. WILLIAMS: And then, yeah, the…

COUNCILMEMBER KING: --to say that they're not --

MR. WILLIAMS: Right.

COUNCILMEMBER KING: --you know, that this is coming from the kalo farmer out there that says they're not. That would be helpful.

MR. WILLIAMS: I will, definitely.

COUNCILMEMBER KING: Thank you.

MR. WILLIAMS: And the other part like I said, those other three streams are ones that we use for survival, right, like that's --

COUNCILMEMBER KING: Well, if anything that you can --

MR. WILLIAMS: --where the resources are.

COUNCILMEMBER KING: --testify from personal knowledge --

MR. WILLIAMS: Yeah.

COUNCILMEMBER KING: --and that we can use, you know.

MR. WILLIAMS: For sure.

COUNCILMEMBER KING: Because we, you know, only one of us lives out there. So --

MR. WILLIAMS: No --

COUNCILMEMBER KING: --you know…

MR. WILLIAMS: --for sure. And people just kind of forget and like --

COUNCILMEMBER KING: Yeah.

MR. WILLIAMS: --it's not one of our thing to say, oh, this is where the hihiwai are, you know what I mean. That's like not kind of something --

COUNCILMEMBER KING: But I think --

MR. WILLIAMS: --to do --

COUNCILMEMBER KING: --it's --

MR. WILLIAMS: --but…

COUNCILMEMBER KING: --important to our testimony, Chair, that --

MR. WILLIAMS: But it is --

COUNCILMEMBER KING: --we --

MR. WILLIAMS: --it is.

COUNCILMEMBER KING: --point out --

MR. WILLIAMS: No, I appreciate…

COUNCILMEMBER KING: --what's lacking in the original plan and the claims that are in this EIS that are not actually being fulfilled.

CHAIR SINENCI: Yes, thank you.

COUNCILMEMBER KING: Okay. Thank you.

CHAIR SINENCI: And just for --

MR. WILLIAMS: And --

CHAIR SINENCI: --the --

MR. WILLIAMS: --thank you so much.

CHAIR SINENCI: --public's notice that we have a copy of the draft EIS at the Hana Community Library at Hana School. And we also have a copy of the draft EIS at the Hana County Office at the…

COUNCILMEMBER KING: All 2,700 pages?

CHAIR SINENCI: Yeah, so that will be 5,400 pages total.

MR. WILLIAMS: Thank you, guys, for your time. I appreciate it.

COUNCILMEMBER KING: Okay. Thank you.

MR. WILLIAMS: Mahalo.

CHAIR SINENCI: Thank you, Zack. Ms. Apo Takayama?

MS. APO TAKAYAMA: Chair, the next testifier is Shay Chan Hodges, on behalf of the Board of Water Supply Temporary Investigative Group, testifying on EACP-22.

MS. CHAN HODGES: Aloha. Aloha, Chair Sinenci and Committee Members. I just want to mention that the issues that Zack was talking about is part of our overall TIG report as one of the considerations for why we need a…the County to consider purchasing the TIG [*sic*], and why a publicly accountable entity needs to be in charge of the EMI system. What I wanted to talk about just…I submitted to you, folks, you should have it on your Granicus, a letter on October 13th, that was approved by all of our TIG members. And basically, what I wanted to do was provide you with documentation and references for what we had discussed at the last meeting. So, for example, the 2018 Department of Water Supply Annual Report that has the water coming from the Kamole Treatment Plant is 1.5 million gallons a day, and then the other two sources of water for Upcountry, also the references for what Toni testified to about the crown lands. We have some excerpts there, and then we had just discussed the acquisition cost of the $5.4 million purchase price. So, there is just a table there that explains that. And we actually added, in terms of an estimate for an acquisition cost, an additional $12 million over two years to restore the system because there have been a lot of comments in the community that the system is in definite need of restoration. And then this is looking at the bond payments, which would be at 3.75 percent. And as you probably know, interest rates are kind of low right now, so it's a good time. And then the other thing we mentioned too is that if anyone is considering purchasing it, the system, the other reason why it's a good time in light of the EIS is that once the 30-year…if a 30-year lease were to be received by Mahi Pono, EMI, we know that the value of that system would go up dramatically based on the fact that there's a $62 million rebate that A&B would owe Mahi Pono if it didn't go through. So, that tells you that the value of the system is way more than 5.4 million, but right now, the purchase price as of December 2018 was 5.4. So, it'd be good to jump on that. We also have some estimates that we talked about, I believe at the last meeting about what the value of that water is, the 65 million gallons a day, showing that if it were delivered at a $1.10--oops, I'm sorry--per gallon or million

gallons, that would be worth 26 million with…and a $1.10 is the going agriculture right. So…anyway, I just want to let you guys know that all of that is there, and I'm going to be here, but I do have to leave in 25 minutes at least for a call. And then I had also added some recent studies and research. I don't know if you folks know, a study came out just last week about the value of East Maui Watersheds, and then--I'm sorry, I'm just going to say just real quick--I also have the governance…potential governance structures of a publicly-owned water authority or water trust. And I just wanted to say--what else there is--and then also studies about climate change, and then just sort of what kinds of, going back to studies that Zack had mentioned, other kinds of…there's a lot of studies that would need to be done moving forward from engineering studies, studies of the stream, studies of, you know, basically what's happening, which we know very little about. So…anyway, just wanted to make sure you folks knew all that was there, and I can be here to help.

CHAIR SINENCI: Thank you, Shannon [*sic*]. Thank you for submitting this report. You know, in the EIS, it says that they won't issue a 30-year lease until there's a Watershed Management Plan. Who does…who would create that? BLNR?

MS. CHAN HODGES: I'm not sure. Lucienne maybe knows. I think it's BLNR or…

MS. de NAIE (from the audience): It's supposed to be a mix.

CHAIR SINENCI: A mixture?

MS. CHAN HODGES: Yeah.

CHAIR SINENCI: Okay.

MS. de NAIE (from the audience): I'll address that when I come down…

CHAIR SINENCI: Any questions for the testifier? Ms. Kama, you had your light on?

VICE-CHAIR KAMA: Yeah, thank you, Chair. So --

CHAIR SINENCI: And then --

VICE-CHAIR KAMA: --you know --

CHAIR SINENCI: --Ms. Paltin.

VICE-CHAIR KAMA: --you spoke about the structure of the public governance should this become a public utility. What does that look like?

MS. CHAN HODGES: So…

VICE-CHAIR KAMA: Or tell me to go to a page somewhere.

MS. CHAN HODGES: So, on Page 6 of the letter --

VICE-CHAIR KAMA: Okay.

MS. CHAN HODGES: --we put together some potential structures. So, we showed the shareholder owned, which is what A&B is, and that was the previous owner obviously; private equity controlled, which is Mahi Pono; and then other options are a co-op; a municipal water authority; some kind of hybrid; an independent public water authority. And then as far as deciding what would be the best thing, I think…I mean obviously, more research has to be done, folks who are experts in that field, and then also what the stakeholders want as far as…I mean because accountability is the most important thing here.

VICE-CHAIR KAMA: One more, Chair. So --

CHAIR SINENCI: Go ahead.

VICE-CHAIR KAMA: --when you mentioned the cost of the purchase, and then you also had tacked on some R&M cost to that, did you also factor in the cost to do the community outreaches and all those other things to be able to put this together?

MS. CHAN HODGES: That would be a lot to…we put in hundreds of hours so far, but no, I didn't specifically --

VICE-CHAIR KAMA: Okay.

MS. CHAN HODGES: --do that, but the way that it works out, if you look at the…our estimated cost of purchasing at…we added actually quite a bit to the two…oh, for operations and for the purchase price, we added quite a bit. So, we ended up with an operating cost of 12.5. And if you consider how to recoup those costs, and you have water valued at 27 million, there's some wiggle room there. I mean --

VICE-CHAIR KAMA: Okay.

MS. CHAN HODGES: --obviously, you're not going to get 27 million --

VICE-CHAIR KAMA: Yeah --

MS. CHAN HODGES: --total --

VICE-CHAIR KAMA: --obviously.

MS. CHAN HODGES: --but…

VICE-CHAIR KAMA: Okay. Thank you. Thank you --

MS. CHAN HODGES: Thank you.

VICE-CHAIR KAMA: --Chair. Good.

CHAIR SINENCI: Thank you. Ms. Paltin?

COUNCILMEMBER PALTIN: Thank you, Chair. Thank you, Ms. Chan Hodges. You know, when you mentioned that Ms. Eaton's concerns regarding crown lands were in this letter, is there another area besides Page 2, number 3, where it says that 18,000 of the 30,000 acres are crown lands, is there more or is that…

MS. CHAN HODGES: Well, so for the purpose of the letter, I just did a little excerpt, and you can see in the footnotes, there is links. So, to the Kipuka Database, and then there's also number two, which is the old contracts. But in our report, which actually is going to be presented on Thursday and will be public probably sometime tomorrow, there's much more information. I was just trying to give you guys sort of digestible little snippets.

COUNCILMEMBER PALTIN: And so, the purpose of differentiating the crown lands is that those are stolen lands that the occupier is using for…

MS. CHAN HODGES: So, going back to the research and the studies, I think one really important thing that needs to happen is research on the legality of the ownership, and I am definitely not an expert in this, but there seem to be a lot of questions. And, you know, as far as what the outcome would be, I think respecting and honoring what the reality of the situation is is the first step.

CHAIR SINENCI: Member…

COUNCILMEMBER PALTIN: The reality of the situation that somewhat over half of the lands are crown lands?

MS. CHAN HODGES: Yes, if it's determined. You know, I don't know where that leads, right, and I'm not like I said, I'm not…I don't have expertise in that area, but it seems to me there's questions about the ownership of the land, and that needs to be cleared up and addressed.

CHAIR SINENCI: Member Paltin, are you looking at Page 2 of her report with all the TMKs?

COUNCILMEMBER PALTIN: Yeah, that's --

CHAIR SINENCI: Okay.

COUNCILMEMBER PALTIN: --what I was looking at. I just was wondering if that was…'cause when she mentioned that Toni…Ms. Eaton's concerns, that's all that I had found, but I thought in her previous testimony, she had some more concerns than that.

MS. CHAN HODGES: Well, she had also talked about the reversion of the land back to the government. And so, I have an excerpt of one of the contracts above that in number two.

COUNCILMEMBER PALTIN: Okay. Thank you.

MS. CHAN HODGES: So…

CHAIR SINENCI: Thank you.

MS. CHAN HODGES: Yeah.

CHAIR SINENCI: Chair King?

COUNCILMEMBER KING: Thank you, Chair. So, thanks for being here. This report is really good, well-organized as well. But on Page 4, I just had some questions about the operating costs --

MS. CHAN HODGES: Sure.

COUNCILMEMBER KING: --that you guys have estimated here. I understand the 2.5 million was what the EIS said the annual operating costs are, but the improvements and maintenance, I'm not sure…I don't understand what…where that 1.5 percent of replacement asset value came from because --

MS. CHAN HODGES: So…

COUNCILMEMBER KING: --it doesn't sound like it should be a recurring…is it an annual recurring --

MS. CHAN HODGES: Right.

COUNCILMEMBER KING: --cost?

MS. CHAN HODGES: So, basically, if you first go up to the purchase price on the previous page, like I said, we added a total of $12 million for restoration, which would be immediate restoration to the system because it…from what we're hearing, it needs a lot of work. And obviously, that's somewhat of an arbitrary number and it's based on this replacement asset value, RAV, is just an industry sort of I guess best practices. So, obviously, till we do an appraisal, we don't really know. So, I felt like we had to say something, and that seemed like…and the 200 million that that's based on is what EMI said a modern system would cost today is 200 million. So, that was how we came up with that formula. You know, obviously…

COUNCILMEMBER KING: Okay. But that's a whole new system, so we're not…we're actually…

MS. CHAN HODGES: So, we're saying to restore it, we took 3 percent of the 200 million.

COUNCILMEMBER KING: Okay.

MS. CHAN HODGES: So…and again, I mean we're…

COUNCILMEMBER KING: Okay.

MS. CHAN HODGES: I'm…I…we're hoping --

COUNCILMEMBER KING: Okay. No, that's okay.

MS. CHAN HODGES: --that number is…

COUNCILMEMBER KING: So, it's not…that's not a hard and fast number.

MS. CHAN HODGES: Right.

COUNCILMEMBER KING: Then the watershed number, the 6 million that you added on, is that all watershed or is that East…

MS. CHAN HODGES: That's East Maui, and --

COUNCILMEMBER KING: Okay.

MS. CHAN HODGES: --again --

COUNCILMEMBER KING: So, it's East --

MS. CHAN HODGES: --that is --

COUNCILMEMBER KING: --Maui.

MS. CHAN HODGES: --somewhat of an arbitrary number. We --

COUNCILMEMBER KING: Okay.

MS. CHAN HODGES: --know that for 2018--or what year is it right now?--2020, sorry --

COUNCILMEMBER KING: Okay.

MS. CHAN HODGES: --for 2020, a total of 2.69 million is allocated for watershed. And, you know, based on what I've seen in the research, I'm not a scientist, but it seems like we

need to do a lot more. So, really, that was somewhat of a random just trying to get a higher number to make a difference. And as I mentioned in here, a study was just recently done of the East Maui Watershed, and…but they need…I talked to Eva Blumenstein, and she said they've actually asked…they're working on another study to get a more specific number of what kind of investment would produce how much water. So, obviously, you know, it could be more --

COUNCILMEMBER KING: Okay.

MS. CHAN HODGES: --or less.

COUNCILMEMBER KING: And then also could come from other sources besides the County --

MS. CHAN HODGES: Absolutely.

COUNCILMEMBER KING: --so.

MS. CHAN HODGES: Absolutely.

COUNCILMEMBER KING: Okay. So, I just was curious about those numbers because I think that watershed too, if we're talking about operational, then that wouldn't be bond-funded. So, that shouldn't be part of that debt service. So, just some things to keep in mind --

MS. CHAN HODGES: Yeah --

COUNCILMEMBER KING: --when you --

MS. CHAN HODGES: --that's true --

COUNCILMEMBER KING: --go through that because --

MS. CHAN HODGES: --that's true, yeah.

COUNCILMEMBER KING: --the only thing you're going to have debt service on is whatever is bond-funded, otherwise, the rest of it, we have to put into our budget annually. So, just --

MS. CHAN HODGES: That's a good point --

COUNCILMEMBER KING: --keep that in mind.

MS. CHAN HODGES: --yeah. That's a good point --

COUNCILMEMBER KING: Okay.

MS. CHAN HODGES: --yeah.

COUNCILMEMBER KING: Thank you. Thank you, Chair.

CHAIR SINENCI: Okay. Thank you. Members, if there are no objections, we would like to designate Ms. Shay Chan Hodges as a resource if we need additional questions.

COUNCILMEMBERS: No objections.

CHAIR SINENCI: Okay.

MS. CHAN HODGES: Thank you.

CHAIR SINENCI: Thank you.

MS. CHAN HODGES: Thank you.

CHAIR SINENCI: Thank you for your testimony. Ms. Apo Takayama, can you call the next testifier please?

MS. APO TAKAYAMA: Chair, the last testifier signed up in the Council Chamber is Lucienne de Naie, on behalf of the Sierra Club. She'll be testifying on EACP-22 and EACP-33.

CHAIR SINENCI: Okay. And…

MS. de NAIE: Aloha. I'm Lucienne de Naie. Nice to see you all again. I first would like to testify on the proposal to amend the Subdivision Code so that signs would be posted at Agricultural subdivisions as part of the subdivision review process. And this idea came out of some candidate forum discussions in the Haiku community, and it's actually found on the Big Island every subdivision, or actually any kind of project on the Big Island has a sign posted with what's planned, who is in charge at the County that you can call, and it's like a white and black sign. Every bed and breakfast on Maui has to post a sign to let the neighbors know what's going on. So, it would seem like a reasonable thing at this point where people's lives are busy. And the most common complaint I hear whether I have my Sierra Club phone on or my hat on as the president of the community association in Haiku is how come we never heard that anything was being planned here. And so, the sign is a very cheap and easy way to deal with that. So, I hope it will receive some favorable consideration. I don't think it puts an undue burden on anybody to have the sign on the parcel where it can be read. Switching over to the matter of item number 22, the EIS for the East Maui streams, I agree completely with Zack Williams. The Makapipi Stream is just a textbook example of how we have not gotten enough information about what feeds a stream. There are at least five registered diversion tunnels that then intersect with the underground tunnel of the ditch itself. And so, all this underground water that otherwise would be eventually finding its way into the stream, perhaps further downstream, because we're not God and we don't know how these waters travel, are now being intercepted and they go into the ditch.

And then the community pipeline that Mr. Sinenci referred to, it actually doesn't come from the ditch, it comes from one of those development tunnels. And one of the development tunnels in the water base, you know, the diversion base of the State Water Commission says, domestic, you know, commercial user…municipal use, and it's the only tunnel that has municipal use. So, even if the ditch system was shut down, and if we remove that whole lease area from consideration, which I hope you will consider putting in your comments, there's three to four streams that are diverted in the Nahiku lease area, and it's the cheapest lease area. And if one of those is supposed to be fully restored, that's Makapipi, the other two Hanawi, and Kapaula are not given full restoration, they're given some sort of, you know, partial wetted pathway kind of thing. If we just didn't use that part of the lease area, had three lease areas instead of four, then we could work with those development tunnels. It would not affect the water supply of Nahiku that is coming from a pipe that comes into a tunnel, and that tunnel is going to be there whether you open the ditch or shut the ditch, or whatever, it's just…it's a tunnel, it's like water drips into it, it's intercepting some sort of underground spring. You know, it's a very complex system. This is like the map of it. I use this when I go hiking 'cause…and it even it doesn't show everything. So, really, that could be one consideration for your comments that perhaps using the Nahiku lease area is not needed. Wow. It's a rush. I have a bunch of other stuff to say. Anyway, there are…besides that consideration, the flora and fauna report for it in the EIS is really totally inadequate. Thirty-three thousand acres was covered in four days? Excuse me, that is not a study, and one day of airplane flyover. Back in 1985, this report was prepared on two streams. It's twice as long as the flora and fauna report for all the 33,000 acres in the EIS, and it's not even referred to, and all the plants that were found, and the rare birds, and things were found were not even referred to. Some of the same bird species are referred to, but the comparative information, it's like this doesn't even exist. So, we're really not getting an EIS where an adequate job was done protecting those public resources. And thank you very much. I'm out of time, yes, or I still have 30 seconds?

CHAIR SINENCI: We have a question from Member Kama --

MS. de NAIE: Okay. Thank you.

CHAIR SINENCI: --Ms. de Naie.

VICE-CHAIR KAMA: Hi, Lucienne. Thank you for being here. So, how long did it take for them, do you know, to write the EIS?

MS. de NAIE: Well, they published the prep notice in 2017. There were meetings in January and February of 2017, and then they got comments from everybody. There was a 30-day comment period. So, my assumption would be that sometime like in April, they started, of 2017. So, several years, yeah.

VICE-CHAIR KAMA: Would that normally be the amount of time to write a 2,700-page report?

MS. de NAIE: Yeah, EIS's if they're really beefy, you know, they have a lot of pages. They could take several years to produce, but the quality of studies --

VICE-CHAIR KAMA: Yeah.

MS. de NAIE: --you know, varies. The study on the historic ditch diversions is excellent. It's really good. We know all about all kinds of gates and openings and closures. It has full-colored pictures, but the flora and fauna, not so much.

VICE-CHAIR KAMA: So, when you looked at the EIS, do you feel like that the content of the EIS was insufficient, aside from the ones you just mentioned, the flora and fauna?

MS. de NAIE: Well, I think that the assumptions of the EIS allow it to address only a very narrow scope --

VICE-CHAIR KAMA: Okay.

MS. de NAIE: --of things. And I don't know if that make sense to you, but I'm available if people have more questions afterwards, you know, I can hang out for a couple of hours till four o'clock. So, if you have more questions, I can explain more fully what, you know, what is in and what is out, but…

VICE-CHAIR KAMA: Okay.

MS. de NAIE: And some of these assumptions really apply to the County. The County submitted good comments, the Department of Water Supply, saying this is what we'd like to see in the EIS. Some of that in my opinion, just isn't there, you know, or it was given a lick and a promise like, okay, we have four sentences about that now, we've done it, you know.

VICE-CHAIR KAMA: Yeah. So, Chair, could we see if Ms. de Naie could be resource? Hopefully, we are able to.

CHAIR SINENCI: Sure, if there are no objections.

COUNCILMEMBERS: No objections.

CHAIR SINENCI: Okay.

VICE-CHAIR KAMA: Thank you.

COUNCILMEMBER KING: Chair?

CHAIR SINENCI: Okay. Chair King, and then Member Paltin.

COUNCILMEMBER KING: Okay. Thank you. I was actually going to ask you if you could be a resource for both items too since you have historic knowledge of the --

MS. de NAIE: Oh, sure.

COUNCILMEMBER KING: --other, the subdivision --

MS. de NAIE: I'll be here.

COUNCILMEMBER KING: --bill.

MS. de NAIE: I'm not --

COUNCILMEMBER KING: Okay.

MS. de NAIE: --going anywhere till 4:00 --

COUNCILMEMBER KING: Do…

MS. de NAIE: --so.

COUNCILMEMBER KING: So, do you know if…'cause I haven't read those 2,700 pages either, but --

MS. de NAIE: I'm not at 2,700 --

COUNCILMEMBER KING: --do you --

MS. de NAIE: --yet, but I've read hundreds of them.

COUNCILMEMBER KING: --find the parts of it that refer to significant cultural aspects to be adequate, or did you read that yet?

MS. de NAIE: Well, see, they're defining significant cultural aspects as their ditch system. So, like I said, they put a lot of attention, the best documentation I've ever seen of their ditch system, and the, you know, 'cause each intake can be very different. It's fascinating. But in terms of Hawaiian cultural findings, no, it's kind of more of a broad-brush approach. And basically, the Cultural Impact Assessment, you…which usually is very valuable, and A&B did a ethnographic study in 2001 that Kepa Maly did, that's excellent, that's full of in-depth information. I didn't see it attached as an appendix to this. So, I'm assuming that maybe they're not referring to it, but the Cultural Impact Assessment basically takes the minutes from one of the contested case hearings when there was an interview of Davianna McGregor about the cultural practices of the Keanae-Wailua Nui area. It was an excellent testimony. I heard it in person, but it's not a lot of original research and I didn't see that they, you know --

COUNCILMEMBER KING: They didn't go --

MS. de NAIE: --they did…

COUNCILMEMBER KING: --beyond that?

MS. de NAIE: No, they made a few comments around it, but it was like the majority of what was in there from what I've been reading. So, it seems like certain sections, it's like how can we just get this done and get it over with, you know.

COUNCILMEMBER KING: Okay. Thank you.

CHAIR SINENCI: Okay. Member Paltin, you had a question?

COUNCILMEMBER PALTIN: Thank you, Chair. Thank you, Ms. de Naie, for being here. My question was in regards to the statements made about condemning the Lower Nahiku part. Would it be like requesting the State to condemn it, and then it only diverts from the other three lease areas? Or like what does it mean to condemn it?

MS. de NAIE: I don't think you need to condemn it. I think in fact, US Fish and Wildlife in their comments, suggested that that part just be no longer diverted, that the Nahiku…in fact, they suggested everything from Keanae east no longer be diverted, which was the default position when A&B shut down sugar, they just stopped diverting from the furthest ditches because more trouble to maintain it, it's a long way out there, you know. So, part of the system is on A&B land, and part is on…most of the water originates on State land, but the ditch runs right along the edge of land owned by A&B. So, if you just said, we're not leasing you the water that comes from our land, basically, they'd probably say okay, well, we're not diverting those streams then. But Zack is right, just opening a little gate that's this wide, your fish have to figure out how to get up through it, you know, that is not restoring. If you're restoring, you either modify the structure, remove the structure, you do something. The EIS does not even acknowledge that that potential action would exist. That's why I mean it's kind of a limited scope, you know. All it says is we restored the streams, we're good.

COUNCILMEMBER PALTIN: Okay. And then you think that there would be enough water from the other three leases to cover the needs?

MS. de NAIE: Well, you know, I came across…I do, and I'll tell you why. I came across a very interesting article, and you can look it up yourself in *Environment Hawaii* from 1997. And at that time, the head of EMI…it quotes the head of EMI in the 1970s, Mr. Scott, and EMI has been putting on the spot, because someone challenges EMI 'cause they're making so much money on the County by diverting water from Nahiku, which is a very low-lease rate. It's the cheapest lease of all the leases 'cause it's the furthest away. And it goes, the…it was Life of the Land challenged this lease arrangement, and Mr. Scott from EMI said, oh no, no, you know, we send hardly any water from Nahiku to…in fact, I don't think we send any water from the Nahiku lease area to the County, in fact the

County, only 14 percent of the Upcountry water system uses water from our ditches, they have their own pipes. So, that's not exactly what we hear when we have the County come and testify. Now, it's true, in extreme drought situations, the County really needs to use the Wailoa Ditch. The Wailoa Ditch does go all the way to Nahiku. But basically, this is three streams. It's Hanawi Stream, Kapaula Stream, and Makapipi. Makapipi already no water is supposed to be taken from it. So, it would be two additional streams that would not have water taken from them, and their tributaries, you know. They each have…Hanawi has a couple tributaries, and I think Kapaula might have a tributary as well.

COUNCILMEMBER PALTIN: And you don't think…so, that was written about 22 years ago?

MS. de NAIE: It was, yeah.

COUNCILMEMBER PALTIN: With climate change and whatnot, you think --

MS. de NAIE: Would they need more water --

COUNCILMEMBER PALTIN: --it still applies?

MS. de NAIE: --eventually? It's possible, but, you know, climate change, the best way to deal with climate change is not just to go and try to find more streams. The best way to deal with climate change is to take care of the watersheds, and that's off the table in the EIS. There's not one mention of restoration, the potential of restoration for productivity of watersheds, whereas, this is a Statewide topic, you know. The State had the forest follows the…the rain follows the forest initiative to help care for watersheds. It's kind of…it's like basic Hawaiian knowledge. If you take care of something, it serves you better. And so, there's no part of this in the plan. So, to me, if I was going to hedge against climate change, I would have more storage 'cause climate change means longer duration of like flood --

UNIDENTIFIED SPEAKER: Drought.

MS. de NAIE: --conditions and intense rainstorms, and then nothing for a while. Well, just diverting three more streams may not help you there, but having millions of gallons more of storage would because you could get through that dry time, and then when it rains again, you know, you have water.

COUNCILMEMBER PALTIN: Thank you. Thank you, Chair.

MS. de NAIE: Great questions --

CHAIR SINENCI: Thank you.

MS. de NAIE: --you guys. Thank you.

CHAIR SINENCI: Member Molina, did you have any --

COUNCILMEMBER MOLINA: No . . .*(inaudible)*. . .

CHAIR SINENCI: --ninaus? Lucienne, I had a question --

MS. de NAIE: Oh, okay.

CHAIR SINENCI: --and it's just from one of my constituents. So, their concern was, you know, this is a, I guess the public trust, and when you…we speak about Mahi Pono and being the connections to the Canadian pension fund, the question was how is it that like another country would be in charge of a public trust? So, who would be, I guess the police in taking care of our public trust if the lease goes through?

MS. de NAIE: Well, the regulatory authority lies with the Board of Land and Natural Resources because it…these are public trust lands, they're State lands, they issue the permit. So, they could issue the permit to someone from Tunisia. They could issue a permit to someone from Keanae. I think the thing is they should have a criteria for issuing the permit no matter who it comes from. I'm not aware of any law that says an entity that might have some basis on the mainland or in another country is not allowed to use water resources here. In fact, I think there have been several incidents of companies from Japan or other places that wanted to bottle water here in Hawaii from, you know, public trust resources from underground, you know, well water, and sell it. And I don't think that there was any law against that. They just had to get all the proper permits, and it had to be, you know, not have impacts. So, I don't know if that helps answer your question, but people are --

CHAIR SINENCI: It does.

MS. de NAIE: --concerned. It was…back in the days of the Water Board, when Jonathan Starr was on the Water Board, that was one of his chief concerns. He goes, I'm a business person, this is like a ripe plum ready to be picked by some international corporation. This is the largest private water system in the world, and someone could buy it up.

CHAIR SINENCI: Thank you. And just a follow-up question, we're in receipt of Senator Kai Kahele's letter to the Mayor, asking him that the County should actually apply for a lease for their agricultural or…and domestic use Upcountry. Is that a possibility too?

MS. de NAIE: Well, you're going to need to talk to your Corp. Counsel about that, but I'll give you a layman's view. It's like there's an application online that you can apply for a lease of use of State water, you know. People lease State water from various streams. They're not the County. Is the County preempted from asking for the same lease area as A&B, I think that's one of the questions, or Mahi Pono? And if so, would one be given advance status over the other? My understanding of the Water Code is domestic use is considered a higher priority along with Hawaiian Home Lands and traditional and customary use like growing kalo. Those three are at the kind of the top of the pyramid,

and then private users for agricultural purposes are below, which is Mahi Pono's stated intention. Of course, everybody wants to have some sort of a useful mix 'cause we don't want to see, you know, ag completely go away from Central Maui. So, I think it's a matter for the County to consider if they could get a lease perhaps just for one of the lease areas maybe. They don't have to apply for every lease area. It's very interesting, we're a new territory here because of course, there's been one owner of this system for a long time, and now, there's a new owner. And so, it makes you think, well, could there be another arrangement? It's not very well-discussed in the EIS. The EIS, the draft EIS basically just says well, nobody else could really do this, you know, it'd be very tough, and it's not set up to transfer to anybody else. You know, this is a legacy operation. It's very complex. All that's true but --

CHAIR SINENCI: Okay.

MS. de NAIE: --it doesn't mean that there couldn't be some other way that the County could assert its security for water and not have to go through a third-party.

CHAIR SINENCI: Okay. Thank you. We have a follow-up question --

COUNCILMEMBER KING: Well, I --

CHAIR SINENCI: --from --

COUNCILMEMBER KING: --just wanted --

CHAIR SINENCI: --Chair King.

COUNCILMEMBER KING: --to say that this…I think that's a separate issue from the issue of making comments, but it is a part of our…or was a part of our original packet was the letter that was sent by Senator Kai Kahele with that application attached to it. So, if we wanted to follow up at some later time, we might even consider, since the letter went to the Mayor, might even consider, you know, doing a resolution urging the Mayor to look into, you know, this application or something but…

MS. de NAIE: You would know more. If he put an application in, you would get some feedback from the State whether --

UNIDENTIFIED SPEAKER: True.

MS. de NAIE: --they considered it appropriate or not.

CHAIR SINENCI: Good point.

MS. de NAIE: Yeah.

CHAIR SINENCI: Thank you. Thank you --

UNIDENTIFIED SPEAKER: All right.

CHAIR SINENCI: --for your testimony.

MS. de NAIE: Thank you.

CHAIR SINENCI: Ms. Apo Takayama, can we go out to Hana, our District Offices, or we're going to Mr. Law? Ms. Mavis Oliveira-Medeiros, do you have any testifiers there? Can you hear me?

MS. OLIVEIRA-MEDEIROS: Aloha, Chair. This is Mavis Oliveira-Medeiros in the Hana Office, and I have two testifiers, Joss Akoi, EACP-22; and John Longmire, same, EACP-22. So, here's Joss.

MS. AKOI: Aloha, Council. My name is Joss Akoi, and I've been a Hawaii resident from my birth. I've been a Department of Education teacher for 24 years, and I want to testify on EACP-22. So, really my argument is two-fold. First of all, we need an intact watershed to restore and also to preserve our native environment, our natural environment, and we need all of our water back. Two years ago, we put together a curriculum in fourth grade that use the comments for science standards. We use social studies standards using Hawaiian history and Hawaiian culture, and we folded in art and social emotional learning. And the outcome was phenomenal. We had 87 percent proficiency rate on the HSA science test. Only three students didn't pass, and they were in the 290-range, it's 300 to pass. And those were…that was an integrated special needs classroom with five or more special needs student, and they were passing the test. And I thought they passed because the natural environment was important to them. It was real. To me, the children are like the canary in the coalmine, and they need to have beauty and help around them. And our natural environment is that. So, that's one part of my argument. The second part is that Prince Jonah Kuhio Kalanianaole, when he was granting some of these leases to EMI, he put stipulations in there. And there's a…I…it's not kanawai, I don't know what the…his term for what the…there was a kuleana water rights act put into place that the kuleana farmers even if with the leases for the water, they got the water that they needed. And we are seeing that there is not enough water there for the kuleana farmers, and there's not enough water for the programs that are supporting the children and to support a healthy watershed. So, please restore all of our water back and honor the agreements that have already been put in place, and the fact that the people of Hawaii have already spoken. Mahalo.

CHAIR SINENCI: Mahalo, Ms. Akoi.

MS. OLIVEIRA-MEDEIROS: And, you guys, have --

CHAIR SINENCI: Mavis…

MS. OLIVEIRA-MEDEIROS: --any question, Shane?

CHAIR SINENCI: Mavis, I did have a --

MS. OLIVEIRA-MEDEIROS: I mean --

CHAIR SINENCI: --just a comment.

MS. OLIVEIRA-MEDEIROS: --Member Sinenci.

CHAIR SINENCI: I had a comment --

MS. OLIVEIRA-MEDEIROS: Okay.

CHAIR SINENCI: --to Mrs. Akoi. You know, on, Members, on Page Roman numeral X, in the executive summary, it does mention some social context, and it says mitigation needs to go beyond the physical restoration of streams and needs to address the social context and include apology and reconciliation. This needs to be done within a cultural foundation that binds the community together and key players. So, the manner and forum of this process should be defined by the cultural leaders integral with the process. So, thank you, Ms. Akoi, for bringing up the social aspects of this lease. Any questions for the testifier? Okay. Ms. Mavis, you have another testifier?

MS. OLIVEIRA-MEDEIROS: Yes, I have John Longmire --

CHAIR SINENCI: Mr. Longmire?

MS. OLIVEIRA-MEDEIROS: --EACP-22. Here he is.

MR. LONGMIRE: Aloha, Council. My name is John Longmire.

CHAIR SINENCI: Okay. We…did you touch something? Don't touch anything. Did we lose…

MS. APO TAKAYAMA: Yeah, I think we lost them.

CHAIR SINENCI: Okay. Mavis? Members, while we're waiting, I did forget to mention our two other Members that are excused today, Ms. Alice Lee and Ms. Yuki Lei Sugimura, and they may be joining us later on in the day.

MS. OLIVEIRA-MEDEIROS: *. . .(inaudible). . .* Hana Council Office. This is Mavis.

MS. APO TAKAYAMA: Hi, Mavis. I think we got disconnected.

MS. OLIVEIRA-MEDEIROS: Oh, I'm sorry.

MS. APO TAKAYAMA: Okay.

MS. OLIVEIRA-MEDEIROS: Okay.

MR. LONGMIRE: *. . .(inaudible). . .*

MS. OLIVEIRA-MEDEIROS: Okay. *. . .(inaudible). . .* here.

MS. APO TAKAYAMA: Okay.

MS. OLIVEIRA-MEDEIROS: Hang on.

MS. APO TAKAYAMA: Thank you.

MR. LONGMIRE: Hello, this is John Longmire, and I'm a East Maui resident and a lifelong Hawaii resident. Living here in East Maui, how the diversion of the water affects me and the other residents is it changes the future lifestyle by providing a lack of life. The division is affecting streams, aquatic habitat, aquifers, near-shore fisheries, and Native Hawaiian cultural practices. And this is just something that, you know, is a concern of the community. It's stressful for me. I'm a guy in recovery. I'm semi-retired, and I know I get a chance to speak to a lot of the local residents, to a lot of the Native Hawaiian residents, and to learn the history of East Maui Irrigation, and it's something of great concern in the community at this time. You know, the only experience I have with East Maui Irrigation is from a personal matter with a property that my ohana has in Haiku, where there's an easement running through the property that East Maui Irrigation has held onto from a basic agreement in 19_____. And when we challenged it trying to get a additional water meter, it was…it made it so restrictive because we couldn't build anything 30 feet either side of that easement, and that created a lot of stress for our family. But the interesting thing is, it also really restricted our ability to build on the property. And also, when asked if it's a easement and the aqueduct running under the property was active, Maui…East Maui Water [*sic*] said, no, it's not active, it hasn't been used in years. And we asked, could you please, you know, sign off on the rights so we could get…have a chance to get an additional water meter. And they said, no, we're unable to do that. So, again, East Maui and the residents are greatly affected, especially the next generation coming up. So, I thank you for your time.

CHAIR SINENCI: Mahalo, Mr. Longmire. Members, any questions for the testifier? Seeing none, thank you for coming out and providing testimony.

MR. LONGMIRE: Thank you.

CHAIR SINENCI: Mavis, is that all? Okay. We can go out to Molokai District Office. Any testifiers there, Ms. Lindo?

MS. LINDO: Aloha, Chair. This is the Molokai District Office and there are no testifiers.

CHAIR SINENCI: Mahalo. Lanai District Office, Ms. Fernandez?

MS. FERNANDEZ: Good afternoon, Chair. This is Denise Fernandez at the Lanai Office and there are no testifiers.

CHAIR SINENCI: Thank you. And then, it looks like we have one more testifier in the Chambers.

MR. LAW: Hi, Shane. Jasee Law from Kula. Bob Carroll, your predecessor, sends his aloha. I've seen him earlier today. Hey, that blue shirt looks good on you. Did you wear that for the streams today?

CHAIR SINENCI: I did.

MR. LAW: So, I'm from Waiakoa ahupuaa, and I'm wondering how…why…does anybody know why they call it Waiakoa 'cause wai is water, and I believe koa is wood? It's…does anybody…

CHAIR SINENCI: Koa could be like strong too.

MR. LAW: Okay. Wai --

CHAIR SINENCI: Or…

MR. LAW: --is water though?

CHAIR SINENCI: Yeah, there's multiple meanings.

MR. LAW: Okay. I just thought maybe there used to be water up there where I'm at, but there isn't --

CHAIR SINENCI: Or koa --

MR. LAW: --any.

CHAIR SINENCI: --yeah.

MR. LAW: There isn't any anymore. So, I appreciate the County guys. At least, having water available at the parks up there because there's not too many places that you can get water when you're thirsty. And yeah, that's about…oh, and I'm…I was…if they can charge you for water, when is going to be the day when they can start charging us for air?

CHAIR SINENCI: Okay. Thank you. Any questions for testifier? Seeing none, is there anyone else in the Chambers that wanted to provide testimony? Okay. So, Members, seeing there are no more individuals wishing to testify, without objection, I will now close public testimony.

COUNCILMEMBERS: No objections.

. . . END OF PUBLIC TESTIMONY . . .

CHAIR SINENCI: Thank you. So, Members, we had two items, but we had a request earlier to take the items on the agenda out of order, if there are no objections.

COUNCILMEMBERS: No objections.

EACP-33 AMENDING SECTION 18.08.020, MAUI COUNTY CODE, RELATING TO PRELIMINARY PLAT PREPARATION AND SUBMISSION (CC 19-395)

CHAIR SINENCI: So, we would go ahead and take up EACP-33, Amending Section 18.08.020 of the Maui County Code, Relating to Preliminary Plat Preparation and Submission. And I believe we have Mr. Jordan Hart, from the Department of Planning. If you wanted to join us up here. And the purpose of this item is to require project signs posted for subdivisions of land within the Agricultural Zoning District. And since this bill was proposed by Chair King, I'd like to allow her to speak on the item, and explain her…the intent.

COUNCILMEMBER KING: Okay. Thank you, Chair. This was actually proposed a long time ago, and that the one of the reasons I asked Lucienne de Naie if she would stay and become a resource for both items is this item was something that she had worked on years ago before any of us were on the Council here today. I don't know, maybe Mr. Molina was on it back then, because it did come to Council. It passed out of committee. It passed out of the first reading. And then in the second reading, it got sent back to committee. So, I was hoping that Lucienne could maybe explain, unless Mr. Molina has a recollection of that happening. So…anyway, it's something that we resurrected on her request because of what she spoke about earlier, and I've had the same experience with constituents where they don't know what's going on on Agriculturally-zoned land until it starts happening, and all of a sudden, it's in development. There's right now no requirement for notification of anybody for building on Ag or for creating an Ag subdivision, and that was one of the issues that came up in the Planning and Sustainable Land Use with the Maalaea requesting that rezoning is that once…if we were to go ahead and just rezone it Ag, it's out of our hands even though they're showing us plans for an Agriculture subdivision. It could change wildly. There's no conditions on it. So, this was originally intended when it came up before to bring more transparency to developments that are happening on Agricultural lands. So, if I…if it's okay, can we have Ms. de Naie speak to, if she has knowledge…are you still here?

CHAIR SINENCI: Sure. Ms. --

COUNCILMEMBER KING: Oh, yeah.

CHAIR SINENCI: --de Naie?

COUNCILMEMBER KING: If she has knowledge about why it got sent back to Committee?

CHAIR SINENCI: After? Okay.

MS. de NAIE: Thank you, all, again. Okay. This is a ways back, but as I recall, it was part of a bill that had a larger scope of transparency for Agricultural subdivisions. Besides the sign being posted, there was also the requirement that the subdivisions would have a public hearing and various other things. And I'm sorry, I don't have it right in my mind, you know, all those different things, but it was at least a several different requirements so that there would be more accountability when the large subdivisions went in. And of course, I think the bill was introduced after the sliding scale and the Ag bill. I think it was in the early 200s --

COUNCILMEMBER KING: Two thousands.

MS. de NAIE: --or 2000s, that it was introduced.

UNIDENTIFIED SPEAKER: Two hundred is a long...

MS. de NAIE: And before that, you know, if you had a 100 acres of Ag land, you could make 50 lots, and no one would know and you wouldn't have to do anything. You could just put a few roads in, and that's why we have a lot of substandard neighborhoods where then people don't have a water system or don't have good roads or whatever, and they're begging the County to come in and help them. So, after the sliding scale, you had a certain number of lots that could be made, and there was kind of a formula that you had to follow. So, it made it so that you had some two-acre lots, but you had larger lots that could be possibly more useful for farming. But even those kind of Ag subdivisions often get kind of abused. They do a consolidation and re-subdivision process. A large one was just done in Haiku, I think it was 41 lots, and they didn't actually have to officially subdivide a lot of them. They had separate little tiny TMKs that they could just consolidate and re-subdivide into more salable size of lots, and then they actually subdivided one large section that was left over. So, it can be very hard for citizens to kind of know anything is going on. One day, you just see some bulldozers showing up and starting to, you know, make roads. And I know on this particular subdivision I'm referring to, the school was very concerned because it adjoined our Haiku Elementary School, and it adjoined the entrance to the kindergarten. And there was absolutely no provision that you meet with the community in the Ag Subdivision Ordinance. You know, there's just nothing. Of course, you know, you don't want to make it hard for some family that's going to do their three-lot family subdivision, but that isn't what these are about. This is about if you have hundreds of acres of land and you're going to, you know, make some housing out of it. So, it's just a way of notification. So, as I recall, the whole thing got kind of sent back because it was controversial, and, you know, there's a lot of large landowners here that have big chunks of Agricultural land,

not a one of them was in favor of having more regulation of Agricultural subdivisions. I haven't tested the waters on how people feel about signs, but they seem sort of minor. You know, posting a sign seems a very minor thing in terms…but it's huge for the public 'cause at least the public knows what's going on.

CHAIR SINENCI: Thank you --

COUNCILMEMBER KING: So --

CHAIR SINENCI: --Ms. de Naie.

COUNCILMEMBER KING: --also, just to let the Committee know that the bill that we were working on was the previous bill, and it got…OCS…working with OCS, and I think Kasie was one of the people working on this bill, we split it into two bills because it was addressing two different chapters I believe.

MS. de NAIE: Yeah.

COUNCILMEMBER KING: So, there is another bill that was kind of like a companion bill to this one that addressed the other piece that you were talking about, Lucienne, which was public input on the subdivisions. And…but this is the one that just speaks to the sign issue and notification. So, what was the other…the other one got submitted as well? Okay.

MS. APO TAKAYAMA: Yeah, the other item is EACP-34. So, it's amending Title 18.

COUNCILMEMBER KING: Okay. And this one is amending…it's the same, it's a…it's still under Title 18 but it's a different section?

MS. APO TAKAYAMA: Yeah.

COUNCILMEMBER KING: Okay.

MS. de NAIE: Yeah, it's a different section 'cause one was about the Subdivision Ordinance and the other was about what you do on Ag land as I recall, yeah.

COUNCILMEMBER KING: Right. So, that's why we're looking at half of what she originally was talking about.

CHAIR SINENCI: Okay.

COUNCILMEMBER PALTIN: So, the other one is the…oh, sorry.

CHAIR SINENCI: Member Paltin, you had a comment?

COUNCILMEMBER KING: I'm done. Go ahead.

COUNCILMEMBER PALTIN: Okay. So, the other one is the consolidation and re-subdivision, and we cannot look at them together?

CHAIR SINENCI: That one wasn't agendized, just --

COUNCILMEMBER PALTIN: Oh.

CHAIR SINENCI: --this one.

UNIDENTIFIED SPEAKER: Yeah.

COUNCILMEMBER PALTIN: Oh, okay, okay. That…I think that was my question because it's super similar like when folks do the consolidation and re-subdivision, same kind of thing that nobody knows what's going on, and the --

COUNCILMEMBER KING: Well…

COUNCILMEMBER PALTIN: --next thing you know, there is this whole new subdivision.

COUNCILMEMBER KING: Yeah. So, the other bill was speaking to the need for public input, you know. So, it was…it might not be the same bill you're thinking of. It was --

COUNCILMEMBER PALTIN: Oh.

COUNCILMEMBER KING: --actually requiring public hearings…

MS. de NAIE: Yeah, it was requiring a hearing at the County Council I believe, a public hearing at the County Council. And then the draft version that I read, it had the Council giving sort of advisory remarks, but it wasn't clear what the Planning Department had to do with those remarks. So, I don't know if that part got kind of clarified or not, but I need to track that, whatever phase it's in now.

COUNCILMEMBER KING: Okay.

COUNCILMEMBER PALTIN: So, in that case, is it within our purview to also have the consolidation and re-subdivision together with the preliminary plat notification? Like if this bill isn't talking about a public hearing, it's just talking about --

COUNCILMEMBER KING: Signs.

COUNCILMEMBER PALTIN: --signs, could we also include signs for efforts to consolidate and re-subdivide? Or is that not okay because it's not part of the agenda?

CHAIR SINENCI: Ms. Thomson, did you want to respond?

COUNCILMEMBER KING: If this applies to…

MS. THOMSON: Thank you. I think that we would need to post that on a separate agenda because these are…while it may look like these are short bills, they're actually…they kind of implicate a lot of different powers and issues. So, we would want to see it in a future agenda.

COUNCILMEMBER PALTIN: So, would it be okay to like copy majority of the verbiage, and instead of Ag subdivision, just put consolidation and re-subdivision?

CHAIR SINENCI: Ms. Thomson?

MS. THOMSON: I haven't had the opportunity to take a look at the…that other proposed bill. In fact, I wasn't able to actually take a look at this one until today. I didn't realize it was on the agenda. But even just a really preliminary look, I can see a lot of things that would need to be ironed out before I think we would take action on it.

COUNCILMEMBER PALTIN: Oh, this one that already went --

MS. THOMSON: Yeah, and --

COUNCILMEMBER PALTIN: --to --

MS. THOMSON: --even…

COUNCILMEMBER PALTIN: --second reading?

MS. THOMSON: Right, even this --

COUNCILMEMBER PALTIN: Oh --

MS. THOMSON: --one.

COUNCILMEMBER PALTIN: --okay.

CHAIR SINENCI: Okay. Chair would like to recognize Director Rowena Dagdag-Andaya and Deputy Director Jordan Molina. And so, we'd like our departments to weigh in. We also have Mr. Hart here from Planning. Did you guys have any comments?

MS. DAGDAG-ANDAYA: Thank you, Chair. And again, for the record, Rowena Dagdag-Andaya, Department of Public Works. We received the agenda a few days ago. So, we didn't have that much time to really review this with staff. But initially, from the get go, I think we realized that this would be an impact on operations at Public Works Department 'cause this would be a new requirement for all Agricultural subdivisions. We have, you know, just some general initial comments. Would this also be applied to County-sponsored subdivisions in the Ag District where we have, you know, just small

types of land subdivisions for road right-of-way acquisitions? So, I think we need to be a little bit clear as to who this would apply to because now, does it apply to County-sponsored projects? The…we initially also had a question regarding the first sentence. If you look at your draft ordinance, letter A, the subdivider, and then you have the parenthesis there, shall have prepared a…by a surveyor, you have that in parenthesis.

COUNCILMEMBER KING: It's bracketed.

MS. DAGDAG-ANDAYA: A bracket, yeah, a preliminary plat. So, it reads, the subdivider a preliminary plat, together with such improvement plans and other supplementary material required to indicate the general programs…program and objectives of the project, then you have prepared by a surveyor. I think you need to maybe look at that sentence one more time 'cause the first couple words, there may…the bracket might be in the wrong location. We did also want to reach out to the Planning Department to see how their process works with signage and noticing. We've never done that before at Public Works. So, I think in terms of enforcement, that might be an issue. And, you know, we just had a, you know, maybe just some small questions about the requirement for noticing and providing the phone number, how calls would be documented, how are written protests are tracked. But overall, the question that we had was, you know, and we always ask this in Public Works, is what problem are we trying to solve here, and is there data that shows that there is a problem. I understand from, you know, just listening to the discussion just now, there is a concern by our residents wanting to know what is going on with the construction work that's taking place in their communities. So, maybe, you know, that's something that we can take a look at. And no provision for meeting with the community, so maybe that's something that we should also discuss as well, you know, how would…generally, I know I understand public notice is really important in providing transparency. So, maybe coming up, you know, maybe we can come up with some ways to address that. So, I, you know, I do want to engage in discussion with the Councilmembers on this matter. I understand too that you may have questions of your own. Our Department certainly has questions. And I think what we'd like to do is open up this…that discussion in just written communication, maybe being allowed to provide written comments to the bill, and perhaps vetting it out in the community as well because it's not just big landowners that you're going to affect, it's also the small-family type of subdivisions that might be affected. So, those are the comments that I have for now, but I'm assuming that, you know, as, you know, we work on this, I'll…we'll…the Department will have more to offer.

CHAIR SINENCI: Thank you. Mr. Molina, you had any comments? None. Mr. Hart, did you want to weigh in?

MR. HART: Thank you, Chair. Just a few comments on the ordinance as it's drafted. The first being that perhaps the purpose should encompass all of the things that are described in the bill itself below. The second, just a question on the 24-hour contact, you know. Is it appropriate or reasonable for the applicant or the Department of Public Works to expect to field calls during normal business hours? Just a question on the purpose of

the collection of the protest by a deadline, you know, it doesn't seem that there's any indication of what to do about or with the protests. A practical matter, subdivisions often take multiple years just so…just being aware that you're…you will have signs up for years at a time. And a final thought, you know, if the issue of concern is the function of the Agricultural District, then, you know, perhaps looking at the Agricultural District itself is what you're looking for. But we're kind of just in a…giving comment on the ordinance as it's drafted now and trying to get a better understanding of the direction that the Council is trying to go in on this. Thanks.

CHAIR SINENCI: Okay. Thank you, Mr. Hart.

COUNCILMEMBER KING: So, Chair, so, maybe --

CHAIR SINENCI: Chair King?

COUNCILMEMBER KING: --this needs to come back with the companion bill, and maybe it needs…I think one of the things that happened with this bill, because it was so old that one day we drafted it when OCS was…we were…did we work with Alison on this?

UNIDENTIFIED SPEAKER: *. . .(inaudible). . .* Christy.

COUNCILMEMBER KING: Christy, yeah, she's not with us anymore. But we had…we…when we separated it into two separate bills, you know, now, that we're getting comments on things that are on the other bill actually. So, maybe we need to take another look at, and then bring these two bills back together if they need to be in tune, and then we can incorporate Ms. Paltin's concerns into the public notice one. And I'm not sure why…I just was texting earlier to Dave Raatz to find out why it came to us without Corp. Counsel's signature on it. So, I know there was a reason why, but I can't remember why it didn't get signed by Corp. Counsel. So, you know, I'm happy to take this back and work on it some more, and try to incorporate Member Paltin's concerns, and then make sure that we…if we can bring them back together, so that they kind of complement each other. But, you know, we'll go get comments from Public Works and Planning on that. I think they know…I think hopefully, they understand the reasons for this at this point, and we just have to kind of work out some of the details, but…and then maybe, we have to look…work out the protections of people with, you know, one or two Ag acres that is in the family purview or something like that. So, good discussion I think, you know, to understand what the details are that possibly held it up last time, and then we can move forward.

CHAIR SINENCI: Okay. Would that be the will of this body that we bring this back with the other companion bill? And of course, with some of the comments made from Director Andaya. Member Kama?

VICE-CHAIR KAMA: Thank you, Chair. Yeah, 'cause it's not clear to me why we're doing this, and maybe it's because it is a previous legislation and that might…I don't have…I don't know the history. So, I think it'll be helpful if we had the history that was…that's

incorporated someplace in this document somewhere. And then also, if it could be clearly stated, I mean if you anticipate a protest, then you have to anticipate what's going to happen with that protest. It says right there, item 6, Section 2, a provision that the owners and lessees of record within a 500-feet…foot radius of the proposed subdivision may file a written protest with the director via fax…all protests must be postmarked…okay, so, I'm going to file a protest, but who's going to do what about it, who's going to act upon it, how am I going to get my justice if --

UNIDENTIFIED SPEAKER: Sorry.

VICE-CHAIR KAMA: --all I'm doing is writing this letter? So, if that would be spelt out clearer, that would be great. Thank you.

CHAIR SINENCI: Thank you --

MS. de NAIE: Chair, could I --

CHAIR SINENCI: --Member Kama.

MS. de NAIE: --speak to that a moment?

CHAIR SINENCI: Okay. Yeah.

MS. de NAIE: There was a surprise Ag subdivision in Huelo where I lived. And one neighbor, because it was in a Special Management Area, got a notification 'cause they lived within 500 feet. So, if you're in the Special Management Area, and you do an Ag subdivision, you need to notify your neighbors. And when people went to the different departments and explained that this person was like misrepresenting like the size of the road and other things, the agencies were actually grateful to receive that information because they couldn't get out there and look. And so, I think that this may not be a source of annoyance all the time, it might be a source of useful information. But it probably should be streamlined so that there's like a website that you could post on, and there's like a…if you get a certain amount of messages, that someone gets back to the person and says, you know, we have this under review, if there's any additional information you want to…you know, a form reply. It just seems it would help the County do due diligence. I mean this person was trying to have a retreat center on a road 12-feet-wide. I think the County would want to know, and they're probably not going to drive out there. So, it could be helpful in some ways.

CHAIR SINENCI: Okay. Thank you. Member Paltin, and then Member Molina.

COUNCILMEMBER PALTIN: I was just going to request from Deputy Director Hart if he could elaborate on what he was mean by addressing it through the Agricultural Districts?

CHAIR SINENCI: Mr. Hart?

MR. HART: More that, you know, based on when you read through the draft ordinance, what is the conclusion of the intent? It really isn't completely clear. I mean there is the notification aspect of it that's clear, but beyond that, what is the intent? And so, if there is some other intent, is that better addressed through the Ag Zoning Ordinance or not? It was more of a question than --

COUNCILMEMBER PALTIN: Oh.

MR. HART: --we understand what you're trying to do. We…beyond notification, it's not exactly clear, you know, what the purpose is. And if there is a greater purpose, is that better addressed through the Zoning Code or is it…is this the vehicle?

COUNCILMEMBER PALTIN: And my understanding of the purpose is like a notification appeals process. Is that not what your understanding is?

MR. HART: I see the notification, and I see timing on and opposition, but I don't see anything regarding any decision-making over opposition or any sort of appeals discussion, or anything of that nature. It basically ends at get your appeal in or your complaint in within 45 days, and then that's essentially the conclusion.

COUNCILMEMBER PALTIN: And that's something that you guys could work with Chair King on clarifying if that's was the intent, a notification and appeals process for Ag subdivisions or consolidation and re-subdivision, where people have these large projects like pop up with no say for them or no notice.

MR. HART: What I do want to…I think it's really important to acknowledge that the Department of Public Works administers this section of the Code, and we end up being a commenting agency in the context of establishing land use compliance for the proposed subdivisions, or in the situation where they're proposing something in a Special Management Area or other land use issues are at play. But I really think that this is, you know, we're participating on this, but this is really, you know, Public Works, I believe, is the lead on this situation.

COUNCILMEMBER PALTIN: Is it because it's kind of modeled after the B&B or the TVR notification that they're bringing you here today?

MR. HART: I believe we were invited by the Committee to be…Council Services to attend. So, you know, whoever called for us to be…I mean we're happy to come and I did provide comment. Whoever called for us to be invited, I guess that would be the person to let you know why I was invited. With regard to the working with Public Works on how we administer notification or signage, that's no problem. We can touch bases on that. I guess what I was trying to say is the overall question of purpose of this potential legislation and things like that. I really think that Public Works is the primary agency, as it pertains to subdivisions. Thanks.

COUNCILMEMBER PALTIN: Thank you.

CHAIR SINENCI: Thank you. Ms. Thomson, did you want to weigh in?

MS. THOMSON: Thank you. I just wanted to kind of tag along with what Mr. Hart is saying that if we understood better what the intent of the ordinance is, we could help the Council to get to that goal. Through the Zoning Code, you can restrict the, you know, like the minimum lot sizes. So, some of the problems that I've heard may be…might be related to this, you know, with the two-acre minimum lot sizes. So, in certain areas, you know, the Council could look at that through the Zoning Code rather than, you know, this public notice comment protest. I'm not sure what the end goal is because the subdivision approval process involves usually Public Works, and, you know, with input from other agencies making sure that, you know, the General Plan and community plan zoning, that those are all followed. So, I think what we're trying to get is…at is, and we want to make that we understand what the body's goals are, and then we can help.

COUNCILMEMBER PALTIN: Can I ask a question on that?

CHAIR SINENCI: Okay. We had Mr. Molina, and then we'll come back down.

UNIDENTIFIED SPEAKER: Okay.

COUNCILMEMBER MOLINA: If Member Paltin just has one question on it, a comment from Corp. Counsel, I'm fine, I can wait.

CHAIR SINENCI: Okay. Thank you. Go ahead.

COUNCILMEMBER PALTIN: I just was wondering, so, you're saying that Public Works has the authority to approve subdivisions whether they're Agriculture or consolidation and re-subdivision, or deny?

MS. THOMSON: Yes. So, under the Charter, it's Chapter 5. So, Department of Public Works, Powers, Duties, Functions, so, approve proposed subdivision plans, which are in conformity with the Subdivision Ordinance, which is Title 18.

COUNCILMEMBER PALTIN: Thank you.

CHAIR SINENCI: Okay. And then, Ms. Thomson, Ms. de Naie mentioned about SMA. So, the SMAs would require like a public review versus if it's not in an SMA area?

MR. HART: There are exemptions and there can be minor permits. So, there can be an administrative component to it to accommodate the SMA review portion of it, but then there also can be triggers for an SMA major permit, which requires public notification and public hearing before the Maui Planning Commission or any Planning Commission Countywide, sorry.

CHAIR SINENCI: Okay. Thank you. Mr. Molina, then Ms. Kama.

COUNCILMEMBER MOLINA: Yeah, thank you very much, Mr. Chairman. I support your suggestion about, you know, bringing this back again to provide more clarity to the proposal, but I can certainly support this. And I know why maybe one of the reasons may be the community wants transparency 'cause especially in the district that I represent, which is…especially Haiku area, there have been some subdivisions that have just suddenly popped up and to the surprise of many, and not everybody can take the time to go to a community association meeting or read their newspaper. So, I think it's important that we provide as much opportunity for the public to understand what's coming up in their neighborhood. And of course, you have the advent of social media and Facebook, but we all know sometimes, there's a lot of misinformation put out on social media as well. So, I think this is a good step for additional notification of the public. Something we need to consider I think again is…are the parameters or the requirements for a sign to be posted. I believe like Director Dagdag had pointed out, if there's going to be a proposal for what, a 50-unit subdivision that's coming up, then we need to put a sign requirement, or if it's just a, you know, what if somebody --

CHAIR SINENCI: Family.

COUNCILMEMBER MOLINA: --just wants to put a single home, single-family home on it. I mean does that constitute a requirement for a sign? So, I think we need to have those parameters established and what type of specific information we want to put on a sign. I know signs are somewhat limited unless we want to put a gigantic sign with all the details. So, I think we have to look at that as well. And what was said earlier, I can agree with about the comment portion, which department will get this? I believe Mr. Hart stated it should come under the…maybe the jurisdiction of the Public Works, who…they will receive the comment, and then as far as an appeals process from the public, if they are concerned about this, whatever is coming up, how does the public appeal this? So, those are just some of my suggestions --

CHAIR SINENCI: Thank you.

COUNCILMEMBER MOLINA: --to look at when we bring this matter back to your Committee. But thank you again. I appreciate Lucienne for doing this 'cause I think it's important for the public to be in the know. And to the public's credit, they're becoming more interested in what goes on in their community, and especially as our island grows, it's so important. So…anyway, thank you.

CHAIR SINENCI: Mahalo, Mr. Molina, for your comments. Ms. Kama, you had some --

VICE-CHAIR KAMA: Yeah, so I just --

CHAIR SINENCI: --comments --

VICE-CHAIR KAMA: --wanted to --

CHAIR SINENCI: --to share?

VICE-CHAIR KAMA: --say the article that I read, the item that they're protesters. I don't know if that's a good word. I mean to me, I just think if I saw something going up in my community, I wouldn't want to be noted as a protester. I'd like just maybe out of curiosity, maybe just out of concern, or just inquiry, but I don't like the word protest because I think if people are going take the time to write a letter, it would be more of a letter of inquisition and inquiry as opposed to protest. But also, I think that people don't write as much, at least I know my local people don't, they just pick up the phone and they complain, and they tell me or they ask me, and I tell, okay, I'll get back to you. But I mean just if it's…I'd like to at least leave all the options open for people to want to inquire or to protest, that not only the written form, but just picking up the phone maybe.

CHAIR SINENCI: Thank you, Member Kama.

VICE-CHAIR KAMA: Thank you.

CHAIR SINENCI: And I did want to share that, you know, we do have our community plans process, the CPAC. And I know sometimes, you know, things come up before because it takes so long, but I mean that was supposed to be our County-led process so that we could designate, you know, kind of get the community strategic planning, where some of these developments would come up. So, we're hoping that we can all get behind our CPAC process. One last comment --

COUNCILMEMBER KING: Yeah --

CHAIR SINENCI: --Chair King?

COUNCILMEMBER KING: --thank you, Chair. So, appreciate because this is a transparency bill, having the support of our…Chair of our Governance, Ethics, and Transparency Committee support it. But I'm hearing a lot of good comments, and maybe a reason to put this back into one bill too instead of separating it, because some of the comments that were made about public input were in the other bill. So, you know, having public hearings and stuff. And I like the idea of maybe changing the word protest to all comments should be received by a certain date. But…yeah, we'll…I'll…we'll work on this a little bit more and just so everybody…so it's clear. And I think it's been said a couple of times already that the main focus of this is subdivisions, Ag subdivisions, because right now…so, it wouldn't apply to somebody who's just building one house on a single-family lot, but it's subdivisions that are the big focus of community concern because they don't know what's coming up, they don't have any say on it once the…if we change zoning. And your comment about community plan is so apropos because we've been approving projects that aren't in community plans. And so, it makes it even more important that people need to know when things like these are happening because you can't just look at your community plan, go, oh, that couldn't happen because our

community plan says it's not going to happen. So, it doesn't give us a real warm and fuzzy that that protects us against, you know, changes that we don't know about.

CHAIR SINENCI: Thank you, Chair.

COUNCILMEMBER KING: Okay. Thank you.

CHAIR SINENCI: One last comment, Mr. Molina?

COUNCILMEMBER MOLINA: Yeah, thank you, Mr. Chair.

CHAIR SINENCI: Go ahead.

COUNCILMEMBER MOLINA: I just want to add one more thing. We've been watching the news especially on Oahu, I guess. Just this morning, I saw a protest from folks out in the Kahuku community about a proposed wind turbines coming up there. And, you know, some folks have said, they just suddenly heard about it and saw bulldozers or whatever. And then also, there was a proposed park somewhere on Oahu, I forgot the place, but that's been generating a lot of news.

UNIDENTIFIED SPEAKER: Waimanalo.

COUNCILMEMBER MOLINA: So, you know, folks are getting concerned about what goes up in their community and for whatever reasons not hearing about it. But I'm sure City and County did what they felt was right to get the word out. But the signage I think, this just helps with --

CHAIR SINENCI: Yeah.

COUNCILMEMBER MOLINA: --the issue of transparency and to keep the public in the know. So, that way, nobody has an excuse that they said they didn't know about it, yeah. So --

CHAIR SINENCI: Correct, and it --

COUNCILMEMBER MOLINA: --thank you.

CHAIR SINENCI: --could stop any protesters from…I mean if everybody was well-informed, so you wouldn't feel the need to protest. Thank you, Members, for that lively discussion. And I wanted to thank our departments for supplying your guys' input, and we'll work…we'll…with you guys some more and do the verbiage on this, so it's beneficial for everybody. So, with that, Members, I'd like to defer this item.

COUNCILMEMBERS: No objections.

COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused: ALL, YKS)

ACTION: DEFER PENDING FURTHER DISCUSSION.

CHAIR SINENCI: Okay. Thank you. And then we've passed our mid-meeting mark. So, we'll take a ten-minute break, and then we'll be back here at 3:18. The…this meeting is in recess. *. . .(gavel). . .*

RECESS: 3:08 p.m.

RECONVENE: 3:26 p.m.

EACP-22 PROTECTION AND PRESERVATION OF EAST MAUI STREAMS (CC 19-119)

CHAIR SINENCI: *. . .(gavel). . .* Aloha. Will the Environmental, Agricultural, and Cultural Preservation meeting please come back to order. Members, it's Tuesday afternoon, October 15th, 3:26 in the afternoon. And we're going to go ahead and do our second item, EACP-22, the Protection and Preservation of East Maui Streams. Members, this is a conversation that was continued from our last EACP meeting on October 7th, where we discussed comments on the East Water…East Maui Water Lease Draft Environmental Impact Statement. Our purpose today is to take a look at the draft EIS, and see if it contains all the information needed for policymakers, in this case, the Board of Land and Natural Resources, to make an educated decision. My intention today, Members, is to again, review the resolution to authorize the Council Chair to write a letter on our behalf, of the County Council, incorporating ours and the public's comments on the draft EIS. So, that being said, I had put together a list of comments and questions for the applicant, and that has raised…that was raised at the last meeting by this body and our resources and our testifiers. I would like to go through those comments and take any additional comments from this body so that all of our current comments are brought to the floor, and Chair King has more information to work with in the case that we were to authorize her to write a letter on our behalf. So, I've asked Staff to distribute a list of…or the comments that was made for your consideration. To be clear again, it's not my intention to take a stance on whether or not we think A&B and EMI should receive the proposed lease, but rather to identify areas in the draft EIS that need further expiration [*sic*], additional information that needs to be provided in the document, and identify information that is not accurate. I'd also like to remind the body that all comments regarding this draft EIS are due back to the consultant by November 7, and that a formal request was sent out to ask for an extension on the commenting period. And we've received the response, you have that on…in…on your person, indicating that the deadline will not be extended. So, after some discussion with the consultant, the Office of Environmental Control…Quality Control, it was determined that the applicant has the sole authority to accept or deny extension requests. And we have…and I know there was a…or an item that was brought up on

the October 7th meeting, and so, we have Mr. David Raatz to kind of explain what we did at the last meeting, and what we're rectifying today. Mr. Raatz?

MR. RAATZ: Thank you, Chair. For the record, David Raatz from the Office of Council Services. At the last Committee meeting on October 7th, if the Committee Members remember, there was a discussion about not being ready to recommend adoption of the resolution providing substantive comments on the draft EIS, which was posted on the meeting agenda. So, towards the end of the Committee meeting, there was a move to recommend adoption of a new resolution that would merely authorize the Council Chair to request an extension of the time in which comments could be submitted on the draft EIS. Subsequently, Staff took a look at that procedure and consulted with the Committee Chair, and it was deemed not advisable to issue a Committee report recommending adoption of that separate resolution simply because it wasn't listed on the meeting agenda. And the Office of Information Practices has advised this body and other bodies subject to the Sunshine Law, that it's not consistent with public notice requirements to take action on a bill or resolution that's not listed on a meeting agenda. And so, subsequently, the Committee Chair himself decided to fulfill the intent of the Committee's recommendation at least himself, write and request the extension. So, and we do have that response back. So, what's on today's agenda is a resolution that will actually be considered on Friday at the Council meeting for adoption. So, the purpose of the discussion today is merely to offer comments that the Council Chair can subsequently consider including in her letter on the substance of the draft EIS if that resolution on Friday authorizing her to speak on behalf of the Council is in fact adopted. Thank you, Chair.

CHAIR SINENCI: Thank you, Mr. Raatz. Any questions for…Member Molina?

COUNCILMEMBER MOLINA: Yeah, thank you, Mr. Chairman. So, in following up with Mr. Raatz's comments, so, the action we took on the 7th, and based from OIP's comments then, should we look at nullifying what we did or consider maybe a reconsideration? And I know no Committee…if there…if…so, if no Committee report is issued, then basically, is it like saying it never happened? Should we consider an action today on record to then nullify…you know, which is, and I was the one that brought up the issue, as far as is it appropriate to act on a newly titled resolution without having any prior notice to the public? So, should we…I guess that's my question, how should we go forward with this? So, basically to strike it from the record, and then proceed with the resolution that's on your agenda?

CHAIR SINENCI: Mr. Raatz?

COUNCILMEMBER MOLINA: Yeah, maybe it's a question for Mr. Raatz.

MR. RAATZ: Thank you, Chair.

COUNCILMEMBER MOLINA: The best appropriate action to take then?

MR. RAATZ: Thank you, Chair and Councilmember Molina. OIP has advised us that no corrective action is necessary. That meeting is over. It would have been a problem under the Sunshine Law perhaps if the Council would have ultimately enacted that resolution, and then perhaps someone could have filed a claim to try to strike down that resolution as being enacted in violation of the Sunshine Law. That's the basic penalty for Sunshine Law violation is having the body's work nullified. And since the Chair, after consultation with Staff, has decided not to move forward with that separate resolution, there's really nothing that needs to be done at this point.

COUNCILMEMBER MOLINA: Okay. So, we basically kill it here and so it doesn't exist, kill it and no need for anything to go to the Council. Well, there is…there wouldn't be anything to go forward to the full Council. So, okay, I'm okay with that. Thank you.

CHAIR SINENCI: Okay. Thank you, Mr. Molina. Member Kama?

VICE-CHAIR KAMA: So, my question would be that if we pass today the resolution that allows the Chair, right, to be able to respond on our behalf to the EIS, and she's asked everyone for comments, yeah, do you know when would be her last day that she would receive comments to prepare her response to the EIS that has to be in by the 7th?

CHAIR SINENCI: That would be today, I believe, yeah, that we need to get comments by today, and that's why we're kind of sending it over to the…for final vote at the full Council. Is that correct, Mr. Raatz?

MR. RAATZ: Thank you, Chair. Yes, the first BE IT RESOLVED clause of the resolution authorizes the Council Chair to provide comments discussed at today's Committee meeting, the October 15th Committee meeting, as well as written public testimony that's been received. And the Chair could also incorporate the meeting minutes from both today's meeting and the October 7th Committee meeting as well. In addition, testimony that's submitted at the Council meeting this coming Friday as I read the resolution, could also be incorporated into the Council Chair's letter.

CHAIR SINENCI: We have a…is that supposed to be October 7th in the first BE IT RESOLVED?

MR. RAATZ: That's correct, Chair.

CHAIR SINENCI: Okay. Can we make that change? Or we would have to…

VICE-CHAIR KAMA: It's part of the reso.

CHAIR SINENCI: Mr. Molina?

COUNCILMEMBER MOLINA: If Member Kama would yield to me?

VICE-CHAIR KAMA: Go ahead.

COUNCILMEMBER MOLINA: Yeah.

VICE-CHAIR KAMA: Yes.

COUNCILMEMBER MOLINA: Thank you. So, I guess for the sake of expediency, and thank you for this I guess we got this response from Cades and Schutte Law Partnership --

VICE-CHAIR KAMA: Right.

COUNCILMEMBER MOLINA: --representing, I guess --

CHAIR SINENCI: Right.

COUNCILMEMBER MOLINA: --A&B.

CHAIR SINENCI: So, even though we didn't continue on October 7th's resolution, we did send out a letter from the Office, and we got that letter back.

COUNCILMEMBER MOLINA: With the request --

CHAIR SINENCI: So --

COUNCILMEMBER MOLINA: --for extension, yeah.

CHAIR SINENCI: --kind of at least we got, you know, confirmation --

COUNCILMEMBER MOLINA: Right.

CHAIR SINENCI: --back that we didn't have an extension 'cause…

COUNCILMEMBER MOLINA: Right. So, for the sake of expediency, I believe maybe your intent will be just to…we have the discussion in Committee, bypass a Committee report, which would take some time, so we can have this heard for a vote at this Friday's --

CHAIR SINENCI: Correct.

COUNCILMEMBER MOLINA: --Council meeting. That I believe would be your intent.

CHAIR SINENCI: Yes.

COUNCILMEMBER MOLINA: Okay. Yeah, that's fine. And it's ironic, I guess the comment period ends on November 7th --

CHAIR SINENCI: Correct.

COUNCILMEMBER MOLINA: --and it doesn't sound like the applicant would be supportive of extending it, and we don't know for sure which managing agency…which State agency would have the authority. I would guess OEQC, but --

UNIDENTIFIED SPEAKER: Yeah.

COUNCILMEMBER MOLINA: --yeah.

CHAIR SINENCI: Right.

COUNCILMEMBER MOLINA: Okay.

CHAIR SINENCI: Ms. Thomson, you wanted to add comments?

MS. THOMSON: Thank you. Just quickly on the 45-day comment period, so, I misspoke during the last meeting. It is under…it's HRS 343, and then also in the Administrative Rules that set that 45-day comment period. And I called and spoke with OEQC just to make sure that, you know, was there an avenue for either the applicant or the accepting agency to extend that comment period, and they said, no, that there was not. So, it's limited just to the 45 days. The way that it can be extended is that the applicant would refile their draft EIS or file a what's called a like a supplement or an addendum to it, and then that would have all the same, you know, notice comment period as the original would. So, there is no opportunity really to extend it at this time.

VICE-CHAIR KAMA: So, the question…

CHAIR SINENCI: Ms. Kama?

VICE-CHAIR KAMA: Okay. So, what I was trying to get at was okay, so all the testimonies up until on Friday, whatever testimonies are taken Friday at the Council meeting, all of that will be contained in the EIS that Chair will present or --

CHAIR SINENCI: In the --

VICE-CHAIR KAMA: --submit?

CHAIR SINENCI: --letter, yeah --

VICE-CHAIR KAMA: Okay.

CHAIR SINENCI: --on our behalf. So, there would be October 7th's meeting notes, today's meeting notes, and October…is it October 18th --

VICE-CHAIR KAMA: Eighteenth.

CHAIR SINENCI: --meeting notes?

VICE-CHAIR KAMA: Yeah. So --

CHAIR SINENCI: Yeah.

VICE-CHAIR KAMA: --you don't need to generate a community...a Committee report for Friday? It's just going to go right to the Council from --

CHAIR SINENCI: Correct.

VICE-CHAIR KAMA: --this Committee without a report?

CHAIR SINENCI: Yes.

VICE-CHAIR KAMA: Okay. It doesn't need --

MS. APO TAKAYAMA: Chair?

VICE-CHAIR KAMA: --a Committee report to go?

CHAIR SINENCI: Ms. Apo Takayama?

MS. APO TAKAYAMA: Yeah. So, the intention today is to not act on this item on our agenda on EACP agenda because this is --

VICE-CHAIR KAMA: I see.

MS. APO TAKAYAMA: --also agendized on the Council meeting agenda for Friday.

VICE-CHAIR KAMA: I see. I see.

CHAIR SINENCI: We're...

VICE-CHAIR KAMA: Okay.

CHAIR SINENCI: We'll act --

VICE-CHAIR KAMA: That's...

CHAIR SINENCI: --on it then.

VICE-CHAIR KAMA: Okay.

CHAIR SINENCI: We're just...

VICE-CHAIR KAMA: Okay.

CHAIR SINENCI: And the vote on Friday would be to approve this resolution --

VICE-CHAIR KAMA: Okay.

CHAIR SINENCI: --with all the comments that we've had in the last --

VICE-CHAIR KAMA: Okay.

CHAIR SINENCI: --three meetings.

VICE-CHAIR KAMA: Okay.

CHAIR SINENCI: Mr. Molina?

COUNCILMEMBER MOLINA: Yeah, thank you, Chair. And assuming it's approved, then we need to get the Chair, as well as the rest of us need to get our comments into the Chair, so the Chair can meet that November 7th deadline, that commenting --

CHAIR SINENCI: Yeah.

COUNCILMEMBER MOLINA: --period, yeah.

CHAIR SINENCI: And we can give her, you know, help her and send our comments to her.

COUNCILMEMBER MOLINA: Okay.

CHAIR SINENCI: The Members can also send your own comments if you want, if you feel strongly about any one item. As far as us as a collective, we can decide, you know, we'll send the Chair our concern.

COUNCILMEMBER MOLINA: Oh --

CHAIR SINENCI: Yeah --

COUNCILMEMBER MOLINA: --Mr. Chairman --

CHAIR SINENCI: --Kasie?

COUNCILMEMBER MOLINA: --yeah, so that's kind of was my next question. So, we can go either through the Committee to submit our comments, and then you will forward to the Chair or vice-versa, we can go directly to the --

CHAIR SINENCI: Right.

COUNCILMEMBER MOLINA: --Chair?

CHAIR SINENCI: So, Friday's vote, we'll just be giving her the authorization to write a letter on our behalf --

COUNCILMEMBER MOLINA: Okay.

CHAIR SINENCI: --with all of these comments from all of these meetings.

COUNCILMEMBER MOLINA: And quick question, when the Chair is complete with the letter, unfortunately the Chair is not here, then the Members have a chance to review the letter, and then approve at a later point? Maybe Mr. Raatz could answer that?

CHAIR SINENCI: Mr. Raatz?

MR. RAATZ: Thank you, Chair. Yes, we regard this type of situation as similar to when the body authorizes the Council Chair to submit testimony to the State Legislature, for instance. If there's a bill in the County package, the Chair will typically take the lead, to speak on behalf of the body, will share that testimony with her colleagues, and then sometimes individual Councilmembers will add on and supplement the Chair's testimony that was submitted on behalf of the entire body.

COUNCILMEMBER MOLINA: Okay. Okay. Thank you. Yeah, and I just bring that up to ensure that everyone's comments was included in the Chair's letter to OEQC. So…

CHAIR SINENCI: Yeah, all --

COUNCILMEMBER MOLINA: And yeah…

CHAIR SINENCI: --the testimonies, everything will be included in addition to her letter.

COUNCILMEMBER MOLINA: Okay. Great.

CHAIR SINENCI: Yeah. Chair would like to recognize Member Sugimura.

COUNCILMEMBER SUGIMURA: Yeah --

CHAIR SINENCI: Thanks --

COUNCILMEMBER SUGIMURA: --thank you.

CHAIR SINENCI: --for joining us.

COUNCILMEMBER SUGIMURA: Sorry, I had personal stuff. So, thank you.

CHAIR SINENCI: Thank you for being here.

COUNCILMEMBER SUGIMURA: Thank you.

UNIDENTIFIED SPEAKER: *. . .(inaudible). . .*

CHAIR SINENCI: Okay. We'll take a quick recess. Call of the Chair. *. . .(gavel). . .*

RECESS: 3:40 p.m.

RECONVENE: 3:42 p.m.

CHAIR SINENCI: *. . .(gavel). . .* Will the Environmental, Agricultural, and Cultural Preservation Committee please come back to order. And so, from Corporation Counsel, they did bring up that we should be…if the Chair is writing a letter on our behalf, we should provide her instead of…some Members were saying that they were going to send in some personal points, the idea is to have it come from all of us, so that we're discussing those things on the floor.

VICE-CHAIR KAMA: Right.

CHAIR SINENCI: And so, if you guys did have anything specific, I had…I just wanted to…of course, we didn't go over the 2,700 pages of documents, but I did go over the executive summary. And so, some of the…on Roman numeral IV, Alternatives Considered, and so, on the second paragraph, the reasonable alternatives that were comparatively analyzed with the proposed action were, number one, reduce water volume alternatives, where the water lease would be issued allowing the lessee to use less water than is permitted; two, a water lease with different terms, which consists of two scenarios. And these are all right in the draft EIS. So, where the water lease would be issued for a term of years other than the 30 years contemplated under the proposed action. And B, the modified lease area scenario, which some of the testifiers brought up, where the water lease would allow the use of the same amount of water as under the proposed action, but the geographic boundaries of the lease area would be reduced in size sufficiently. And so, some of the comments were whether Nahiku or some of the areas would not be affected. On Roman numeral V of the executive summary, the bottom paragraph, it…and Ms. Shay Chan Hodges brought up the idea about costs. And so, again, this is in the executive summary. At full implementation and operation, the Mahi Pono Farm Plan is projected to generate more than 338 pounds per year of crops, generating 155.9 million per year in annual food sales, and 329.5 million per year in combined direct and indirect sales. Pastures will support some 7,300 cow and calf animal units, producing over 4,300 calves per year, and together with crop sales will result in a total farm sales of over 160.7 million per year. The Mahi Pono Farm Plan is also anticipated to create some 790 jobs on-site, and another 350 indirect jobs for a total payroll of 45.3 million per year. So, there is the idea about, you know, profits, and then Ms. Chan Hodges also brought up some of the…like the market rates of water. So, this could possibly, you know, kind of be something that you guys might want to input in the letter. We did share earlier on Roman numeral X of the executive summary, that the draft EIS recommends mitigation that needs to go beyond just physical restoration

of streams, and also needs to address social context that has cultural foundation and binds communities together with key players of the lease. And then finally, unresolved issues on Roman numeral XIII of the executive summary, the water lease must accommodate a reservation in favor of DHHL, but that amount has not yet been determined and approved by the CWRM. And DHHL's timing for calling upon its reservation is not known yet. Similarly, the content and parameters of a Watershed Management Plan are also not known at this time. So, both the DHHL reservation and the Watershed Management Plan will need to be addressed before the BLNR can issue the water lease. So, again, these are things that we can…we're going to also kind of echo, is like hey, we, you know, it's not complete yet. And so, we can include that in our letter. Other unresolved issues include the requirement for the BLNR to set…and set the upset rental like I explained earlier through appraisal of fair market value, and the requirement of the water lease disposition to be by public auction. As such, at this point, the amount of rental payment that will be required under the water lease and identified the awarded lessee, and the specific terms of the water lease are unknown, but these issues should be resolved prior to the issuance of the water lease. So, I guess, Members, for me personally, you…the system is a 100-year old system. The system's intention was to dewater a lot of streams back in the sugar cane plantation days, where they would divert upwards --

VICE-CHAIR KAMA: Yes.

CHAIR SINENCI: --of 300 million gallons --

VICE-CHAIR KAMA: Yes.

CHAIR SINENCI: --a day.

VICE-CHAIR KAMA: Correct.

CHAIR SINENCI: So, they're not asking that much, but we realize that it's an outdated system, and a lot of our panelists last Monday echoed that, and were asking for more monetarization, more connectivity, and a kind of upgrade some of the systems, so to speak, and more details about possibly what parcels are being diverted from, what land parcels would water be going to. So, these are…sorry, I'm just throwing it out there, but it's just some of the issues and in addition to the panelists' comments that we might want to include in our letter. And we can pick maybe the top five because it's going to be…all our comments are going to be included with the letter. Member Paltin?

COUNCILMEMBER PALTIN: Thank you, Chair, and thank you for all your hard work on this, and putting together the panel and summarizing the points. I really thought that each testifier on the 7th and today had a lot to bring to the situation. I wanted to probably submit my own letter as well, you know, similar…like I think Mr. Williams was saying, similar to Mauna Kea, the lease is issued when it was issued so long ago, and what we know today about that they're being no Treaty of Annexation, I think plays into the situation as well. But for the Council's letter, I really like the points made by Mr. Bacon

and Mr. Gaardner, as well as Ms. de Naie about, you know, there does need to be some water and sharing of water. But to just come in and ask for a 30-year lease without any like timeframe and deliverables, and things like that is just, you know, it's kind of outrageous to me that somebody would ask for a public trust like that without having like a set schedule that they were going to meet these --

VICE-CHAIR KAMA: Yeah.

COUNCILMEMBER PALTIN: --things by a certain time, and for them to just expect that a public trust would be handed over like it was 126 years ago. It's like not realizing what the people know now that they didn't know then, or the transparency issues, you know. So, I think for me, those are…Mr. Bacon, Mr. Gaardner and Ms. de Naie's comments are pretty big as well as, you know, the whole discussion about Lower Nahiku and the need for that to continue to be diverted without…apparently from what Mr. Williams was saying that they're not meeting what they're supposed to meet at Makapipi Stream. So, I have…I think I have so much concerns that I might have to write my own letter, but I totally support this process and all the valuable testimony we received and somehow incorporating in into the letter that, you know, where this some kind of a body in that. We got these comments from the public, and they're all really good comments, and they should be taken into consideration.

CHAIR SINENCI: And yes, all of these will be included with the letter. Mr. Gaardner's, Ms. de Naie's, and Mr. Bacon's.

COUNCILMEMBER PALTIN: Oh, and I didn't want to mean that I didn't value and appreciate everyone else's ones too, but those just kind of stuck out at me as like, you know, just really critical. But everyone's one is critical, but if I had to choose the top three.

CHAIR SINENCI: Okay. Thank you, Ms. Paltin. Member Kama, and then Member Molina.

VICE-CHAIR KAMA: Thank you, Chair. I think my sense is that this is such a huge…this is a lot to take in and a lot to read and to understand, that I think I would probably want to just focus my comments when I…to the Chair on…and I will do that. I will make a list and read it out so that it's documented and it's recorded. So, I'll do that on Friday.

CHAIR SINENCI: Do we --

VICE-CHAIR KAMA: So…

CHAIR SINENCI: --need to do it today, Mr. Raatz?

MR. RAATZ: Thank you, Chair. I don't think it needs to be done today. I think there was perhaps preference to get as many statements on the record today just because the Council agenda on Friday is a fairly heavy agenda, but it is open to whatever the Councilmembers would like to do.

CHAIR SINENCI: I think if we…this was already submitted, all the testimonies. So…and they covered a lot including the panelists. So, we could technically just pick, write off of here, right, without…because this is going to be addressed too?

VICE-CHAIR KAMA: Yeah.

CHAIR SINENCI: Is that correct? I mean if we…a lot of our points have already been covered what I mean. So, if we wanted to just focus on the top five, then it's already submitted as testimony.

MR. RAATZ: Thank you, Chair. Yeah, I would say everything that the Members have said and that the public has said, either by oral testimony or written testimony, is part of the record that's specifically referenced in the resolution, and that will be therefore under the Chair's consideration for something she can put in her letter, assuming the resolution is ultimately adopted.

CHAIR SINENCI: Okay. Member Molina?

COUNCILMEMBER MOLINA: Yeah, thank you, Chair. If Member Kama is done with her --

VICE-CHAIR KAMA: Yeah.

COUNCILMEMBER MOLINA: --line…yeah, well first I want to state that I like this, I guess it…I guess consolidation of comments from the public. Maybe we can attach this to the Chair's letter. _____ --

CHAIR SINENCI: It will.

COUNCILMEMBER MOLINA: --this little summary.

CHAIR SINENCI: Yeah.

COUNCILMEMBER MOLINA: 'Cause I think it's rather than just limit ourselves to only X amount of comments, I think as much comments should be submitted. So, I think this would be great to attach to the Chair's letter. Now, some may overlap with some of our comments and suggestions. And if, you know, depending on your times, Chair, 'cause I do have about nine points that I wanted to --

CHAIR SINENCI: Cool.

COUNCILMEMBER MOLINA: --submit to the Committee as part of the Chair's comments. So, if you allow me…

CHAIR SINENCI: Did you want to read them into the record?

COUNCILMEMBER MOLINA: Yeah, and I'll be as brief and expeditious as much as possible.

CHAIR SINENCI: Okay.

COUNCILMEMBER MOLINA: So, if your Committee Analyst is ready, I'll, you know --

CHAIR SINENCI: Shoot.

COUNCILMEMBER MOLINA: --and plus I'll submit the whole thing anyway if Committee Staff wants more specifics. So…but I just want to make sure we read it into the record if we have this opportunity. So, point number one, total amount of water to be diverted from non-restored streams should be identified. The percentage of water to be diverted from non-restored streams should also be disclosed. That's point one. Point two, the number of streams and the names of the streams where water is to be diverted should be defined. Point three, the amount of water to be diverted from partially-restored streams should be disclosed. Point four, with regards to the draft EIS, it mentions the amount of water allowed to be diverted by the water lease will be significantly less than the amount diverted for sugar cultivation. And what I would like to see or get a comment from is there should be a comparison drawn between the amount of water proposed to be diverted compared to the water diverted for sugar cultivation. Point five, Mahi Pono should be a party to this proposed draft EIS and water lease since they will be directly benefitting from the diversion of these waters. Point six relates to what you had mentioned earlier, Mr. Chair, where the…regarding the water lease is to be awarded by public auction. I think this process for the public auction and awarding of the lease should be defined. Point seven, the draft EIS states the content and parameters of a Watershed Management Plan related to the proposed water lease are unresolved at this time, but will be resolved before the BLNR can issue the water lease. And to add to that, A, the content and the parameters of the Watershed Management Plan that has yet to be resolved should be outlined and defined. And B, the specific timing for resolving the parameters of the Watershed Management Plan should be noted as well. And the resolution that's before the BLNR is too vague and too close to awarding of lease. We're getting there. Point number eight, draft EIS states the water lease is also subject to the rights of the DHHL to reserve water sufficient to support current and future homestead needs. And my point with that is the amount of set-aside for the DHHL reserve should be approximated if a specific water demand cannot be provided at this time. And my last and final point, number nine, the use of reclaimed and recycled wastewater was dismissed because of construction of transmission pipelines and potential impacts to Native Hawaiian birds. This matter should be explored further using other transmission possibility such as tankers. So, that in a nutshell is…are my comments to be included in the Chair's comments on our behalf. So…and I will forward the…as a matter…I'll give it to Staff for additional clarification.

CHAIR SINENCI: Thank you.

COUNCILMEMBER MOLINA: So, and…

CHAIR SINENCI: Consensus?

COUNCILMEMBER MOLINA: Yeah.

COUNCILMEMBERS: Consensus.

COUNCILMEMBER MOLINA: Yeah, yeah, and thank you for allowing me to share my --

CHAIR SINENCI: Thank you.

COUNCILMEMBER MOLINA: --comments in Committee. Thank you.

CHAIR SINENCI: Staff, did we get…

UNIDENTIFIED SPEAKER: *. . .(inaudible). . .*

CHAIR SINENCI: So, we've got plenty to…okay, I think we've given a lot for our Chair to consider, and she can…and then of course, like Member Paltin said, you can always write your own in addition to ours as a Council. So…

MS. THOMSON: *. . .(inaudible). . .*

CHAIR SINENCI: Ms. Thomson?

MS. THOMSON: At the bottom of the reso, it instructs that the Council Chair will provide comments to OEQC, but they actually need to be directed to the approving agency, which is BLNR, and also, the applicant, which is A&B and EMI. So, not to OEQC but to those two entities, the same with any comments that would come either from the Councilmembers individually or from members of the public. So, they're directed to…the e-mail address if you want me to read it out, it's waterleaseeis@wilsonokamoto.com. And that's also listed on the OEQC's bulletin for September 23rd. And then if anybody needs that, just contact me and I can submit to you.

CHAIR SINENCI: Ms. Thomson, would we have to include that in the reso?

MS. THOMSON: I think that the reso should be changed to remove comments made to OEQC, and have them made to the approving agency and the applicant.

CHAIR SINENCI: Okay. Thank you.

COUNCILMEMBER MOLINA: Chair? Should we do this --

CHAIR SINENCI: Yes, Member --

COUNCILMEMBER MOLINA: --when…once --

CHAIR SINENCI: --Molina?

COUNCILMEMBER MOLINA: --the motion has been placed on the floor, and then amend? Or can we just…are we allowed to just do this as a friendly…if there are no objections from the body, to allow you --

CHAIR SINENCI: Would this --

COUNCILMEMBER MOLINA: --to do this?

CHAIR SINENCI: --be included as a friendly amendment to the reso?

MR. RAATZ: Well, Chair, technically, no amendments would be in order today because you won't be taking --

COUNCILMEMBER MOLINA: Yeah, that's…

MR. RAATZ: --any action.

COUNCILMEMBER MOLINA: Yeah, so for…so then it will all have to be considered at Friday's Council meeting then, yeah, yeah.

CHAIR SINENCI: But if we did put the amendments on the floor on Friday, would that change…

COUNCILMEMBER MOLINA: Floor amendment.

CHAIR SINENCI: Would that need a super majority, two-thirds vote, Mr. Raatz?

MR. RAATZ: Thanks. There is a Council Rule 19(C) that generally requires a two-thirds vote when the Council is amending a bill or resolution on the same day that it's taking final action on that bill or resolution. There are some exceptions that may apply though. For instance, any resolution that requires final action to ensure compliance with a deadline, established pursuant to State law, we could look at whether that justifies under the Council Rules of voiding that requirement of a two-thirds vote trigger. It also talks about nonsubstantive errors, correcting nonsubstantive errors don't trigger the two-thirds requirement. So, we haven't had a chance to analyze these types of amendments that's been talked about today. I would say definitely the change from October 8th to October 7th, that reference is something that wouldn't trigger the two-thirds requirement. These other ones, we'll take into account and be ready to advise the Council on Friday.

CHAIR SINENCI: Okay. Thank you. Is that okay with Members?

UNIDENTIFIED SPEAKER: Yes.

COUNCILMEMBER MOLINA: Yeah. No objections.

CHAIR SINENCI: No objections? Okay. Ms. Apo Takayama?

MS. APO TAKAYAMA: *. . .(inaudible). . .*

CHAIR SINENCI: *. . .(inaudible). . .* going to defer this? *. . .(inaudible). . .*

MS. APO TAKAYAMA: *. . .(inaudible). . .*

CHAIR SINENCI: Okay. Members, so, if there are no objections, we're going to defer this item.

COUNCILMEMBER MOLINA: Or discharge, Chair…Mr. Chair? Will…your intent is to discharge the Council's at…would that be the correct action?

CHAIR SINENCI: Mr. Raatz?

MR. RAATZ: Ultimately, there's really no action this body can take. On Friday, the Council will consider discharging this matter from the Committee's further jurisdiction, but it's nothing the body today can do 'cause you don't have time to issue that recommendation in the form of a Committee report.

COUNCILMEMBER MOLINA: So…

CHAIR SINENCI: So, we'll be discharging on Friday?

MR. RAATZ: I believe that's the case, yeah. But today, all you can do is defer 'cause there's --

COUNCILMEMBER MOLINA: Just defer.

MR. RAATZ: --no --

COUNCILMEMBER MOLINA: Okay.

MR. RAATZ: --legislative action available.

COUNCILMEMBER MOLINA: Okay. So, as I understand, just discharge at Friday's Council meeting, and then once that discharge, assuming that discharge is approved from Committee then we vote at…then it's voted as a Council measure on Friday?

MR. RAATZ: That's the standard --

COUNCILMEMBER MOLINA: Yeah.

MR. RAATZ: --procedure --

COUNCILMEMBER MOLINA: Yeah.

MR. RAATZ: --for these type of matters. I haven't looked at the exact motions that are on the table, but that sounds right.

COUNCILMEMBER MOLINA: Okay. Okay. Thank you.

CHAIR SINENCI: Yeah.

COUNCILMEMBER MOLINA: And, okay, we'll follow your lead, Chair, for me.

CHAIR SINENCI: Okay. Thank you, Mr. Molina. Any other comments, Members? Ms. Thomson? Staff? Okay. Ms. Siegel? Okay. So, thank you, Members, for your hard work and dedication to this time-sensitive and incredibly important topic. We look forward to the Council's decision on Friday. So, with that, Chair is recommending to defer this item.

COUNCILMEMBERS: No objections.

COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused: ALL, YKS, KTK)

ACTION: DEFER PENDING FURTHER DISCUSSION.

CHAIR SINENCI: The resolution is posted on the Council agenda for this Friday, at which time, the Council can consider passage of the proposed resolution. So, with that, if there are no other questions or comments, this concludes today's Environmental, Agricultural, and Cultural Preservation Committee meeting. It's October 15th at 4:05. Thank you, everybody.

UNIDENTIFIED SPEAKER: Thank you.

CHAIR SINENCI: *. . .(gavel). . .*

ADJOURN: 4:05 p.m.

APPROVED:

SHANE M. SINENCI, Chair
Environmental, Agricultural, and Cultural
Preservation Committee

eacp:min:191015:acqp

Transcribed by: Ann Carmel Q. Pugh

CERTIFICATE

I, Ann Carmel Q. Pugh, hereby certify that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED the 29th day of October, 2019, in Kihei, Hawaii

Ann Carmel Q. Pugh