

LAND USE COMMISSION
STATE OF HAWAI'I

Hearing held on July 9, 2020
Commencing at 9:00 a.m.

Held via ZOOM by Interactive Conference Technology
and
YouTube Streaming Video link

VII. Call to reconvene

VIII. CONTINUED ACTION (IF NECESSARY)
SP97-390 County of Maui (Central Maui Landfill)

IX. ADOPTION OF ORDER
A04-751 Maui Land & Pineapple Company, Inc.
(Pulelehua)

X. Adjournment

BEFORE: Jean Marie McManus, CSR #156

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1 APPEARANCES:

2 JONATHAN SCHEUER, Chair (Oahu)
3 NANCY CABRAL, Vice Chair (Big Island)
4 EDMUND ACZON Vice Chair (Oahu)
5 GARY OKUDA (Oahu)
6 LEE OHIGASHI (Maui)
7 ARNOLD WONG (Oahu)
8 DAWN CHANG (Oahu)
9 DAN GIOVANNI (Kauai)

10 STAFF:

11 DANIEL A. MORRIS, ESQ.
12 Deputy Attorney General

13 DANIEL ORODENKER, Executive Officer
14 RILEY K. HAKODA, Planner/Chief Clerk
15 SCOTT DERRICKSON, AICP/Planner

16 DAWN APUNA, ESQ.
17 Deputy Attorney General

18 RODNEY FUNAKOSHI, Program Manager
19 LORENE MAKI, Planner
20 AARON SETOGAWA, Planner
21 State of Hawaii, Office of Planning

22 MICHAEL HOPPER, ESQ.
23 Deputy Corporation Counsel
24 MICHELE McLEAN, Director of DPP
25 ANN CUA, Planner
KURT WOLLENHAUPT, Planning Consultant
Department of Planning and Permitting
City and County of Honolulu

JENNIFER OANA, ESQ.
Department of Environmental Management
ERIC NAKAGAWA, Director DEM
SHAYNE AGAWA, Deputy Director DEM
ELAINE BAKER, Project Manager DEM
MARK ROY, Munekiyo Hiraga Consultant
For County of Maui DEM SP97-390

GILBERT KEITH-AGARAN, ESQ.
For A04-751 Pulelehua

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1 CHAIRPERSON SCHEUER: This is a
2 continuance -- we're coming out of recess from
3 yesterday for our July 8th and July 9th, 2020 Land
4 Use Commission meeting.

5 Our next agenda item is scheduled to be a
6 continuance of the matter that we took up yesterday
7 regarding the Central Maui Landfill, but I would like
8 the concurrence of the Commission that we should take
9 up Pu'ulehua first and then move on to allow for the
10 continued participation of Commissioner Ohigashi.

11 I don't think we need a vote on this, Dan.
12 Just a sense, is that correct?

13 EXECUTIVE OFFICER: Yes, that's correct.

14 A04-751 Maui Land & Pineapple

15 CHAIRPERSON SCHEUER: Okay, so seeing no
16 objections, our next agenda item action meeting on
17 Docket A04-751, the Petition of Maui Land and
18 Pineapple to approve the form of the order in this
19 matter.

20 This Commission met in Kahului, Maui on
21 December 4th and 5th, 2019, on Docket A04-751 and
22 voted to grant, with conditions, Petitioner Maui
23 Oceanview's Motion to Amend the Decision and Order
24 dated June 30, 2006, and to recognize the Petitioner
25 as Successor to Maui Land & Pineapple Company, Ltd.,

1 to acknowledge the proposed development layout for
2 Pulelehua; to amend the 2006 Decision and Order to
3 allow rentals as well as sales, development of a
4 private water treatment plant, development of a
5 private wastewater treatment plant, amend the number
6 of workforce housing units, and to clarify that
7 development conditions do not apply to the County of
8 Maui Public Works Department; subject to the approval
9 by the Chairperson and authorizing the Chairperson to
10 approve the conditions contained in the stipulated
11 Decision and Order, and that staff would incorporate
12 the conditions contained in the stipulated Decision
13 and Order for the Commission's final review and final
14 approval.

15 At that meeting, prior to voting, all
16 Commissioners affirmed they had reviewed the record
17 and transcripts in this Docket.

18 On June 30th the Commission mailed the
19 July 8th and 9th, 2020 Notice of Agenda to the
20 Parties in this matter, as well as to the Statewide
21 and Maui regular email and mailing lists.

22 Will the Parties please identify yourself
23 for the record?

24 MR. KEITH-AGARAN: Good morning, Chair,
25 good morning, Commissioners. I'm Gil Keith-Agaran.

1 I'm counsel for Maui Oceanview.

2 Also in the audience, I can't see them, but
3 I believe my client Paul Cheng is there, along with
4 Preston Cheng.

5 CHAIRPERSON SCHEUER: Thank you.

6 MR. HOPPER: Michael Hopper, Deputy
7 Corporation Counsel, representing the Maui County
8 Department of Planning. With me are Planning
9 Director Michele McLean and Ann Cua.

10 MS. APUNA: Good morning, Dawn Apuna on
11 behalf of State Office of Planning. With me is
12 Rodney Funakoshi and Eric Setogawa.

13 CHAIRPERSON SCHEUER: Mr. Hakoda, has
14 anyone submitted written testimony on this matter?

15 CHIEF CLERK: Not to my knowledge, Mr.
16 Chair.

17 CHAIRPERSON SCHEUER: Has anybody
18 preregistered to testify in this?

19 MR. DERRICKSON: No they have not, Chair.

20 CHAIRPERSON SCHEUER: Is there anyone in
21 the audience as attendee in this ZOOM meeting who
22 wishes to testify in this matter? If so, please use
23 the raise-hand function and I will bring you into the
24 meeting, swear you in, and give you two minutes to
25 offer testimony.

1 I'm not seeing anyone who is wishing to
2 address the Commission on this matter.

3 We will now go to closing arguments from
4 the parties, starting with Mr. Agaran.

5 MR. KEITH-AGARAN: Thank you, Mr. Chair and
6 members of the Commission.

7 When Maui Oceanview made their Motion to
8 Amend the Decision and Order, their attempt was to
9 develop a rental project, and that was what they
10 initially pursued. But after discussion with the
11 County, and then through the community engagement
12 process that the Commission allowed, following the
13 September initial hearing on the motion.

14 We did come back with a revised proposal on
15 the amendment, including a change to the number of
16 workforce units that would be provided.

17 And also at the urging of the County to
18 provide a number of single-family lots that would
19 also be provided, and in discussions with the
20 community, further adjustments on how some of those,
21 both workforce units for rental, as well as the
22 workforce units for sale would be allotted.

23 In further discussions after this
24 Commission's decision, we reached a general
25 stipulation over the proposed Findings of Fact,

1 Conclusions of Law, including 35 conditions that are
2 included in the Proposed Amended Findings of Fact,
3 Conclusions of Law that were submitted to the
4 Commission.

5 With that, I would submit the proposed
6 finding that I would be available for questions, as
7 well as my clients in the audience would also be
8 available if the Commission has questions for them.

9 CHAIRPERSON SCHEUER: Thank you very much.

10 Commissioners, are there questions for the
11 Petitioner? Commissioners, for the Petitioner's
12 client? I can admit the client in. I see none.

13 Maui County.

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

15 County of Maui obviously signing the
16 stipulated Decision and Order is supportive of
17 approval of this Request to Amend the Original
18 Decision and Order, subject to these, to the
19 conditions provided.

20 I do want to acknowledge County Planning
21 Department staff's effort with the developer to get
22 the project into the original amended request into
23 compliance with community plans and various other
24 plans that the County has, and also get it ready for
25 the next steps.

1 Just to note, there has been a Phase II
2 application filed for this project, which is the next
3 step that the project has to go through. That was
4 filed this week. That will require a public hearing
5 in front of the Planning Commission, but I think that
6 this project reflects a crucial need for Maui County,
7 which will involve rental housing, affordable rental
8 housing and rental units in West Maui, which is an
9 area that you heard through the testimony and
10 evidence provided, which is a critical need in Maui
11 County.

12 The County is supportive of the Decision
13 and Order being granted with the conditions, and we
14 ask that the Commission do also.

15 Also available for any questions if you
16 have them on the next step going forward, but I think
17 the County was pleased to see the project continuing,
18 having the ability to move forward should the
19 Commission decide to adopt this Decision and Order.

20 We also acknowledge the Applicant's
21 evidence in working with the community to get the
22 project to a point where it has a buy-in from State
23 and County agencies, as well as the community groups
24 that participated in the proceeding before the
25 Commission. Thank you.

1 CHAIRPERSON SCHEUER: Thank you very much,
2 Mr. Hopper.

3 Are there questions for Maui County,
4 Commissioners? Seeing none.

5 Ms. Apuna.

6 MS. APUNA: Thank you, Chair, Office of
7 Planning is supportive of the stipulated Decision and
8 Order and the Motion to Amend.

9 CHAIRPERSON SCHEUER: Any questions for the
10 Office of Planning? Seeing none.

11 Mr. Agaran, anything further to say or any
12 questions from the Commissioners or any of the
13 parties?

14 MR. KEITH-AGARAN: Just very briefly. I
15 just wanted to acknowledge the work of the County of
16 Maui. I think their assistance and their input on
17 the shape of the project was very useful and
18 instructive to my client.

19 And I want to thank them as well as the
20 Office of Planning for the comments that they made;
21 and obviously I think I want to thank the members of
22 the community that participated in the community
23 engagement that occurred after the September hearing.

24 I think their input was valuable to my
25 client, not only to understand the importance of

1 rental projects, but also the need for the housing on
2 the West side.

3 So, again, let me thank everyone that was
4 involved in concert.

5 CHAIRPERSON SCHEUER: Thank you, Mr.
6 Agaran.

7 Commissioners, any questions for Mr.
8 Agaran? I guess if there is none, I just want to put
9 on the record, Mr. Agaran, that I've heard nothing
10 from your client that -- obviously the world is very
11 different in July 2020 as it was in December when we
12 met due to the pandemic, as well as the associated
13 economic downturn -- but I'm not hearing anything
14 from your client that suggests that timelines will be
15 altered or this project isn't moving forward.

16 Is that correct?

17 MR. KEITH-AGARAN: Yeah. As the County
18 indicated, he has a submitted a Phase II application.

19 We also have submitted a draft of a house
20 agreement, which is mentioned in the proposed
21 Decision and Order, and we're waiting for comments on
22 that.

23 And we'll be working on a number of other
24 agreements, one with the Department of
25 Transportation, as well as an agreement that we

1 haven't submitted yet, but will be submitted to the
2 County Department of Environmental Management, which
3 will outline any conditions for hooking up into the
4 County system on the West side.

5 But he is moving forward, and he's hopeful
6 that he will get through the next part of this
7 project.

8 CHAIRPERSON SCHEUER: Thank you.

9 Anything further, Commissioners? If not,
10 this concludes closing arguments and the Commission
11 will now consider the Adoption of the Order.

12 Commissioners, before you for your
13 consideration, deliberation and adoption is proposed
14 Findings of Fact, Conclusions of law, and Decision
15 and Order prepared by the staff as instructed at the
16 last meeting on this docket.

17 I have personally reviewed the document as
18 well. Is there any discussion on the matter before
19 us for a Motion to Adopt?

20 COMMISSIONER WONG: Chair.

21 CHAIRPERSON SCHEUER: Commissioner Wong.

22 COMMISSIONER WONG: I would like to make a
23 Motion to Adopt this matter --

24 CHAIRPERSON SCHEUER: Is there a second?

25 COMMISSIONER WONG: -- to the stipulated

1 deal. Sorry.

2 COMMISSIONER GIOVANNI: Dan Giovanni. I
3 second the motion.

4 CHAIRPERSON SCHEUER: A motion has been
5 made by Commissioner Wong and seconded by
6 Commissioner Giovanni to approve the form of the
7 order in this matter.

8 Any discussion? Any further praise for the
9 parties who all figured out how to work together?

10 Commissioner Chang.

11 COMMISSIONER CHANG: Thank you, Mr. Chair.

12 I would like to applaud and thank the
13 Petitioner and this community for establishing a
14 model for community engagement, and to demonstrate
15 through their genuine engagement with each other they
16 can find a mutual benefit.

17 I really applaud the Petitioner for
18 listening, and the community for engaging in a
19 genuine way. So I hope that there are other projects
20 on Maui that are paying attention to the process that
21 this Petitioner and the community undertook here as,
22 again, I think it does establish some expectations on
23 our part that this can happen, and when we see it
24 working well, just the positive result.

25 So, again, thank you very much, Mr. Cheng.

1 I appreciate everyone's efforts in working on this
2 and it has made our lives much easier. Thank you.

3 I will be voting in favor of this. Thank
4 you.

5 CHAIRPERSON SCHEUER: Thank you,
6 Commissioner Chang.

7 Commissioner Okuda.

8 COMMISSIONER OKUDA: Thank you very much,
9 Mr. Chair.

10 I echo what Commissioner Chang has said. I
11 would like to especially thank the Petitioners, both
12 senior and junior, Messrs. Cheng.

13 We all recognize, at least those of us who
14 come from private industry, that development is very,
15 very difficult. Doing business oftentimes is very,
16 very difficult, just trying to keep profitable, keep
17 employees employed are very, very difficult.

18 I think what both of you have done is a
19 tremendous contribution to the process in Hawaii,
20 especially with respect to land use. And so I
21 especially thank what you and your family have done.
22 Thank the community, and I'll be voting in favor of
23 this motion also.

24 CHAIRPERSON SCHEUER: Thank you,
25 Commissioner Okuda.

1 Commissioner Giovanni.

2 COMMISSIONER GIOVANNI: I would like to
3 echo the comments of Commissioner Chang and
4 Commissioner Okuda.

5 I would like to recognize that affordable
6 housing is not an only-on-Maui issue, but it's a
7 statewide issue, and I'm very hopeful that this
8 project will serve as a model for other affordable
9 housing projects that are being considered around the
10 State.

11 Again, I echo the comments made previously
12 and in particular the Petitioner, Mr. and Mr. Cheng
13 that work well with the County and have worked well
14 with the community, and that's what makes this whole
15 thing great. And I'm just very hopeful that the
16 project can be executed and move forward as planned,
17 and I am strongly in favor of this motion.

18 CHAIRPERSON SCHEUER: Thank you.

19 I'll note that at 9:17 Commissioner
20 Ohigashi entered the meeting.

21 Commissioner Cabral.

22 VICE CHAIR CABRAL: Just I'll be voting in
23 favor, and I want to echo the comments of my fellow
24 Commissioners.

25 I work in housing, and I deal with

1 subsidized government housing, and occasionally I get
2 to deal with a few million dollar properties, and it
3 terrifies me that I see agencies, like our LUC and
4 government planning departments, and State Planning
5 Departments are really part of the obstacle and a
6 huge reason why there is no affordable housing is
7 because we add to the cost of the developer, private
8 citizen, and I really applaud the efforts of
9 everybody to provide a range of housing, because it's
10 scary to think we are only going to be able to have
11 private people build multi-million dollar McMansions,
12 and then the government is going to come in with all
13 the low income and there's nowhere for the middle,
14 and I see that as a problem, even in Hilo, where our
15 housing is outrageously affordable.

16 Thank you to our Petitioner for working
17 with the community, and thank you for the community
18 for coming up with a compromise, and thank you to the
19 Commission for moving ahead. Hopefully we get to
20 come to the groundbreaking soon. Thank you.

21 Bye-bye.

22 CHAIRPERSON SCHEUER: Thank you
23 Commissioner Cabral.

24 Commissioner Ohigashi.

25 COMMISSIONER OHIGASHI: I apologize for not

1 being here. I don't think I'm supposed to be able to
2 vote on this matter, but I'm still in support of the
3 motion. Thank you. That's all I have to say.

4 CHAIRPERSON SCHEUER: Commissioner
5 Ohigashi, thank you.

6 Anything further, Commissioners?

7 Commissioner Aczon.

8 VICE CHAIR ACZON: Yeah, thank you, Mr.
9 Chair.

10 I just want to thank everyone, especially
11 the community leaders that brought these things to
12 the Commission, also the Petitioners and its counsel,
13 and this is just to show that with good communication
14 without hidden agenda, great things can happen.

15 So thanks to everyone. I'll be voting in
16 support.

17 CHAIRPERSON SCHEUER: Thank you,
18 Commissioner Aczon.

19 Anything further, Commissioners?

20 I guess just to add to the praise to
21 highlight a couple people, I would like to thank Mr.
22 Agaran for providing Mr. Cheng able counsel during
23 this very transformative process for them during the
24 project. Without casting aspersions against other
25 professionals in Hawaii, other counsel might not have

1 so aptly guided their client through this kind of
2 process.

3 I appreciate that, and I also appreciate
4 the work of Maui Department of Planning for having
5 been so responsive as going through the changes to
6 this project.

7 With that, if there is nothing further, Mr.
8 Orodenker, please poll the Commissioners.

9 EXECUTIVE OFFICER: Thank you, Mr. Chair.
10 The motion is to Adopt the Stipulated Decision and
11 Order.

12 Commissioner Wong?

13 COMMISSIONER WONG: Aye.

14 EXECUTIVE OFFICER: Commissioner Giovanni?

15 COMMISSIONER GIOVANNI: Aye.

16 EXECUTIVE OFFICER: Commissioner Aczon?

17 VICE CHAIR ACZON: Yes.

18 EXECUTIVE OFFICER: Commissioner Cabral?

19 VICE CHAIR CABRAL: Yes.

20 EXECUTIVE OFFICER: Commissioner Chang?

21 COMMISSIONER CHANG: Yes.

22 EXECUTIVE OFFICER: Commissioner Ohigashi?

23 COMMISSIONER OHIGASHI: Abstain -- should
24 it be excused?

25 CHAIRPERSON SCHEUER: Excused.

1 EXECUTIVE OFFICER: Commissioner Okuda?

2 COMMISSIONER OKUDA: Yes.

3 EXECUTIVE OFFICER: Chair Scheuer?

4 CHAIRPERSON SCHEUER: Aye.

5 EXECUTIVE OFFICER: Thank you, Mr. Chair.

6 The motion passes with seven affirmative votes and
7 one abstention.

8 CHAIRPERSON SCHEUER: Thank you.

9 Congratulations. It's 9:22 A.M. the Chair
10 will do a brief three-minute recess to 9:25 to allow
11 us to take up the next matter of the Central Maui
12 Landfill.

13 SP97-390 Central Maui Landfill

14 CHAIRPERSON SCHEUER: We are out of recess,
15 9:25 A.M.

16 Moving back to agenda item SP97-390
17 Department of Public Works and Waste Management Solid
18 Waste Division, County of Maui, to consider a fourth
19 amendment to the State LUC Special Permit for the
20 proposed Central Maui Landfill facilities project at
21 Tax Map Key (2)3-8-003 Portion of Lots 19 and 20,
22 Pu'unene, Maui, Hawai'i.

23 Will the parties please identify yourselves
24 for the record beginning with DEM.

25 MS. OANA: I'm Jennifer Oana, Deputy

1 Corporation Counsel for the Department of
2 Environmental Management. Along with me today is,
3 again, Director Eric Nakagawa. Sitting behind me is
4 Deputy Director Shayne Agawa. Down there as project
5 manager is Elaine Baker and across from me is Mark
6 Roy, our consultant.

7 CHAIRPERSON SCHEUER: Thank you.

8 Mr. Hopper?

9 MR. HOPPER: Maui County Department of
10 Planning, Deputy Corporation Counsel, Michael Hopper.
11 Here with me is Ann Cua and Kurt Wollenhaupt, and
12 Deputy Director Molina is on his way -- sorry, Keven
13 Hart is on his way.

14 MS. APUNA: Good morning, Deputy General,
15 Dawn Apuna an on behalf the State Office of Planning.
16 With me is Rodney Funakoshi and Lorene Maki.

17 CHAIRPERSON SCHEUER: Commissioners, where
18 we left off yesterday, before we went into recess
19 there were questions for DEM, and we had not yet
20 heard public testimony from the Office of Planning.

21 Are there any are current questions at this
22 time? You'll have another chance.

23 Questions for DEM?

24 Commissioner Giovanni.

25 COMMISSIONER GIOVANNI: Thank you, Chair.

1 I just have one question to clarify to DEM.
2 In the presentation by the DEM team yesterday
3 reference was made to the current solid -- I believe
4 it's called the Integrated Solid Waste Management
5 Plan.

6 And my question is whether that plan is
7 currently on the record in this matter?

8 MS. OANA: It's referred to in the Final EA
9 as well as the Planning Department's report. The
10 plan is not in the record, but it is talked about in
11 those two documents.

12 COMMISSIONER GIOVANNI: That's my
13 understanding, talked about and referred to, but the
14 plan itself is not yet part of the record; is that
15 correct?

16 MS. OANA: That's correct.

17 COMMISSIONER GIOVANNI: Thank you.

18 CHAIRPERSON SCHEUER: Anything further at
19 this time? Commissioners, questions?

20 I will give DEM a chance to speak after OP.

21 If there is nothing at this time, OP, are
22 you ready?

23 MS. APUNA: Yes, Chair, thank you.

24 DAWN APUNA

25 Was called as a witness by and on behalf of the

1 Public, was not sworn to tell the truth, was examined
2 and testified as follows:

3 DIRECT EXAMINATION

4 MS. APUNA: So I'm going to address some of
5 the issues that were brought up by the Commissioners
6 yesterday.

7 The first is what is OP's proposed
8 condition on IAL? OP has proposed that the County be
9 required to submit a Petition for Declaratory Order
10 to the Commission to withdraw the 22 acres from IAL
11 designation within one year of the LUC's approval of
12 the Decision and Order for this Special Permit.

13 OP has not offered any other alternatives
14 for the County regarding the 22 acres of IAL as
15 Commissioner Ohigashi had mentioned or questioned.

16 The one year would allow the County an
17 opportunity to determine whether the removal of the
18 22 acres would significantly affect the majority of
19 lands of the original IAL Petitioner Alexander &
20 Baldwin's landholdings that were put into IAL in
21 protection of all other of its landholdings from
22 designation by the County pursuant to HRS 205-49.

23 I understand that the IAL for that petition
24 was for 27,000 acres, and this is 22 of those
25 27,000 acres.

1 The reason why OP has suggested that the
2 County remove the 22 acres from IAL is that as a
3 landfill it no longer meets the definition of IAL.
4 However, the landfill is not necessarily required to
5 be reclassified to the Urban District through a
6 district boundary amendment as mentioned yesterday.

7 Why a special permit rather than a district
8 boundary amendment for this landfill? A special
9 permit, as opposed to a district boundary amendment,
10 is more appropriate for several reasons.

11 A landfill is not necessarily an urban use
12 as some had indicated. It is an unusual and
13 reasonable use of the Ag District for which HRS 205-2
14 and 205-4.5(a) do not expressly permit, and which are
15 not contrary to the purposes of HRS Chapter 205.
16 That is what a special permit is for, those uses not
17 expressly permitted, but may be reasonably allowed in
18 the Ag or Rural District.

19 A special permit is not a mechanism to
20 allow urban uses within the Ag District. If the
21 landfill were an Urban use it would be contrary to
22 the purposes of Chapter 205 to allow it in Ag
23 District, and would require a variance for District
24 Boundary Amendment.

25 Special permits are also temporary in

1 nature. The use is not thought to be a permanent
2 use. A landfill is temporary in that it has a
3 limited life span. The County stated that the
4 landfill has sufficient capacity to operate through,
5 I think it was 2030, when it reaches capacity, it no
6 longer can serve as a landfill and potentially could
7 be used once again for some type of agriculture.

8 It is uncertain at this time what that
9 future use will be, but it will not necessarily be
10 Urban.

11 It's premature and purely speculative to
12 say that the area will be used for Urban use and
13 therefore a dba would not be appropriate at this
14 time.

15 Should the Commission allow the removal of
16 the 20 acres from IAL, and more specifically, because
17 of its IAL designation, it is protected from
18 withdrawal.

19 There's nothing in the statute prohibiting
20 this Commission from removing the 22 acres from IAL
21 designation. The required two-thirds vote by the
22 Commission under Article XI, Section 3 of the
23 Constitution, and HRS 205-50(f) is specific to a
24 district amendment or zone change involving IAL land
25 where the underlying district or zoning of the IAL

1 land is changed from Agriculture to Urban, Rural or
2 Conservation. The two-thirds vote is not required
3 here for the withdrawal of an IAL designation from
4 land that will remain in the Agricultural District.

5 HRS 205-50(g) provides that a landowner may
6 remove the IAL designation if its sufficient supply
7 of water is no longer available to allow profitable
8 farming of the land due to governmental action, acts
9 of God, or other causes beyond the landowner's
10 reasonable control. This is the only provision that
11 addresses the withdrawal of the IAL destination from
12 ag land.

13 OP believes that without a specific
14 provision to address this situation, public policy
15 dictates that the 22 acres, which will serve an
16 important public service to the County, is a
17 legitimate use of the Agricultural District, but not
18 consistent with the provisions of IAL and should
19 therefore be withdrawn.

20 The Commission is empowered to remove the
21 IAL designation under HAR 15-15-98(a).

22 This type of situation or scenario in which
23 the LUC may use its discretion and authority to
24 remove the lands from IAL designation and to allow
25 this public benefit, it's an important opportunity

1 for the LUC.

2 This is only 22 acres in IAL, and it serves
3 an important public benefit. So I think it's a
4 matter of the Commission weighing those two things,
5 and I think the County can provide more about why
6 these 22 acres are important for the landfill site.

7 Additionally, the Commission, if they are
8 concerned that the special permit approval will
9 precede the removal of IAL designation, there could
10 be a condition that -- or there is a condition that
11 we have proposed to require one year within which the
12 County will move to ask for the removal from IAL
13 designation, and not do anything upon the 22 acres
14 until the designation is removed.

15 That is it. Thank you.

16 CHAIRPERSON SCHEUER: Thank you, Ms. Apuna.
17 Commissioners, are there questions for Ms.
18 Apuna?

19 Commissioner Okuda.

20 COMMISSIONER OKUDA: Thank you very much.
21 Mr. Chair.

22 Ms. Apuna, thank you for your explanation.

23 Just to lay the cards on the table, your
24 analysis pretty much convinces me, as far as
25 analysis, but this is my question.

1 I understand your analysis about why you
2 consider the use not to be an Urban use. What do we
3 do with the fact that when I ask that specific
4 question of DEM, their response, as I recall, was
5 that their proposed use of the property was Urban. I
6 mean that's their response on the record.

7 MS. APUNA: Right. And I think you might
8 want to give the County an opportunity to revisit
9 that question. Perhaps they might have -- might be
10 able to explain that. But, yeah.

11 COMMISSIONER OKUDA: Well, just so that I'm
12 clear, can you explain again or -- yeah, explain
13 again why you believe the use is not an Urban use?

14 MS. APUNA: So I think there's plenty of
15 reasons why it's not an Urban use. It's not
16 something permitted expressly under 205 as an Urban
17 use. I think Urban uses are considered city-like
18 concentrations of people, structures, and facilities.

19 I think that the history of landfills
20 throughout the islands are generally within the Ag
21 District, they aren't in Urban District, and I think
22 that a lot has to do with the surrounding properties
23 of landfills.

24 They aren't necessarily welcome or properly
25 sited in Urban areas. They're probably a better fit

1 for Agricultural Districts that are open, and we
2 don't have as many neighbors nearby that would be
3 affected by the landfills.

4 COMMISSIONER OKUDA: Thank you very much.
5 Thank you, Mr. Chair, no further questions.

6 CHAIRPERSON SCHEUER: Commissioner Giovanni
7 followed by Commissioner Ohigashi.

8 COMMISSIONER GIOVANNI: One second, please,
9 just making a note.

10 Thank you, Ms. Apuna. I want to follow up
11 on your discussion with Commissioner Okuda. My
12 perception of the Petition is primarily one that
13 would add 40 acres for reversion and recycling
14 activities consistent with their integrated Solid
15 Waste Management Plan.

16 And what we're seeing in that industry
17 across the State and in other locations is a movement
18 to invest in processing technologies that in
19 different ways and really minimize the requirements
20 for landfill, per se.

21 In effect, this particular landfill, which
22 was, as you noted, originally estimated to reach
23 capacity by now, now says if nothing happens, they'll
24 reach capacity by 2026. And if they put in this
25 first phase of diversion and recycling activity on

1 the new 40 acres, their estimation is 2042 before
2 they reach capacity. And that's with technology
3 already identified.

4 So my question is, would you still, with
5 all of that, would you still contend that the
6 activities and the processes and the investments to
7 be made to the new 40 acres, not to the landfill, per
8 se, is still best characterized as Agricultural use
9 and not an Urban use?

10 MS. APUNA: I'm not sure how to answer that
11 question.

12 Yeah, I think that it is an unusual and
13 reasonable use, the landfill, and so you can't
14 necessarily put it definitely within Urban, the Urban
15 District, or as a traditional Agricultural use. It's
16 kind of in between, we're in a gray area, but it is
17 unusual and reasonable to be within the Agricultural
18 District.

19 COMMISSIONER GIOVANNI: So are you
20 suggesting that if on a given piece of property or
21 land, if any part of it is used for landfill, that
22 the landfill would govern how that entire activity is
23 to be judged?

24 Because I actually see the landfill
25 operation becoming a minor part of the operation as

1 time goes forward.

2 MS. APUNA: I'm not sure -- I don't know.
3 I think I would defer to the County.

4 COMMISSIONER GIOVANNI: We will let the
5 County speak to that.

6 My other question has to do with your
7 contention that this is not permanent or
8 longstanding, that it would actually have a term to
9 it. And I think you noted 2030, but I think the
10 representation from DEM, they're looking at 2042.

11 There were numerous comments made yesterday
12 by DEM that this is basically viewed as a permanent
13 investment rather than having something that terms
14 out and reverts back to another use.

15 Could you expand why you think that this is
16 not a permanent plan?

17 MS. APUNA: So I think that, you know, at
18 2042 the County will follow the DOH's regulation and
19 they'll have to cap it and landscape it and bring it
20 back to as best as possible land that could be
21 useable for other uses. And I'm not sure if the
22 County's perspective is a little bit shorter than
23 what I'm talking about, but we are talking about
24 maybe 100 years or, you know, not necessarily just up
25 to 2042. That beyond that there should be other uses

1 for that land, and we can't foreclose or say
2 definitely that this will always be a landfill or
3 that it will always be Urban use, that it has
4 potential to be used in other ways, even Agricultural
5 uses.

6 COMMISSIONER GIOVANNI: Thank you.

7 That's all, Chair.

8 CHAIRPERSON SCHEUER: Thank you,
9 Commissioner Giovanni.

10 Commissioner Ohigashi

11 COMMISSIONER OHIGASHI: Thank you,
12 Commissioner Giovanni, for asking the two questions
13 that I wanted to ask.

14 The third question that I want to ask is
15 essentially the question as to your reading of how a
16 declaratory order would be able to remove the IAL
17 designation.

18 Are we looking at 205-52 which tracts, I
19 think, 205-50(g) and it states that Important
20 Agricultural Land designation shall be removed from
21 those Important Agricultural Lands when the
22 Commission has issued a declaratory order if a
23 sufficient water supply is no longer available to
24 allow profitable farming on these lands due to
25 governmental action, acts of God, or other causes

1 beyond the farmers' or landowners' reasonable
2 control.

3 Would you agree with me that that would be
4 the standard to remove Important Agricultural Lands
5 designation?

6 MS. APUNA: I would say that is one of the
7 avenues, or one of the scenarios in which the
8 Commission may withdraw the IAL here.

9 COMMISSIONER OHIGASHI: Could you point out
10 any other statutory criteria for the withdrawal of
11 Important Agricultural Lands?

12 MS. APUNA: I think that the Declaratory
13 Order process under 15-15-98 HAR --

14 COMMISSIONER OHIGASHI: That's a rule. I'm
15 asking is there any statutory --

16 MS. APUNA: I think the 15-15-98 is based
17 on HRS 91 as far as declaratory orders and the
18 authority of the Commission to make orders. So that
19 there is statutory authority for the Commission to do
20 so, and to modify the current IAL, that Petition, for
21 this land.

22 COMMISSIONER OHIGASHI: Under what criteria
23 would we use to remove it that you're suggesting?

24 MS. APUNA: I think it's looking at what
25 the same criteria that you used to identify and to

1 declare land as IAL, and whether it still meets those
2 standards; and if it does not, then you would
3 withdraw it. It's almost like a reverse process.

4 COMMISSIONER OHIGASHI: Is that process
5 outlined or authorized that it would be used in any
6 statutory authority?

7 MS. APUNA: I think that it's -- I think
8 it's reasonable that that would be your avenue to
9 remove it.

10 COMMISSIONER OHIGASHI: Second things is --
11 so the answer is, no, right? But you believe it's
12 reasonable.

13 The second question I ask is there any case
14 authority that you can cite that will allow us to
15 create a new standard or create these standards for
16 removal when the statutory standards are already
17 indicated under (g) or --

18 MS. APUNA: No, there isn't any case law
19 that I'm aware of, yet this is breaking new ground
20 for the Commission, but I don't think you're in any
21 way prohibited from doing it, and I think you have
22 the authority to withdraw it from IAL.

23 COMMISSIONER OHIGASHI: Would it be in our
24 best interest then to request a written opinion from
25 our Attorney General, Mr. Morris's office, to be sure

1 that we can proceed in this fashion, thereby putting
2 the opinion of the Attorney General receiving this
3 session?

4 MS. APUNA: That's certainly within your
5 discretion.

6 COMMISSIONER OHIGASHI: Now, I lost
7 everybody for a minute.

8 CHAIRPERSON SCHEUER: We're still here.

9 COMMISSIONER OHIGASHI: Is there any -- I'm
10 going to ask you, because if you review the record --
11 did you review the record in this case?

12 MS. APUNA: Not completely.

13 COMMISSIONER OHIGASHI: The reason why is
14 that, when I looked at the Exhibit No. 6 which
15 appears to be the Planning Commission or the Planning
16 Department's staff report in this matter, which is
17 part of the record, what their argument was that you
18 can do this on this IAL lands, so long as you meet
19 the criteria for boundary amendment.

20 And I'm looking at page 8 of that. Again,
21 need to review the rationale that they used in terms
22 of how to determine whether or not they can bypass
23 the IAL requirement.

24 MS. APUNA: I think there might be some
25 confusion there. I know under 205-50 there are

1 standards and criteria for the reclassification or
2 rezoning of IAL lands, and that's not the situation
3 here. They're not trying to change the zoning or
4 take it out of Ag, they're just asking to withdraw
5 the IAL lands, or withdraw the lands from IAL, and
6 the only --

7 COMMISSIONER OHIGASHI: I just want to make
8 my point.

9 However, the staff report that was adopted
10 I believe by the Planning Commission, they indicate
11 that they believe that they have sufficient basis for
12 boundary amendment, to meet the boundary amendment,
13 thereby creating an argument that the IAL lands can
14 be -- this requirement about IAL, IAL lands, should
15 not be applied, since we can meet the boundary
16 amendment requirements.

17 That's what I was reading in this. If you
18 haven't read it, that's fine, I'll ask the County.

19 MS. APUNA: I can just say that --

20 CHAIRPERSON SCHEUER: Go ahead.

21 MS. APUNA: I think that even if you do
22 apply the -- if the County has applied these criteria
23 to this situation, I don't think that -- I think that
24 just shows that they have met some higher standard.
25 But I'm just saying these standards don't necessarily

1 apply to this special permit.

2 So I don't think there's any -- it shows
3 that they've reached the standard, rather than that
4 they're some how deficient in any way.

5 COMMISSIONER OHIGASHI: I'm just trying to
6 find out what was in the record and make sure I
7 understood everything. No further questions.

8 CHAIRPERSON SCHEUER: Thank you very much,
9 Commissioner Ohigashi.

10 Sorry, I see a hand raised from Maui County
11 Planning, Mr. Hopper.

12 MR. HOPPER: I was just offering to
13 respond. I was a present at the Planning Commission
14 meetings during that discussion. Also I think you
15 typically allowed -- the Planning Department to
16 provide public comments --

17 COURT REPORTER: Can you back up? You're
18 kind of breaking up on me.

19 MR. HOPPER: Would you like me to speak
20 louder?

21 COURT REPORTER: Speak up and speak clear.

22 MR. HOPPER: Okay.

23 I was offering to help answer that question
24 about the record as I was present at the Planning
25 Commission meeting when that discussion took place.

1 In addition, I just offered that I think
2 typically the Planning Department does allow -- is
3 allowed to participate on the public comments usually
4 on district -- on special permit request. So we can
5 request, if available, if that option is available to
6 be able to do that at the appropriate time.

7 CHAIRPERSON SCHEUER: Why don't you go
8 ahead, Mr. Hopper.

9 MR. HOPPER: Certainly.

10 To address Commissioner Ohigashi's
11 questions.

12 HRS 205-50, it's an interesting read. Item
13 (b), 205-50(b) states that:

14 Upon acceptance by the County for
15 processing, any application for a special permit
16 involved in Important Agricultural Lands shall be
17 referred to the Department of Agriculture and the
18 Office of Planning for review and comment.

19 That's the only mention I could find in
20 this section about special permits.

21 It obviously contemplates that special
22 permits can be granted for uses on IAL lands.

23 Now, the statute goes onto state a variety
24 of criteria, some of which are premised with, for
25 example, 205-50(c)(2). (2) talks about the proposed

1 district boundary amendment or zone change.

2 Subsection section (3) talks about district
3 boundary amendment or zone change.

4 But then subsection (4) simply says, the
5 public benefit to be derived from the proposed action
6 is justified by a need for additional lands for
7 nonagricultural purposes.

8 In subsection (c) of that statute says:

9 Any decision by the Land Use Commission or
10 the County pursuant to this section shall
11 specifically consider the following standards and
12 criteria. Some of which specifically mention the
13 district boundary amendment or zone change, some of
14 which do not.

15 So given that this also mentions special
16 permits, and that the section also mentions
17 specifically district boundary amendments or zone
18 change.

19 The staff report, I think out of an
20 abundance of caution, did do an analysis of these
21 standards as far as whether or not this project met
22 them, in order to make sure that when it went to the
23 Land Use Commission it wouldn't revert, saying you
24 didn't make any findings with respect to this section
25 even though it may apply to special permits.

1 But I would argue that the section
2 states that -- does recognize that special permits
3 can be allowed on IAL. And if this criteria does not
4 apply, then the only other criteria for determining
5 whether to grant the special permit was HRS 205-6 and
6 LUC's administrative rules, which are contained in
7 the staff report and an analysis is provided.

8 But it was a bit, I think, ambiguous as to
9 whether none of these criteria apply to special
10 permits and only apply to boundary amendments. In
11 some cases it specifically says this is for boundary
12 amendments or zoning changes, but in others they're
13 not so specific, and the section does recognize that
14 there are special permits that can be allowed on IAL.

15 That's, I think, what the County dealt with
16 in the record there.

17 I would like to address some of the other
18 issues as well, but I wanted to first get to that
19 issue that was raised by Commissioner Ohigashi on
20 why --

21 CHAIRPERSON SCHEUER: Let's just see if
22 there's a followup from Commissioner Ohigashi, since
23 it was responsive to his question. We're still on
24 questioning of OP.

25 COMMISSIONER OHIGASHI: So following your

1 line of reasoning then, I'm saying because it
2 mentions Special Use Permit be sent to Department of
3 Ag as well as I think it was OP, that that triggers
4 the ability to the Land Use Commission to grant
5 special permits on IAL lands.

6 Is that right?

7 MR. HOPPER: Yes, I don't see --

8 COMMISSIONER OHIGASHI: I'm just trying to
9 follow your logic.

10 MR. HOPPER: There would be no reason for
11 the legislature to have mentioned where special
12 permits involving IAL lands should set to, if it
13 wasn't possible to get a special permit for any use
14 on IAL lands.

15 COMMISSIONER OHIGASHI: Is that supported
16 by history? Have you guys taken a look at that?

17 MR. HOPPER: Not in depth, but, again, I
18 don't know why there would be direction as to who has
19 to review special permits on IAL, if you could never
20 grant a special permit on IAL. That's the logic.

21 COMMISSIONER OHIGASHI: Now, my next
22 question would involve --

23 CHAIRPERSON SCHEUER: Is this a question
24 for OP, Commissioner Ohigashi?

25 COMMISSIONER OHIGASHI: No, this is -- I

1 just want to up followup on the Maui Planning.

2 So would that, under the agreed upon -- let
3 me put it this way.

4 DEM agrees to the condition that OP wants
5 to remove the IAL designation by filing a Petition
6 for Declaratory Order within one year.

7 Is it your position that that declaratory
8 petition is not necessary?

9 MR. HOPPER: That's a difficult question.
10 I believe that, per the law, you can do uses under
11 special permits without getting the IAL designation
12 removed.

13 Technically, according to this, you can get
14 a district boundary amendment on IAL without the
15 removal of the designation.

16 COMMISSIONER OHIGASHI: With six votes.

17 MR. HOPPER: Yeah, you do need a two-thirds
18 majority for a district boundary amendment. But I
19 don't -- according to the law, that doesn't remove
20 the IAL designation. But I think I would say that
21 OP's position, we understand, to mean removing from
22 IAL is the right thing to do because the property no
23 longer meets the criteria.

24 But as to whether or not you can't grant a
25 special permit with the designation still there, I

1 think, based on the law, you are not prohibited as a
2 matter of law from doing that simply because there is
3 an IAL designation.

4 COMMISSIONER OHIGASHI: So if we decided
5 that you have to file for -- agree with OP's
6 position, and we said, okay, you have to file for
7 declaratory ruling, remove the IAL, and we determine,
8 according to the criteria, statutory criteria, that
9 you don't need the statutory criteria no remove IAL
10 land under 205-52(g) -- 52, so far 52 -- then the
11 special use permit will still be valid according to
12 your reading; is that correct?

13 MR. HOPPER: Yes, because the IAL, and I
14 think --

15 COMMISSIONER OHIGASHI: I just wanted to
16 know, yes?

17 MR. HOPPER: Yes, the answer is yes.

18 CHAIRPERSON SCHEUER: Thank you,
19 Commissioner Ohigashi.

20 Are there further questions for the Office
21 of Planning at this time, Commissioners?

22 Commissioner Wong.

23 COMMISSIONER WONG: Question for OP. I
24 know that they advised that within one year they
25 should do a declaratory ruling on the IAL.

1 What if we hypothetically say instead of
2 one year, do it by 2028? Would OP still agree upon
3 that? Be okay with that?

4 MS. APUNA: 2028 --

5 COMMISSIONER WONG: The special permit is
6 supposed to end too, right, within that time period?

7 MS. APUNA: I think the reason why we're
8 asking for it to be removed from IAL is that it is
9 not IAL. Is it doesn't meet the criteria. To wait
10 eight years for that determination, it kind of
11 doesn't make sense.

12 COMMISSIONER WONG: The reason I'm saying
13 that is because of -- let's say, this issue we have
14 with the ZOOM and everything is backing up, what if
15 we can't do it within that one year? So we have to
16 do it in two years, because everything is backing up,
17 everything is piling up, is that okay, or three
18 years?

19 MS. APUNA: It's reasonable if the
20 Commission can't get to it within a year, but as soon
21 as it possibly can would be ideal.

22 COMMISSIONER WONG: So I was thinking
23 hypothetically, what if we put in a condition that
24 says within that period, sooner than later, you have
25 to do that declaratory ruling to get rid of the IAL

1 designation? Would OP be agreeable upon that?

2 MS. APUNA: I think within a reasonable
3 time, yes.

4 COMMISSIONER WONG: Thank you, Chair.
5 Thank you, OP.

6 CHAIRPERSON SCHEUER: Thank you.

7 Commissioner Chang, about how long do you
8 think you have? We're right about an hour.

9 COMMISSIONER CHANG: I'm hoping no more
10 than five minutes, just to confirm something.

11 CHAIRPERSON SCHEUER: Okay.

12 COMMISSIONER CHANG: Thank you very much,
13 Mr. Chair.

14 So, Ms. Apuna, I just want to clarify.

15 It's my understanding the reason you're
16 putting in the condition for within five years, it is
17 to provide the County -- well, it's to ensure there's
18 no physical structures built on that IAL designation.
19 And so it puts the motivation on the County to do
20 that action before they start investing and building
21 structures on the IAL designated lands.

22 Is that correct?

23 MS. APUNA: I think in part. Yeah.

24 COMMISSIONER CHANG: And then also I
25 appreciated your reasoning as I agree with your

1 assessment.

2 The final question is, with respect to your
3 point about that the Ag lands, the landfill, it could
4 be restored, that we don't know what's the state of
5 the art of technology, we don't know what they can
6 do, so at this time it would be premature to assume
7 that it would be -- the more appropriate designation
8 is Urban.

9 And I say that because I live -- I can see
10 what is that -- the quarry. They've been
11 landscaping. I don't know what they propose to do.
12 That's my understanding of why, because it's too
13 speculative and premature at this point in time to
14 say it should be Urban designation, because we don't
15 know what happens at the end of the term; is that
16 correct?

17 MS. APUNA: That's correct.

18 COMMISSIONER CHANG: Thank you, Mr. Chair,
19 I have no further questions.

20 CHAIRPERSON SCHEUER: Commissioner
21 Giovanni.

22 COMMISSIONER GIOVANNI: Yes, Chair. I know
23 that you're angling to get a recess, and I would like
24 to request, upon return of the recess, we have a
25 short executive session, if possible.

1 I have some questions in processes that I
2 would like to put forth in executive session.

3 CHAIRPERSON SCHEUER: For us to -- let me
4 procedurally address this. I mean, technologically
5 address this prior to procedurally asking for a
6 Second Chair motion.

7 What we would need to do is to have Mr.
8 Orodenker or Mr. Hakoda send a separate ZOOM meeting
9 link. We would log out of this meeting, I believe.
10 And then log into executive session along with Mr.
11 Morris, and then leave that and rejoin this meeting
12 which would somehow continue to operate.

13 Do I have that correct, Scott or Riley?

14 MR. MORRIS: This is Dan Morris. Yes, what
15 we have done for executive sessions is, of course,
16 following a motion that is carried, there would be
17 sort of a withdraw from this meeting into a new
18 meeting that is set up amongst the parties to the
19 executive session. Then we would finish that, go
20 back and rejoin this meeting thereafter.

21 CHAIRPERSON SCHEUER: Thank you, Mr.
22 Morris.

23 Mr. Orodenker, are we ready to do that
24 technologically?

25 EXECUTIVE OFFICER: We will be. I'll be

1 sending out an email right now with the link.

2 CHAIRPERSON SCHEUER: Okay.

3 Is there a second to Mr. Giovanni's -- I
4 see two waving hands, Commissioner Ohigashi and
5 Cabral. Are those seconds?

6 VICE CHAIR CABRAL: Yes, I am seconding
7 Commissioner Giovanni's motion.

8 CHAIRPERSON SCHEUER: Commissioner
9 Ohigashi.

10 COMMISSIONER OHIGASHI: I understand that
11 the motion is to go into executive session for
12 consultation with our attorney concerning -- that's
13 my understanding, that we are going into executive
14 session for purposes of consulting concerning
15 procedures that are involved in this matter.

16 CHAIRPERSON SCHEUER: Is that correct, Dan
17 Giovanni?

18 COMMISSIONER GIOVANNI: Yes, that's
19 correct.

20 CHAIRPERSON SCHEUER: Is there discussion
21 on the motion? If not, Mr. Orodener, please poll
22 the Commission.

23 EXECUTIVE OFFICER: Thank you, Mr. Chair.
24 The motion is to go into executive session.

25 Commissioner Aczon?

1 VICE CHAIR ACZON: Yes.

2 EXECUTIVE OFFICER: Commissioner Cabral?

3 VICE CHAIR CABRAL: Yes.

4 EXECUTIVE OFFICER: Commissioner Chang?

5 COMMISSIONER CHANG: Yes.

6 EXECUTIVE OFFICER: Commissioner Giovanni?

7 COMMISSIONER GIOVANNI: Yes.

8 EXECUTIVE OFFICER: Commissioner Ohigashi?

9 COMMISSIONER OHIGASHI: Yes.

10 EXECUTIVE OFFICER: Commissioner Okuda?

11 COMMISSIONER OKUDA: Yes.

12 EXECUTIVE OFFICER: Commissioner Wong?

13 COMMISSIONER WONG: Yes.

14 EXECUTIVE OFFICER: Chair Scheuer?

15 CHAIRPERSON SCHEUER: Yes.

16 So for the people who are panelists, as
17 well as meeting attendees, I believe what is going to
18 occur is that this meeting will remain open. There
19 will be a note somehow placed up that we are in
20 recess, and that after that is done, we're done with
21 executive session, we will reconvene.

22 Is that correct, Mr. Hakoda?

23 CHIEF CLERK: Yes, Mr. Chair.

24 CHAIRPERSON SCHEUER: So we are actually
25 adjourning into executive session right now.

1 (Executive session.)

2 CHAIRPERSON SCHEUER: Okay, thank you to
3 everyone for your patience. It's 11:17 A.M., we're
4 back in session.

5 Thanks to everybody's patience, it was our
6 first time going into executive session virtually, so
7 there were some technical hiccups. Sorry for the
8 length of time it took.

9 We were questioning the public testimony
10 from Office of Planning. Were there further
11 questions, Commissioners, for OP?

12 The Chair had a question.

13 Ms. Apuna, if I understood your statement
14 correctly, you seem to say that one of the reasons
15 for keeping this landfill expansion in the
16 Agricultural District is that landfills are not
17 expressly included in the Urban District as a use.

18 Did I understand that correctly?

19 MS. APUNA: Well, I think what I was saying
20 is that under 205, it's not an expressly permitted
21 use under the Urban District.

22 CHAIRPERSON SCHEUER: But aren't a vast
23 majority, or a very significant number of Urban uses
24 not explicitly included in 205?

25 MS. APUNA: Yes, that's correct. Also

1 Urban uses are -- I think the statute says that they
2 are uses as provided by ordinance or regulations of
3 the County.

4 CHAIRPERSON SCHEUER: My second question
5 had to do with -- I'm chewing over and struggling
6 with the idea of temporary uses versus permanent
7 uses. And I believe the way 205 is constructed is
8 there's this implication that temporary uses can have
9 a special use permit; permit uses, by contrast, need
10 a dba.

11 But what makes a use not temporary? I
12 mean, you could put in a subdivision and remove a
13 subdivision that's been done, or remove an industrial
14 area and return it to Agriculture, Conservation.

15 So I'm particularly concerned in this case,
16 because even though it has been done before, there's
17 probably certain things you would not do on that
18 property after it had been a landfill. You might not
19 put an elementary school on it; is that correct?

20 MS. APUNA: Yes.

21 CHAIRPERSON SCHEUER: Or, you know, you
22 might do a sports field, you might not do housing?

23 MS. APUNA: Right.

24 CHAIRPERSON SCHEUER: So there is a
25 permanent change to the property as a result of the

1 landfill use, correct?

2 MS. APUNA: Yes, there could be.

3 CHAIRPERSON SCHEUER: So is the use really
4 for a landfill -- I mean, for a solar farm, it has an
5 expected life and you can envision the panels are
6 removed and then it goes back to being Agricultural
7 in nature.

8 But for a landfill, you're not really ever
9 going to fully restore. You're not going to remove
10 the waste from the site essentially, at least under
11 you current technology? Is that correct?

12 MS. APUNA: Right. It's not going to go
13 back exactly as it was prior to the landfill, but it
14 allows for other uses after that. You can put a
15 solar farm on top of it.

16 CHAIRPERSON SCHEUER: There's some things
17 you would never do again?

18 MS. APUNA: Sure.

19 CHAIRPERSON SCHEUER: Last thing I wanted
20 you to comment on what was phrased by -- I don't know
21 if correctly -- a chicken and egg argument.

22 Why would it not be more appropriate to
23 first remove IAL designation then get a SUP?

24 MS. APUNA: I think you can -- I'm not sure
25 actually. I think you could do it either way. It's

1 not -- but I don't think you're required to do it
2 either way either. When we ask that it be removed
3 from IAL, I think it's to uphold the standards of IAL
4 and what that means to the Commission, and what the
5 Commission is trying to do when it does designate
6 IAL.

7 But there is nothing requiring you to do it
8 in a certain order, or that you're prevented from
9 doing one before the other.

10 CHAIRPERSON SCHEUER: Thank you. I don't
11 have anything further for OP.

12 Anything else, Commissioners? If not, then
13 Maui County, you wanted to make some comments to
14 Office of Planning?

15 MR. HOPPER: Yes.

16 Mr. Chair, I want to be brief because I
17 think Office of Planning did go over a lot of the
18 items that I had. Also didn't know if DEM had
19 responded to some of the issues that were outstanding
20 after this.

21 I wanted to just address a few things,
22 again, OP did go over some of these.

23 I think the question was asked, why a
24 special permit was sought in this case. I think one
25 important fact, I think a reasonable reason for

1 seeking a special permit might by the Applicant, was
2 that this is involving two already existing permits
3 that have been in place for decades for the operation
4 of the landfill.

5 I think it was reasonable for DEM to
6 conclude that an appropriate approach would be to
7 amend those permits for time extension. In fact, as
8 I understand it, the life of the permits have expired
9 as of today. Because there was an application filed
10 prior to the expiration date, the landfill can
11 continue.

12 But I think that was a reasonable approach
13 based on the fact that not only were these landfills
14 permitted by special permit, there are two other
15 landfills in Maui that are permitted by special
16 permit. It's my understanding that that is
17 consistent practice across the state with the
18 majority of landfills on AG land are permitted by
19 special permit.

20 I think OP outlined some of the reasons for
21 doing that. I think one of them is the piecemeal
22 nature of the landfill expanding and having to add
23 additional land isn't necessarily as consistent with
24 the district boundary amendment process, which
25 doesn't necessarily envision piecemeal continuing

1 urbanization of lands.

2 In addition, the dba process is a bit more
3 expensive. I think it was commented that --
4 yesterday it was discussed that there was not any
5 public testimony in opposition to this request,
6 either at the Planning Commission meeting or at this
7 meeting.

8 There was notice sent to owners of property
9 within 500 feet, and there was a newspaper article
10 published, I think -- it can be difficult to
11 speculate why people in a case decide not to show up,
12 but I think Maui has shown if there are important
13 issues, they do not hesitate to come out and testify.

14 And I think it's possible that if this had
15 been a district boundary amendment for the whole area
16 urbanized a significant amount of acreage, it's
17 possible that that could be something more
18 controversial.

19 Again, that's speculation, but I think it's
20 based on my experience in the land use area.

21 In addition, there was some discussion of
22 whether the structures made this an Urban area. I
23 think that there are numerous special permits across
24 the state where structures are part of the special
25 permit process. I don't think that necessarily

1 transforms something to Urban use.

2 I think as the Office of Planning stated,
3 Urban uses are classified as city-like areas. And I
4 don't think that this project would be considered
5 city-like in its nature to the extent that you would
6 need a district boundary amendment.

7 Again, the presence of structures does not
8 require something that you have to get district
9 boundary amendment, if they're part of -- and that
10 can be permitted by special permit.

11 Again, if the criteria for a special permit
12 are met, HRS 205-6 in the Commission's administrative
13 rules.

14 And then just briefly about IAL. I think
15 OP did verify a few things, that legislative approval
16 was not required for removal of the designation in
17 this case. Legislative approval would only be
18 required if the removal involved an area that when it
19 was originally designated, there was a current
20 redesignation of property, of other property owned by
21 the same owner to Urban or some other designation.

22 I was present and represented the
23 Department of Planning for A&B's Declaratory Order to
24 request the IAL designation, and participated in
25 meetings for A&B on behalf of Department of Planning.

1 They waived the right to concurrently redesignate
2 their land to the Urban District. And that was
3 expressed under Decision and Order.

4 So what we do not believe we need
5 legislative approval to change that designation,
6 because there was not a concurrent redesignation done
7 at the time A&B requested their designation.

8 We also believe -- just to clarify -- for
9 the special permit request, we do not believe there
10 would need to be a two-thirds majority vote on the
11 Commission, that would be for a district boundary
12 amendment. I think that's been clarified.

13 And I think we did clarify that we do
14 believe that a special permit is something that can
15 be granted by the Commission while the property is still
16 designated IAL, although there's been discussion of
17 conditions with respect to obtaining a complete
18 removal of that designation, and the Commission
19 certainly can consider that.

20 Finally, I did want to discuss -- OP got
21 into this a little bit -- but the facts of the
22 situation I think are -- if you look at the map of
23 IAL, they essentially surround the landfill. The
24 landfill doesn't have many options as far as
25 extending to meet their County's needs. It doesn't

1 involve somehow interacting with the IAL.

2 The IAL represents 22 acres of 27,000 acres
3 that were designated IAL on A&B's request. The land
4 is no longer being used for the Agricultural purpose
5 for which it was originally designated, which was
6 sugarcane. So I think that by granting the special
7 permit, there's not necessarily a loss of active
8 agriculture, because the situation has very much
9 changed from the time that A&B sought their
10 designation.

11 And finally, I would note, I think there
12 was a discussion of, you know, there is a limit to
13 how much land a single landowner can have their land
14 designated as IAL by the County. And I think there
15 was a discussion of would removing this designation
16 allow the County to redesignate other A&B lands,
17 because you're below that 50 percent threshold.

18 And I would just note -- I think
19 Commissioner Ohigashi asked about that. I would note
20 the limitation on how much land a single landowner
21 can have designated as IAL is based on the amount of
22 land that landowner owns within the County, I believe
23 it's on an island.

24 But in this case, by selling that land to
25 the County of Maui, that IAL land would not be

1 considered part of the inventory of A&B. So that
2 would be taken out regardless of whether that
3 designation remained, or if it ended up removing that
4 designation.

5 That's all I had. Again, I think OP made a
6 lot of the points that I wanted to address. I wanted
7 to make sure to give that to the Commission.

8 CHAIRPERSON SCHEUER: Thank you, Mr.
9 Hopper, for those comments.

10 Commissioners, I think procedurally where
11 we might go now is to offer some opportunity for DEM
12 to offer further comments, and then questions of any
13 of the parties by the Commission.

14 DEM are you prepared?

15 MS. OANA: Yes, thank you.

16 So one of the issues that we heard
17 yesterday as to why we had been operating under a
18 special permit, rather than obtaining a district
19 boundary amendment, as I said yesterday, Petition has
20 been on our minds as well. We have been wondering
21 what is the most appropriate thing to do.

22 And so we very well may be going in for
23 district boundary amendment in the future, maybe
24 sooner than later, but I want to remind everybody, as
25 the HC&H quarry moves from one spot to the next, we

1 follow along with them.

2 So as this facility has expanded, it did
3 also make sense for us to come in for amendments for
4 a special use permit.

5 With regard to a district boundary
6 amendment, you know, I'm not sure whether we would
7 want to go for district boundary amendment for just
8 the current portions that we're using for the land,
9 or whether we could anticipate where the next
10 expansion would be.

11 And so going -- if we were to go in for a
12 district boundary amendment for a potential future
13 expansion, that is a little bit concerning, only
14 because we don't have control over that land yet. We
15 may never have control over that land. And if we go
16 in for a boundary amendment to like Urban,
17 essentially we would be asking a portion of land to
18 be Urban that we will never use as a landfill.

19 So then now we have Urban parcel out there
20 that could really be used for something not wanted in
21 that area.

22 Commissioner Okuda, I believe, brought up
23 yesterday a Supreme Court case Neighborhood Board
24 Number 24 versus State Land Use Commission.

25 And so he brought that up to basically ask

1 that we analyze that. And I'm sorry we did not
2 analyze that. But that case involved a proposed use
3 of land in the Waianae Coast for an amusement park.
4 The Supreme Court specifically noted that allowance
5 of a special permit for the development of a
6 recreation theme park covering 103 acres of Ag land
7 which will attract 1.5 million people to the Waianae
8 Coast frustrates objective and effectiveness of
9 Hawaii's land use scheme.

10 The Supreme Court did say, as Commissioner
11 Okuda pointed out, that they did not believe the
12 legislature envisioned the special permit technique
13 to be used as a method of circumventing district
14 boundary amendment procedure to allow the ad hoc
15 infusion of major Urban uses into the Ag District.

16 However, right after that the Supreme Court
17 stated that the theme park proposal was not an
18 unusual and reasonable use, and was more properly
19 subject to district boundary amendment.

20 Now, that case is distinguishable from the
21 present situation. Whereas with the theme park, it
22 would generate a lot more people, more traffic,
23 services such as water, police, fire, emergency
24 services, and this project does not create that much
25 of a need, as stated in the record, in the Final EA,

1 as well as report from the Planning Commission. This
2 is not the kind of Urban use that the supreme court
3 was analyzing in the Waianae Coast case.

4 The supreme court also did not say that a
5 more permanent use had to be done by a district
6 boundary amendment over a special use permit --
7 special permit.

8 Now, I just want to address something that
9 I heard yesterday, as well as this morning. Why is
10 it I say that this is more of an Urban use than an Ag
11 use? And the reason why I said that was, in looking
12 at the standards in HAR 15-15-19, the landfill use
13 plus the facilities project does not fit in with the
14 standards for establishing an Agricultural District.
15 So that's why I said that.

16 I do want to reiterate what has been stated
17 multiple times, stated as well as in the record, the
18 22 acres of IAL lands for this project is 22 acres
19 out of the 27,000 acres that A&B designated, 22 acres
20 out of 235,000 Agricultural acres on Maui.

21 In A&B's Petition it stated at the time
22 that the entire Petitioned Area was used for
23 Agricultural purposes, and that is not the case any
24 more.

25 As you know, in 2016 HC&S shutdown sugar,

1 and the majority of land that was once used for sugar
2 cultivation is left fallow.

3 Now, I'm going to just provide you a little
4 bit of commentary. We had a huge fire on Maui
5 yesterday. And as I was driving down Haleakala
6 Highway to come to work yesterday, I could see the
7 fire starting around Haliimaile.

8 At the end of the long day yesterday, they
9 were reporting that they were getting prepared to
10 evacuate all the way down to Paia and Skill Village.

11 So at the end of the day they had closed
12 Haleakala Highway down, and ironically I had to drive
13 home through Pulehu Road.

14 So at first I believe it was Commissioner
15 Chang who asked the question yesterday, how far is
16 the landfill from any residential area? And I wasn't
17 really thinking about it when I was driving by the
18 residential areas in Kahului, but when I hit the
19 Pu'unene Mill, I looked down at my odometer and it
20 said something, something, 81. And then I continued
21 down Hansen Road, and then turned right up Pulehu
22 Road.

23 So once I hit the landfill it was about
24 85 -- 83, so that's about two miles from the Pu'unene
25 Mill. No houses, commercial buildings along the way.

1 Then at the top of the landfill, I looked
2 down again, and from there to the first sign of
3 civilization it was five miles, approximately. I
4 don't have tenths of a mile on my thing.

5 So that was Waka Farm, a little bit further
6 than that is the goat farm, and a little further than
7 that is the first house that I saw. Once I hit the
8 first house, that was about six miles from the top of
9 the landfill.

10 So I don't want to add anything to the
11 record, I just want to provide a commentary. The
12 record already stands that there's no
13 residential-type uses around the special permit area.

14 Now, I want to point out that I see IAL
15 lands every day as I drive on Haleakala Highway. And
16 yesterday I saw it on Pulehu Road.

17 I want to kind of highlight, although you
18 all know already that we are not asking to use the
19 last 22 acres of IAL land for this project.

20 The IAL for the most part on Maui is not
21 being used for Agricultural at all, it's weeds,
22 ground cover, dry ground cover that looks like short
23 wheat fields, hence, the huge brush fire we had
24 yesterday on Maui.

25 So we are not asking to use the last

1 remaining IAL land. If we were, I don't think we
2 would be here today. But there are thousands and
3 thousands of acres of IAL not being used for
4 Agricultural purposes at this time.

5 Now, I would like to go back to what we are
6 requesting of you today. The amendment, again, has
7 three components, and I will talk about the
8 expansion, 40-acre, but the first component is the
9 removal of the remaining portion of Parcel 20 from
10 the Special Permit Area. The County does not own it.
11 We don't intend to own it. We have no control over
12 it. And I did not hear any concerns about that
13 yesterday. So we're asking for removal of that land
14 from the Special permit area.

15 Another component is the time extension to
16 the special permit, which does consist of the working
17 landfill. Now, this process, and trying to obtain
18 this fourth amendment and time extension, actually
19 started five years ago. This five years we came upon
20 2018, and we hit the date for expiration of the third
21 amendment.

22 So we asked that the time extension be
23 granted, because essentially if it's not, we have no
24 permit, and we're not going to be able to operate the
25 landfill.

1 And as a reminder, the only legal landfill
2 that would be remaining is in Hana. I don't think
3 people will drive out to Hana to dump their waste,
4 but I definitely know Hana doesn't want to accept
5 this side of the island.

6 Now, to the component that is concerning to
7 all of you, which is the 40-acre expansion project
8 which consists of the 22 acres of IAL. The County
9 does agree and want to take steps to remove the IAL
10 designation from those 22 acres.

11 We agree with the conditions that OP stated
12 in their July 1st, 2020 letter to you. We're okay
13 with that and agree with it. I respect that.

14 And we heard additional conditions offered
15 today by OP, and so we are fully in agreement of OP's
16 condition.

17 I want to offer additional conditions for
18 you today for your consideration and to hopefully
19 make this easier for you to approve.

20 The first one is: Within one year of
21 approval of this amendment, the County shall identify
22 County-owned Agricultural property of similar and
23 equivalent acreage on Maui, and submit a request to
24 have it designated as IAL to compensate for the loss
25 of 22 acres of IAL associated with this facility with

1 this new project.

2 The second condition: Upon restoration of
3 closed phases of CML where safe and practicable to do
4 so, and if designated as Agriculture still at that
5 time, the County shall seek to make lands available
6 for future appropriate Agricultural use in accordance
7 with applicable state and federal guidelines, a
8 requirement.

9 That's all I have to say right now. We're
10 available for questions.

11 CHAIRPERSON SCHEUER: Thank you very much,
12 DEM.

13 Commissioners, questions for DEM?

14 Commissioner Chang followed by Commissioner
15 Ohigashi.

16 COMMISSIONER CHANG: Thank you, Mr. Chair.

17 I appreciate the County's additional
18 clarification, and the additional conditions. I
19 guess I would just ask you, under your second -- upon
20 restoration, if the land is appropriate for ag, then
21 you would seek to make available the appropriate use.

22 What if it's determined that it's not
23 appropriate for ag? What is the County going to do?

24 MS. OANA: You know, I'm not sure. I
25 haven't spoken to my people about that. I envision

1 it to be like an open space if it's not appropriate
2 for agriculture. But, you know, from what I
3 understand from the engineers is that it really is
4 more of an engineering kind of thing, how can we make
5 it appropriate for agriculture. It's kind of an
6 engineering design kind of thing. I can't really
7 talk about that too much. I mean, I don't know.

8 COMMISSIONER CHANG: I understand it's hard
9 to maybe speculative.

10 You're asking for an extension until --
11 remind me what was the date you're asking an
12 extension till?

13 MS. OANA: 2028.

14 COMMISSIONER CHANG: And you're confident
15 that's the only extension you need?

16 MS. OANA: Honestly, I was brought in to
17 this very, very shortly ago, a couple of weeks. So
18 if it was my decision from the beginning, you know, I
19 probably would have asked 20 years or at least ten.

20 So, you know, I think we will be coming in
21 for another amendment before you folks.

22 COMMISSIONER CHANG: I appreciate your
23 honesty on that, because I'm wondering, to put this
24 kind of investment just for another ten years may not
25 be the most prudent course of action, but I leave

1 that to the County.

2 Sometimes I also believe that if there's
3 intention, if the intention is to restore the site to
4 Agricultural uses, then that helps drive some policy
5 decisions about how you -- so it's more than just
6 maybe an engineering or technological, but it may be
7 the intentions of DEM if it, again, if it is intended
8 to go back to Ag, then you will take appropriate
9 actions.

10 But if it's not the intention to go back to
11 Ag, and maybe again this is too speculative, would
12 the County consider at that point in time doing a
13 district boundary amendment?

14 MS. OANA: You know, I do think so, because
15 that, like I said, has been discussed. Should we do
16 that? And so, you know, we're hearing you folks
17 today loud and clear, and with regard to what you
18 said the intention, you know, we hear you, and maybe
19 if there were no plans to make this restored back to
20 Ag, now we're hearing that we should make a plan for
21 what happens after this is all done.

22 COMMISSIONER CHANG: Thank you so very
23 much.

24 Mr. Chair, I have no other questions.

25 CHAIRPERSON SCHEUER: Thank you,

1 Commissioner Chang.

2 Commissioner Ohigashi followed by
3 Commissioner Giovanni.

4 COMMISSIONER OHIGASHI: Am I allowed to ask
5 questions of testimony before?

6 CHAIRPERSON SCHEUER: Yes. Meaning?

7 COMMISSIONER OHIGASHI: I'm just curious
8 what is my ability to ask questions. I wanted to ask
9 questions about some figures over here that they had
10 in their Exhibit 7.

11 CHAIRPERSON SCHEUER: Yep, that's fine.

12 COMMISSIONER OHIGASHI: I'm not sure who
13 can respond to this, but Ms. Oana indicated that you
14 follow the quarry. So I'm looking at this page
15 number 17, and Central Maui Landfill Exhibit 7, page
16 17, Central Maui Landfill. It's right there. I'm
17 looking in the middle. And next door to it is HC&D,
18 LLC quarry.

19 So is that where the next expansion for the
20 landfill would take place?

21 MS. OANA: I'm going to have to get one of
22 my people to answer that question.

23 This is Deputy Director Shayne Agawa. He
24 hasn't been sworn in yet.

25 CHAIRPERSON SCHEUER: Mr. Agawa, do you

1 swear or affirm the testimony you're about to give is

2 MR. AGAWA: Yes.

3 SHAYNE AGAWA

4 Was called as a witness by and on behalf of the
5 Department of Environmental Management, was sworn to
6 tell the truth, was examined and testified as
7 follows:

8 DIRECT EXAMINATION

9 MR. AGAWA: The actual next expansion of
10 Central Maui Landfill is currently in the bid
11 process, it's Phase III. That is right adjacent to
12 the existing landfill. But there is some validity to
13 following the quarry as was mentioned earlier, that
14 would be after Phase III expansion would be the next
15 planned expansion to follow the quarry.

16 COMMISSIONER OHIGASHI: So are you guys
17 following the quarry now or not? I'm just curious.

18 MR. AGAWA: Currently we are not. Our
19 plans, yes, is to follow the quarry in the future.
20 The quarry is still active currently, so we cannot
21 assume to take over that land for landfill use at
22 this time.

23 COMMISSIONER OHIGASHI: The expansion that
24 you're planning in the future, is that -- was that
25 quarry used before?

1 MR. AGAWA: Yes. The completed --
2 (inaudible) -- of the quarry, yes. It was used.
3 What we are currently landfilling now.

4 COMMISSIONER OHIGASHI: So could you point
5 out in Exhibit 7, on No. 17 on Exhibit 7, the County
6 what part of the expansion falls within those black
7 lines that project site location of the landfill?
8 The landfill itself, I want to know where it is in
9 the black line.

10 MS. OANA: Are you talking about this
11 slide?

12 COMMISSIONER OHIGASHI: Yeah.

13 MS. OANA: The one with the green showing
14 the IAL?

15 COMMISSIONER OHIGASHI: The one in the
16 green, and there is a black line going, it says
17 approximate location of project site.

18 CHAIRPERSON SCHEUER: Is it possible to do
19 a share screen on this for the benefit of the
20 Commissioners?

21 COMMISSIONER OHIGASHI: I don't have that.

22 CHAIRPERSON SCHEUER: Not Mr. Ohigashi, but
23 DEM?

24 MS. OANA: If you can hold on a minute, I
25 have not done this before.

1 COMMISSIONER OHIGASHI: If it is too
2 difficult maybe I can clarify my question.

3 MS. OANA: So if you're referring to our
4 presentation yesterday that showed a big green area
5 showing the Important Agricultural Land, and that's
6 on page 17, and you're asking about the black line
7 showing the location of the project site.

8 That is the location of the expansion
9 project. That is not going to be part of the
10 landfill. That is going to be the facility for the
11 various diversion and recycling operation.

12 COMMISSIONER OHIGASHI: Because I just want
13 to be fair with you guys, that's what my problem in
14 this case. None of the landfill operations are
15 taking place on that expansion site. The only
16 operations that are taking place on the expansion
17 site appear to be so-called industrial uses that I
18 cannot find in the record that are tied directly to
19 the landfill site.

20 So I'm having a difficult time saying that
21 a special use permit should cover that 40-acre site,
22 given the fact that the user expansion of the
23 landfill itself is not going to take place on that
24 site, and in fact, the future expansion, which is the
25 HC&D, LLC quarry for the landfill is not on that

1 site.

2 So could you help me out and tell me
3 whether or not a special use permit should be issued
4 or district boundary amendment should issued for
5 industrial uses soley for the purpose it hasn't been
6 connected to the landfill at all?

7 CHAIRPERSON SCHEUER: DEM.

8 MS. OANA: Can I ask Mr. Roy to answer your
9 question or a part of your question?

10 CHAIRPERSON SCHEUER: He can respond.

11 MR. ROY: Thank you, Mr. Chair.

12 Thank you, Commissioner Ohigashi, for the
13 question.

14 As I mentioned yesterday during testimony,
15 this has been quite a process for the County. We
16 have been in this process for about five years.
17 There was a dedicated effort at the very outset to
18 coordinate with the State and the County to determine
19 the appropriate process that should be followed for
20 requesting this additional expansion to the Central
21 Maui Landfill.

22 During that early consultation process, it
23 was determined that -- well, the guidance that was
24 issued was based on the uses being directly related
25 to the existing landfill operation, and the landfill

1 being an identified special use within the
2 Agricultural District by County zoning, that it was
3 appropriate for the County to seek amendment to the
4 existing special permit that covers the landfill.

5 CHAIRPERSON SCHEUER: Mr. Ohigashi.

6 COMMISSIONER OHIGASHI: If that's your
7 answer, there's nothing else I can say. But I've
8 laid out my problem. And I'm sure everybody will
9 decide on their own, but that is my problem. Thank
10 you.

11 CHAIRPERSON SCHEUER: We have Commissioner
12 Giovanni and Commissioner Okuda are continuing with
13 questions.

14 I will say one thing about this Docket, it
15 has been a testimony to my inability to accurately
16 estimate how long we would be spending on it. So we
17 are now pushing up -- I thought we might be done
18 before lunch yesterday. I don't think we will be
19 done before lunch today.

20 If Mr. Giovanni and Mr. Okuda have brief
21 questions, I would suggest we do them before lunch,
22 and then take a break for lunch and then move into
23 deliberation. Is that acceptable?

24 COMMISSIONER GIOVANNI: That's acceptable
25 for Mr. Giovanni. Of course, I would never speak for

1 Mr. Okuda.

2 COMMISSIONER OKUDA: I just have one
3 question, and it's actually a followup to
4 Commissioner Giovanni's statement earlier, so I'm
5 pinning it on him.

6 CHAIRPERSON SCHEUER: Mr. Hopper seems to
7 have raised his hand again.

8 MR. HOPPER: Mr. Chair, I just wanted to
9 offer, if possible, a reference in the staff report
10 responding to the Commissioner's previous question
11 about the expansion area use, Planning Department
12 just referred me to a part of the staff
13 (indecipherable).

14 CHAIRPERSON SCHEUER: Is it responsive to
15 Mr. Ohigashi's questions?

16 MR. HOPPER: Yes.

17 CHAIRPERSON SCHEUER: Okay. Can you be
18 brief, Mr. Hopper?

19 MR. HOPPER: I'll be brief.

20 CHAIRPERSON SCHEUER: And then we will go
21 to Commissioner Giovanni, Commissioner Okuda, unless
22 there are any other Commissioners, and then we will
23 break with the intention of coming back for
24 deliberation.

25 MR. HOPPER: Page 3 of the staff report,

1 which you have as a matter of your record, talks
2 about the 40-acre expansion area.

3 It says: The DEM proposes approximately
4 40-acre expansion to increase the County's Integrated
5 Solid Waste Management and Recycling/Diversion
6 facilities on the Central Maui Landfill property
7 which will serve to reduce the amount of waste
8 entering the landfill.

9 And then it lists the specifics. The idea,
10 this is an accessory use to the landfill and directly
11 tied to the landfill use. It's part of the same use.

12 So I think that's just what the planning
13 staff report did address, and I wanted to get that
14 response on record. DEM can correct me if they
15 disagree with this, but it does appear to be part of
16 and integral to the operation of the landfill
17 ongoing.

18 CHAIRPERSON SCHEUER: Thank you, Mr.
19 Hopper.

20 Commissioner Giovanni.

21 COMMISSIONER GIOVANNI: Well, let me start
22 by saying I disagree with Mr. Hopper and his
23 interpretation of what is a landfill or an ancillary
24 requirement to be part of a landfill, and my feelings
25 are more in the lines of Commissioner Ohigashi.

1 So let me start with the technical question
2 to DEM or your engineering consultants and planning
3 consultants.

4 When you have a process that would take
5 waste and look to divert that waste, reduce that
6 waste, otherwise recycling part of that waste, you
7 end up with a lesser amount of waste that actually
8 has no other outcome other than perhaps landfill.

9 So what I envision in this project is that
10 the original idea as far as the landfill was purely
11 to take all the waste and just put it there, and now
12 we're diverting part, so in essence we are expanding
13 the capacity of the existing footprints and buying a
14 lot of times for this facility to accept waste.

15 My question in all of this is to the
16 engineer or planners, is it not possible, feasible,
17 and even common that diversion and recycling
18 facilities are not adjacent to a landfill, even
19 though they're end products, or part of their end
20 products end up in a landfill?

21 CHAIRPERSON SCHEUER: DEM, the question is
22 for you, DEM. DEM, the question is for you.

23 MR. AGAWA: Thank you, Member Giovanni.

24 The answer to your question directly is
25 yes. It does happen outside of the Central Maui

1 Landfill location itself. In addition to that
2 though, you hit the nail on the head, it is directly
3 part of landfilling, what we're proposing on this
4 site, although it may seem industrial in nature like
5 Member Ohigashi was saying, it attributes to the
6 landfill diversion directly. It does give life to
7 the landfill.

8 Efficiently-wise, having it on-site versus
9 having it off-site at a private location, it just
10 makes sense. It's cost efficient as well.

11 But to answer your question directly, yes,
12 it does occur off-site as well on private property.

13 COMMISSIONER GIOVANNI: I would agree with
14 that and I would also concur with your statement it
15 might promote efficiency and cost savings to do it
16 adjacent, but it's not necessary to be adjacent.

17 So thank you for that.

18 So then the other kind of related issue I
19 have, and it goes back to kind of Mr. Hopper's
20 opening comments and his testimony a few moments ago,
21 is that this is not an amendment to expand a
22 traditional landfill. It's an amendment to add
23 industrial facilities that would work in concert with
24 the existing landfill, and thereby reducing the
25 demand on that existing landfill, not expanding the

1 demand for existing landfill.

2 If this was purely an amendment, request
3 for amendment to make a larger landfill, then I could
4 accept Mr. Hopper's arguments that a modification of
5 a permit made the most sense. But that doesn't seem
6 to be what this is about.

7 I wonder if Mr. Hopper can comment further.

8 MR. HOPPER: Certainly. I think that a
9 landfill is not only composed of what is in the
10 ground, I think you've got landfill facilities,
11 oftentimes structures or other uses, not necessarily
12 exactly like this in other Counties.

13 In addition, I don't see how a special
14 permit for the landfill use would be allowed, but a
15 special permit for these uses which are certainly
16 related to the landfill would not be allowed by
17 special permit.

18 If you look at the criteria of HRS 205-6,
19 LUC rules, I think they serve similar purposes too,
20 which allow a landfill.

21 I don't think that if you say, if you do
22 anything other than put the garbage into the ground
23 that's a landfill, but anything else other than that,
24 even if it's related, has to get a district boundary
25 amendment.

1 I think those uses can still be allowed by
2 special permit. So I do think this is clearly tied
3 to the landfill use. It's not literally the same
4 thing as putting the garbage into the ground, but
5 it's certainly accessory to that use. And I don't
6 see how you would -- you've got discretion in
7 exercising the criteria, 205-6, but I don't see that
8 as a matter of law you cannot get a special permit
9 for this use along with the rest of the landfill use.

10 COMMISSIONER GIOVANNI: Thank you for the
11 elaboration. I have no further questions, Chair.

12 CHAIRPERSON SCHEUER: Thank you,
13 Commissioner Giovanni.

14 Commissioner Okuda.

15 COMMISSIONER OKUDA: Thank you, Mr. Chair.

16 This can either be answered by Mr. Hopper
17 or DEM or its counsel.

18 You know, Commissioner Giovanni made an
19 observation about the fact that right now there are
20 no neighbors around the proposed facility.

21 Isn't it true that there might be a benefit
22 to the County of Maui by going with a district
23 boundary amendment? If that amendment is granted,
24 that settles the issues before the State Land Use
25 Commission about people complaining to the State Land

1 Use Commission that, gee, maybe the use should be
2 stopped because once the district boundary amendment
3 is granted, then it's granted.

4 If, on the other hand, all you get is a
5 special permit, and that permit is subject to a time
6 limit in the future, your facility, which actually
7 may be and probably will be a benefit to the County,
8 might be subject to challenge.

9 So isn't there really a benefit in the long
10 run, and maybe even in the medium run, by going for a
11 district boundary amendment even though that process
12 in the short run may seem to take a little bit more
13 time?

14 That's my only question, Chair.

15 CHAIRPERSON SCHEUER: So the question was
16 posed to either DEM or Mr. Hopper. I'll allow both
17 to reply.

18 COMMISSIONER OKUDA: Yes, thank you, Chair.

19 MS. OANA: Mr. Chair, we totally understand
20 the issue. We acknowledge what Commissioner Okuda
21 just said, as well as Commissioner Giovanni
22 yesterday, and we do acknowledge the importance and
23 the beneficial benefits of having a district boundary
24 amendment. So there will for sure be further
25 discussions on moving towards that direction.

1 We just do hope that this amendment is
2 granted.

3 CHAIRPERSON SCHEUER: Mr. Hopper.

4 MR. HOPPER: Yes. The only thing I would
5 add to that is if you do a district boundary
6 amendment and the landfill needs to expand beyond
7 that district boundary, we would still have to go
8 before this Commission to get another amendment for
9 that area. So obviously it certainly -- DEM's
10 approach, they can choose -- I think it's certainly a
11 possibility to get a district boundary amendment.
12 That's an option available.

13 But I would note that the landfill would
14 have to continue to expand. We would still have the
15 same issue of potential challenges to future
16 Urbanization of additional lands if that approach is
17 taken.

18 CHAIRPERSON SCHEUER: Thank you, Mr.
19 Hopper.

20 Commissioner Ohigashi.

21 COMMISSIONER OHIGASHI: Just a comment I
22 wanted to make.

23 I see the benefit in the 40 acres being
24 determined by boundary amendment. However, there
25 appears to be nothing in my mind preventing the

1 landfill from continuing and going forward and
2 getting time extensions.

3 The question -- the comment I have is that
4 are we able to sever the issues and grant time
5 extension and -- what was the other one now?

6 Well, several issues that require that the
7 expansion portion coming in for boundary amendment.

8 CHAIRPERSON SCHEUER: I believe that might
9 be a question for counsel, Mr. Morris.

10 COMMISSIONER OHIGASHI: Are we stuck with
11 up or down the whole thing?

12 CHAIRPERSON SCHEUER: Mr. Morris, if you
13 could review for the Commission the four large
14 options that we have in front of us from denial
15 through other options.

16 MR. MORRIS: I think we talked about the
17 granting or the denying or the granting with
18 conditions attached. And the fourth option, I'm not
19 sure.

20 CHAIRPERSON SCHEUER: Remand for further
21 proceedings, since we are limited to the record at
22 hand.

23 So the question from Commissioner Ohigashi
24 is: Is it possible to approve in part?

25 MR. MORRIS: Well, I don't think that's in

1 one of the four categories, but if approving in part
2 was construed as we're approving it, but we're
3 attaching conditions. That's sort of like approving
4 in part.

5 So I guess you would have to be real
6 specific about what part you're not approving, and
7 how you're addressing that.

8 COMMISSIONER OHIGASHI: Let me put the
9 question simply.

10 Can we approve the extension of time as
11 well as the other -- I'm getting a blank right now on
12 the other request -- but and deny expansion?

13 MR. MORRIS: I don't believe so.

14 COMMISSIONER OHIGASHI: So it's either all
15 or --

16 MR. MORRIS: Or remand and attach
17 conditions.

18 CHAIRPERSON SCHEUER: Mr. Morris --
19 Commissioner Okuda, I do want to take a break soon
20 for lunch.

21 COMMISSIONER OKUDA: Mr. Chair, I would
22 request that if that is the Deputy Attorney General's
23 advice, if he can reconsider that and provide
24 authority that so states, because I believe we can
25 grant in part and deny in part.

1 I don't see anything in the rules or the
2 statute, as long as we don't violate something else.

3 I only make a request that, because that's
4 an important question that Commissioner Ohigashi has
5 raised, that the Deputy Attorney General, over the
6 lunch break, look for authority that supports that,
7 and maybe reconsider his advice. Thank you, Chair.

8 MR. MORRIS: I'll do that.

9 CHAIRPERSON SCHEUER: Thank you, Mr.
10 Morris.

11 The last question I have is actually for
12 the Deputy Attorney General. I want to see if I can
13 phrase this correctly and recall what I want to say
14 is -- no, I'm sorry, I lost it. It was a procedural
15 question.

16 Commissioner Giovanni.

17 COMMISSIONER GIOVANNI: Thank you, Chair.
18 I think I have a quick question.

19 So DEM has maintained that time is of the
20 essence, that they've been at this process for five
21 years and they want to move forward, and I appreciate
22 that fully.

23 So the question is, if we approve the
24 request, whether it has conditions or not, when would
25 the development or shovel-in-the-ground, when would

1 it start on the 40 acres?

2 MS. OANA: If I can just have a moment.

3 COMMISSIONER WONG: Chair, this is
4 Commissioner Wong.

5 CHAIRPERSON SCHEUER: Commissioner Wong.

6 COMMISSIONER WONG: If DEM needs more time,
7 plus our AG needs more time, can we take a lunch
8 break?

9 CHAIRPERSON SCHEUER: I remembered my
10 question.

11 I just want to confirm with our Attorney
12 General, we were given orally by DEM some conditions
13 they would be willing to accept. I think it would
14 assist the Commissioners greatly to have these in
15 written form in front of us.

16 Is it violative of any of our processes
17 that those could be shared with us along with our
18 deliberation as long as they're shared with OP and
19 County?

20 MR. MORRIS: I think if they're just going
21 to putting in writing what their testimony is, I
22 don't see that's a problem as long as, as you said,
23 it is shared for any members reviewing it.

24 CHAIRPERSON SCHEUER: So I would ask the
25 counsel for DEM to work with Mr. Hakoda and Mr.

1 Orodenker to share what you orally had shared
2 as proposed conditions, and get those to the
3 Commissioners and the parties over the lunch break as
4 well. Is that possible?

5 I see you nodding. Can you for the
6 record --

7 MS. OANA: Yes, it is.

8 CHAIRPERSON SCHEUER: Okay. Is there
9 anything further right now, Commissioners?

10 Commissioner Giovanni, then Commissioner
11 Chang.

12 COMMISSIONER GIOVANNI: I'm waiting for an
13 answer to my question about shovel-in-the-ground.

14 MR. AGAWA: Shovel-in-the-ground as early as
15 fiscal year 2022.

16 CHAIRPERSON SCHEUER: Please identify
17 yourself for the record.

18 MR. AGAWA: Deputy Director of DEM Shayne
19 Agawa.

20 To answer Commissioner Giovanni's question,
21 as early as the year 2022.

22 CHAIRPERSON SCHEUER: Does that answer your
23 question, Commissioner Giovanni?

24 COMMISSIONER GIOVANNI: Just wanted to be
25 sure.

1 So would you do physical work on the
2 property starting two years from now?

3 MR. AGAWA: Correct.

4 COMMISSIONER GIOVANNI: Thank you.

5 CHAIRPERSON SCHEUER: Commissioner Chang.

6 COMMISSIONER CHANG: Thank you, Mr. Chair.

7 I'm going to ask DEM and our AG to do some
8 work during the lunch. I guess for me the question I
9 have for DEM are these three:

10 Is there application, the three points that
11 they asked, one the removal, the time extension, and
12 then the expansion.

13 Are those -- from a management standpoint,
14 can they indeed separate them? Because I agree with
15 our Deputy AG. I don't believe that we can
16 bifurcate, but that's what they're going to look at.
17 But I think we have to look at the application that's
18 before us.

19 But I would like to know from a practical
20 matter whether the County can indeed do what we are
21 asking them. So while they're on lunch break that's
22 the question.

23 CHAIRPERSON SCHEUER: Thank you for that,
24 Commissioner Chang.

25 What I would like to suggest is that, I

1 will then, after lunch, we will recess, reconvene at
2 1:00 P.M. I'll give the briefest of opportunities for
3 DEM to respond to that particular question, and then
4 I believe that we are probably ready to go into
5 deliberation on this matter.

6 Is that acceptable, Commissioners?

7 Mr. Orodener.

8 EXECUTIVE OFFICER: Mr. Chair, could you
9 have -- could the County please send their email with
10 their proposed additional conditions to Scott
11 Derrickson? Riley and I have another matter we have
12 to address during lunch.

13 CHAIRPERSON SCHEUER: Apologize for that.
14 You can do that, DEM? Yes.

15 Okay, it's 12:17, we're going to reconvene
16 at 1:00 P.M. for deliberation after hearing briefly a
17 response to Commissioner Chang's question.

18 (Noon recess taken.)

19 CHAIRPERSON SCHEUER: I'm going to call us
20 back into order. It's 1:03 P.M.

21 Friends and colleagues, there was a request
22 for a response to a specific question from
23 Commissioner Chang to DEM prior to the break, and I
24 indicated that we would head into deliberations.

25 DEM.

1 MS. OANA: Can you please repeat the
2 question?

3 COMMISSIONER CHANG: Okay. Thank you.
4 This is Commissioner Chang.

5 The question I asked, based upon the
6 previous conversation, was could we bifurcate. So
7 the question I have for DEM is, you came in with an
8 application asking for three actions to be taken.

9 I want to know from DEM, is that necessary
10 that all of these three parts be approved? Or can
11 you -- can we separate as being discussed?

12 MS. OANA: Thank you.

13 You know, as far as I'm concerned, without
14 the granting of time extension, we have no landfill.
15 So if Mr. Morris is saying that you can divide it,
16 grant it or grant it with conditions or remand,
17 without the grant in part or deny in part, if you
18 were to deny it, then we don't have a Central Maui
19 Landfill after that.

20 I do want to turn this over to the DEM
21 Deputy Director or the Director, because if the
22 40-acre expansion project is denied, there are some
23 repercussions, so I just want you folks to hear from
24 them what their situation will be.

25 CHAIRPERSON SCHEUER: Go ahead.

1 Sorry, Commissioner Aczon.

2 VICE CHAIR ACZON: Is it possible to hear
3 our Deputy AG first on his opinion before we go --

4 CHAIRPERSON SCHEUER: Regarding the denial
5 in part?

6 VICE CHAIR ACZON: Right.

7 CHAIRPERSON SCHEUER: That might make
8 sense. Mr. Morris.

9 MR. MORRIS: Thank you. I've had a
10 relatively brief period of time to review this
11 question, but I'm looking at 15-15-95, 15-15-96,
12 15-15-96.1.

13 Because this project is greater than
14 15 acres, the County's role is primary here. And in
15 those administrative rules, it lays out these four
16 options, grant, deny, remand or place conditions.

17 And my reading of the conditions would be
18 additional requirements. It says that -- the
19 Commission in 15-15-96, the Commission may impose
20 additional restrictions that may be necessary.

21 I do not see that as the same thing as
22 saying, well, we will allow an extension of time but
23 deny the expanded footprint. I don't see that as
24 additional condition.

25 So my inclination under this scenario is to

1 say that if they wanted to suggest, well, we will
2 grant the extension of time, but we're not going to
3 let the application or this petition include -- we
4 are going to deny the part about an expanded
5 footprint. I believe that would require a remand to
6 the County for their consideration of the changed
7 request.

8 It really wouldn't be the same special
9 permit that was approved by the County.

10 So that's my view is that I don't think you
11 can grant in part and deny in part in the way that
12 we've talked about without some attendant remand to
13 the County.

14 CHAIRPERSON SCHEUER: Thank you, Mr.
15 Morris, for that.

16 Was that responsive, Mr. Aczon?

17 VICE CHAIR ACZON: Yes, thank you. Thank
18 you, Mr. Morris.

19 The other question I have is for, I guess,
20 our staff on how long it's going to take, if you do
21 remand it, how long it's going to take? Some kind of
22 timeline how long it's going to take to get this
23 thing done.

24 I'm more concerned about not having a
25 landfill. That's my only concern. I just want to

1 kind of see how long this is going to take, because
2 we don't want the County operating illegally on this
3 one, whether it's one month, two months, three
4 months, we don't want any illegal operation. And
5 this thing went five years already.

6 So every day that they do illegal
7 operations, is not a good thing.

8 EXECUTIVE OFFICER: Commissioner Aczon, we
9 will, if the decision is to remand back to the
10 County, we will transmit that to the County
11 immediately.

12 The difficulty is when the County wants to
13 hear it, how and when they can render a decision.

14 The minimum on this would be, because to
15 hold the hearing, render a decision, and then adopt
16 the minutes and everything to send them up to us, the
17 minimum is two to three months.

18 If they have a lot -- if they're busy, it
19 could take a year.

20 VICE CHAIR ACZON: Procedurally this one is
21 going to go back to the Planning Commission and then
22 the County Council?

23 EXECUTIVE OFFICER: It goes back to the
24 Planning Commission.

25 VICE CHAIR ACZON: And it doesn't have to

1 meet approval from the County Council?

2 EXECUTIVE OFFICER: It does not. But for
3 us to act, they have to transmit the entire
4 (inaudible) which would take some time and after they
5 render the decision, that's why I'm saying at a
6 minimum it would take three months.

7 CHAIRPERSON SCHEUER: If I may clarify as
8 Chair, one part of Commissioner Aczon's question, and
9 this might be directed towards Mr. Morris or Mr.
10 Orodener.

11 Only a denial would result in the County
12 currently operating without a permit, because under
13 the appropriate rules, it is my understanding that so
14 long as they have a pending application for an
15 extension of their permit, they can continue to
16 operate even if that permit has passed its expiration
17 date.

18 EXECUTIVE OFFICER: I got nothing. I'm not
19 sure what the answer is on that.

20 CHAIRPERSON SCHEUER: Commissioner Cabral,
21 I see your hand and other hands.

22 VICE CHAIR CABRAL: Commissioner Cabral.

23 CHAIRPERSON SCHEUER: Commissioner Cabral,
24 hold on. I was just saying I was acknowledging that
25 I notice that you're in line to speak.

1 Mr. Morris?

2 MR. MORRIS: I don't have an answer for you
3 on that, whether the pending application, if there
4 were to be -- issue a new request for additional time
5 during the pendency of that, it would be fine for
6 them to operate. I don't know the answer to that. I
7 can work on it, but I don't --

8 CHAIRPERSON SCHEUER: Mr. Aczon, anything
9 further?

10 VICE CHAIR ACZON: That's all, Mr. Chair,
11 thank you.

12 CHAIRPERSON SCHEUER: So we were planning
13 to go to DEM's response, but I have hands up from
14 Commissioner Ohigashi, Cabral and Chang. So we will
15 do those first.

16 Commissioner Ohigashi.

17 COMMISSIONER OHIGASHI: I just want to
18 caution the County, DEM, about additional evidence
19 that is not on the record, if they intend to place
20 into the record things that were not discussed below
21 or not contained within the record, because
22 apparently I'm not sure, I don't believe that we can
23 consider that. Is that right?

24 MR. MORRIS: Well, I'm confident saying we
25 are confined to the record before us that was sent up

1 from the County proceedings.

2 CHAIRPERSON SCHEUER: Commissioner Cabral.

3 VICE CHAIR CABRAL: Thank you.

4 I wanted to speak up, not necessarily in
5 disagreement, but somewhat in disagreement with my
6 other fellow neighbor island Commissioners.

7 I think that this -- I keep hearing the
8 theme of a landfill is not a landfill, because it has
9 a warehouse and it does recycling or something.

10 CHAIRPERSON SCHEUER: Commissioner, are we
11 in deliberation now, or do you have a question for
12 Mr. Morris?

13 VICE CHAIR CABRAL: I guess my question
14 would be, is there a legal definition under which
15 this has been brought forth that a landfill is
16 restricted to only putting stuff in the ground as
17 opposed to a recycle and rubbish facility?

18 CHAIRPERSON SCHEUER: That would be a
19 question actually under the Maui County Code. I'll
20 hand it to Mr. Hopper to respond to and then
21 Commissioner Chang.

22 MR. HOPPER: You're asking what the
23 definition of a landfill is in the County ordinance?

24 VICE CHAIR CABRAL: My question is, yeah, I
25 mean, I'm getting that a landfill can only be

1 something because it's where we fill the land with
2 rubbish. Where, in fact, I feel like a modern
3 landfill could be on that IAL land. You drop off
4 your slop, you go through the building, drop off your
5 plastic and you're really into a recycling act. The
6 new world is no longer a landfill like it was 20, 50
7 years ago.

8 It is really a recycling and reused and
9 final waste site. And I think we're getting hooked
10 up on what we think is a landfill.

11 And if the application of a landfill is
12 restricted to just a hole in the ground, then we have
13 a problem. But otherwise, if it's the bigger
14 definition, then everything that you're proposing
15 should be acceptable on the expanded land.

16 MR. HOPPER: I'm looking just in Title 19
17 of the County Code which deals with zoning, but the
18 only definition in the zoning ordinance about just
19 landfill -- there might be another definition where
20 it would fall under -- goes into what is allowed in
21 County zoning. (Audio difficulty) -- under HRS 205
22 in the Ag District has the -- sorry -- OP talked
23 about there is not a definition in HRS 205 of what a
24 landfill is. Acknowledge it's not one of the listed
25 permitted uses.

1 So whatever is being done is something for
2 which a special permit is required, because it's an
3 unusual and reasonable use.

4 Maybe there is a more industry specific
5 definition of what a typical landfill would include.
6 I just checked the County Code for the zoning area
7 definition of landfill. I could look more in depth,
8 but maybe DEM could help with explaining what a
9 typical landfill could include, additional things
10 other than what is in the ground.

11 For the purpose of discussion of special
12 permit, the issue is whatever you're being asked to
13 allow is it consistent with 205-6 and the Land Use
14 Commission admin rules.

15 Again, that analysis is here (audio
16 difficulty) -- for however the use -- whatever the
17 use is defined as, that that has to meet the
18 requirements of 205-6 as unusual and reasonable use.

19 CHAIRPERSON SCHEUER: Commissioner Chang.
20 You've been very patient.

21 COMMISSIONER CHANG: I would just like to
22 ask to provide DEM an opportunity to complete
23 answering my question.

24 CHAIRPERSON SCHEUER: Your question to DEM
25 was what the practical effect was on whether they

1 could be split, I believe, to paraphrase your
2 question.

3 COMMISSIONER CHANG: I believe they were
4 just about to bring up their administrator who was
5 going to talk about what the consequences of not the
6 expansion, and then we took other questions.

7 So I would like DEM the opportunity to
8 complete their answer.

9 CHAIRPERSON SCHEUER: Yes.

10 COMMISSIONER CHANG: Thank you.

11 MR. AGAWA: Yeah, so regarding if we don't
12 get approval of this amendment regarding the Central
13 Maui Landfill capacity, the current working landfill,
14 the working phase of the landfill, we're looking at
15 about another year, year-and-a-half of space.

16 As I mentioned earlier, we do have a
17 Central Maui Landfill Phase III expansion that is
18 going on. That will buy us another four years
19 roughly, approximate.

20 And this is assuming that the project we
21 are bidding out now, assuming no hiccups in the
22 project, no hiccups in construction. You know,
23 everything goes on plan. So we're looking at another
24 five-and-a-half years from today for capacity.

25 So we'll probably reach capacity in about

1 the year 2025/26. And then we will be in dire
2 straits. We're either going to be denying people
3 throwing rubbish in the landfill or be operating
4 against DOH regulations.

5 COMMISSIONER CHANG: And that was all part
6 of your record, was that going back to Commissioner
7 Ohigashi's admonition about making sure what you're
8 saying is also part of the record?

9 MS. OANA: There are multiple places in the
10 record that have that 2026 date of the capacity of
11 the landfill, that if we don't have this diversion
12 project in multiple places, with regard to -- you
13 know, if the Commission wants us to get a district
14 boundary amendment, you know, that of course is not
15 in the record. That was established before us.

16 But from what I understand from Mr. Roy,
17 you know, that could take five years. We're going to
18 have to hire outside counsel, do various
19 requirements, and so that -- we're in 2020 right now,
20 that will bring us up to 2025.

21 So that's in the same range year of when
22 the capacity of the landfill is going to be, you
23 know, dead, exhausted.

24 Mr. Roy, do you have --

25 MR. ROY: Mark Roy. I can just add to the

1 comments about the dba process. It's just an
2 important, I think, piece of additional information
3 that with a district boundary amendment, the County
4 would also need to go through equivalent community
5 plan amendment and change in zoning processes.

6 They would also need to amend the Maui
7 Island Plan, which is a general plan document for the
8 island, and as Mike Hopper mentioned earlier, those
9 are highly discretionary processes that involve
10 approval, of course, before the Land Use Commission
11 but also the Maui County Council and the Maui
12 Planning Commission.

13 And so we can easily estimate that about
14 five years, but there's no real knowledge as to how
15 long that process would take. It's definitely known
16 that it's a very expensive process for the County to
17 entertain, but highly discretionary. And, you know
18 --

19 COMMISSIONER CHANG: Excuse me. I probably
20 was not as articulate with my question as I should
21 have been. It was a very limited question.

22 You came in with an application that came
23 before the Planning Commission on three requests: It
24 was to take out the 22; it was to extend -- and it
25 was extend the duration, and then expand.

1 That was your application.

2 My only question was, could we, because
3 there a discussion about bifurcation.

4 So I just wanted a confirmation from DEM
5 that your application that you presented to the
6 Planning Commission, all of those three elements were
7 critical to proceed forward. That we couldn't take
8 out one, and then do two.

9 So that's the only thing I wanted was a
10 confirmation that the application and the
11 presentation to the Planning Commission was that all
12 three of your requests are dependent upon one another
13 and critical to moving forward?

14 I'm seeing a nod from the Administrator.
15 Is that correct?

16 CHAIRPERSON SCHEUER: DEM.

17 MS. OANA: So to answer your question,
18 Commissioner Chang, there is -- the time extension is
19 really the most critical. We need that time
20 extension granted in 2018. The parcel 20, that is
21 not critical. But the expansion of the project, it's
22 not critical today. It will be critical in 2026.

23 COMMISSIONER CHANG: All right. Thank you
24 very much.

25 I think our Deputy AG also answered my

1 question by saying we have to consider what was
2 before the Planning Commission and we can't piecemeal
3 it. Thank you very much.

4 I have no further questions, Mr. Chair.

5 CHAIRPERSON SCHEUER: Thank you very much,
6 Commissioner Chang.

7 My decision to allow the AG to speak and
8 hold DEM in abeyance was what I took to be a very
9 good suggestion from Commissioner Aczon that we hear
10 from the AG prior to their response.

11 Commissioners, during a difficult time in
12 the world, we are faced with making a decision on
13 very complex issues.

14 I believe we could certainly find
15 interesting ways to go on with additional questioning
16 of all the parties, but my sense is that we could
17 move more productively into deliberation.

18 During deliberation the only participation
19 from other parties would be to answer very narrowly
20 tailored questions from Commissioners to a specific
21 party at my discretion.

22 Are we prepared to go into deliberation?
23 So we're in deliberation on this docket. And perhaps
24 the best way to move into deliberation is if somebody
25 wishes to offer a motion.

1 COMMISSIONER WONG: Before we go into
2 deliberation, I need some legal advice. Just want to
3 just ask the AG, two parts, two questions.

4 One is hypothetically talking, we cannot
5 break in part the whole thing, but hypothetically,
6 can Maui DEM stipulate, take out one, is that
7 allowable?

8 MR. MORRIS: Well, again, I think if the
9 request for a special permit morphed into a different
10 request with different components that the County
11 hasn't considered, that's going too far.

12 Now, I want to also point out that the
13 statute talks about the Commission being able to take
14 representations from the Petitioner, and have them
15 adhere to it.

16 So we have had some proposed things, we
17 will do this in a year, or we'll do these various
18 additional things, additional requirements, fine.

19 But to sort of modify what the scope of the
20 permit is with these three substantive areas getting
21 narrowed down to two or one, I don't think the County
22 has had a fair chance to weigh in on that.

23 COMMISSIONER WONG: The other hypothetical
24 question I have is, again, there's a portion yes or
25 no, can we say yes to two parts, and then remand back

1 one part?

2 MR. MORRIS: I believe if it's a remand,
3 it's a remand. I don't think you can piecemeal it
4 like that.

5 COMMISSIONER WONG: Thank you. Thank you,
6 Chair.

7 CHAIRPERSON SCHEUER: We are in
8 deliberation.

9 COMMISSIONER WONG: Chair, do we need a
10 motion to start deliberations, or can we just
11 deliberate?

12 CHAIRPERSON SCHEUER: We can go for some
13 period without a motion before us.

14 COMMISSIONER WONG: I'm going to tell the
15 truth, I'm in a quandary right now from my last
16 questioning with the AG, that I understand there's an
17 issue, the time extension is really needed.

18 Expansion is, yeah, okay, we have that last
19 part. So I'm in that quandary is how do we -- you
20 know, I want to share the pie pretty much, and I'm
21 trying to figure out ways to go around it like
22 putting a condition or something, and I just need --
23 I don't know how to do it, Chair, or how to even make
24 a motion.

25 CHAIRPERSON SCHEUER: Thank you.

1 Commissioner Ohigashi followed by Commissioner Aczon.

2 COMMISSIONER OHIGASHI: I don't have an
3 answer for you, Mr. Wong, but I do have a comment.

4 This is the first time during these
5 proceedings that I've heard DEM indicate what
6 consequences may happen. I've looked at the record
7 and I tried to find comments in the record.

8 Counsel for DEM is correct, that they
9 mentioned that it would see capacity at 2026 and they
10 testified to that. But nowhere was there attached
11 that this particular section, this particular area,
12 which is the 40 acres, is a requirement, was required
13 to make sure that they are good beyond 2026.

14 The second thing is that the way I look at
15 it is that any time they could have come forth with
16 an extension of time. It's a simple motion. All
17 they had to do was say, hey, we need some extensions
18 of time here because our permit is running out, and
19 the Commission, Planning Commission and the Land Use
20 Commission would probably go ahead and grant it at
21 that time.

22 They could have come at any time to remove
23 that section, that 16-acre, 17-acre section, and that
24 would be not as substantive.

25 But they chose to package it altogether

1 with a 40-acre industrial park, for lack of a better
2 word, 40-acre industrial park. It has an office of
3 8000 square feet. It as an abandoned vehicle area,
4 two acres; metal processing area, 40,000 square feet,
5 which is an acre.

6 Open construction demolition material
7 recovery area. Household hazards, waste, electronic
8 waste, and storage area. Warehouse and storage area.
9 Refuse collection, office, truck parking, maintenance
10 area, drainage basins.

11 Wailuku Industrial Park would fit this
12 bill. So rather than being in a quandary, I would
13 remand with instruction to them saying, go on the
14 record where this is necessary for the purposes of
15 extending the life of the landfill. And if so, come
16 back with a boundary amendment. And remand with
17 instructions that they can come back with extension
18 of time. And to remove the 16, 17 acres.

19 I find -- I hate to point fingers at the
20 County, but it seems to me that they're bootstrapping
21 the good stuff with the bad stuff -- not the bad
22 stuff, but the things that require us to take a look
23 at it in more granular fashion to make that
24 determination.

25 But that's my position. And if they want a

1 remand, if they feel that they want to put that in
2 the record to indicate that this is necessary to
3 extend the life of the landfill and all of that
4 things, and bring it back up as special use permit,
5 my suggestion is bring it back up separately, and
6 bring up the other two issues separate from this one
7 and we can have a discussion on that.

8 That's all I got to say. That's going to
9 be my position at this time.

10 CHAIRPERSON SCHEUER: Thank you,
11 Commissioner Ohigashi.

12 Commissioner Aczon.

13 VICE CHAIR ACZON: I'm not sure of where we
14 are. Are we in deliberation or something else? It
15 seems like we are in deliberation right now.

16 CHAIRPERSON SCHEUER: We are in
17 deliberation, but we have not yet had a motion put
18 before us.

19 VICE CHAIR ACZON: So I guess my thing is I
20 can understand everybody's frustration, and I wish we
21 were in a different situation than this, but what we
22 have is what we have in front of us. And we only
23 have four options to do it.

24 We can jump, scream at everything that
25 everything is not okay, but by the end of the day, we

1 are supposed to make a decision based on the options
2 that we are allowed to do.

3 So that's only my comment, and I don't know
4 if it's part of the deliberation or not.

5 Thank you, Mr. Chair.

6 CHAIRPERSON SCHEUER: Thank you.

7 Commissioner Aczon.

8 Commissioners, it will guide us if somebody
9 wishes to make a motion. Obviously, if somebody
10 makes a motion and the motion fails, it means that an
11 alternative motion will have to be made by somebody
12 who is on the winning side of that.

13 So, for instance, if somebody was to make a
14 motion to grant without conditions the Special Use
15 Permit, and that permit vote failed to get five
16 votes, then somebody who did not vote for that motion
17 would then be the next to make a motion.

18 Commissioner Cabral.

19 VICE CHAIR CABRAL: I would make a motion
20 to grant them their request with the two conditions
21 that they have provided, that within one year of
22 approval of this amendment, the County shall identify
23 County owned Agricultural property of similar land
24 properties and equivalent acreage on Maui and submit
25 a request to have it designated as IAL to compensate

1 for the loss of the 22 acres of IAL land associated
2 with the facility project.

3 Number two, upon restoration of closed
4 phases, the CML, and where safe and practicable to do
5 so, and if still designated as Agriculture at the
6 time, the County shall seek to make such plan
7 available for future appropriate agricultural use in
8 accordance with applicable state and federal
9 guidelines and requirements. Thank you.

10 CHAIRPERSON SCHEUER: Thank you,
11 Commissioner Cabral. A motion has been made by
12 Commissioner Cabral to grant the Special Use Permit
13 as previously passed by the Maui County Planning
14 Commission, with the two additional conditions
15 offered by DEM?

16 Is there a second? Commissioner Aczon.

17 VICE CHAIR ACZON: Yeah, I would like to
18 second that.

19 CHAIRPERSON SCHEUER: We have a successful
20 motion in front of us to grant the permit. Sorry,
21 Commissioner.

22 VICE CHAIR ACZON: Just for the sake of
23 discussion I want to second.

24 CHAIRPERSON SCHEUER: We have a motion in
25 front of us. Who wishes to speak to the motion?

1 Does the movant want to speak to it first, and then
2 followed by Commissioner -- first, I'll give Nancy an
3 option, and then followed by Commissioner Giovanni.

4 COMMISSIONER GIOVANNI: Procedural
5 question. I would like to propose consideration to
6 Commissioner Cabral to add an amendment to her
7 motion. Should do I that after she speaks for it?

8 CHAIRPERSON SCHEUER: Why don't you go
9 ahead -- if you wish to make an amendment to the
10 motion, please offer it now.

11 COMMISSIONER GIOVANNI: I support the
12 motion with an amendment subject to further
13 condition. So I would like to amend the motion to
14 add a condition in which the Petitioner will seek a
15 district boundary amendment from the Land Use
16 Commission within five years.

17 CHAIRPERSON SCHEUER: To begin the process,
18 we do their initial filing or --

19 COMMISSIONER GIOVANNI: Begin the process.

20 CHAIRPERSON SCHEUER: So there is a
21 proposed amendment to the motion, the movant and the
22 second would have to agree to it.

23 Commissioner Cabral, do you agree?

24 VICE CHAIR CABRAL: Yes, I would agree to
25 that.

1 CHAIRPERSON SCHEUER: Commissioner Aczon?

2 VICE CHAIR ACZON: I'm just kind of
3 thinking about the wording, if is it necessary to ask
4 for boundary amendment.

5 So I'm not too sure if it is required or
6 not, so I'm just kind of not sure about that. So I
7 would accept if it is seek for a boundary amendment,
8 if required.

9 COMMISSIONER GIOVANNI: That's not what I'm
10 proposing. I'm proposing they seek it. And the
11 process will determine whether or not it's
12 appropriate or not.

13 CHAIRPERSON SCHEUER: So the amendment has
14 been clarified.

15 Do you agree or disagree with the
16 amendment, Commissioner Aczon?

17 VICE CHAIR ACZON: That's fine.

18 CHAIRPERSON SCHEUER: So we have a
19 successfully modified motion in front of us to
20 approve the Special Use Permit with three additional
21 conditions, two are offered by DEM, and the third to
22 require within five years of approval by this
23 Commission that a Land Use District Boundary
24 Amendment be pursued by DEM before this body.

25 Who wishes to speak to the motion?

1 COMMISSIONER GIOVANNI: Since I added the
2 last condition, let me, if the Commission will allow
3 me. I would like to say why I think that's
4 important.

5 CHAIRPERSON SCHEUER: Please proceed.

6 COMMISSIONER GIOVANNI: So first of all, I
7 am very strongly in favor of this project as
8 envisioned by DEM and its consultants and engineers
9 and its operators.

10 I am very strongly in favor of our County's
11 each moving in the direction of increased diversion
12 and recycling of waste, and minimizing what I refer
13 to as a traditional landfill, which is you just put
14 garbage in the ground and cover it up.

15 As such, I think time is of the essence to
16 allow this project to move forward. And if not for
17 the fact that there's a lot of confusion about
18 whether it's permanent or not permanent, whether it's
19 better suited for a dba or an endless series of
20 permit amendments, I think that it's just time is of
21 the essence.

22 So I would prefer that it would be a
23 district boundary amendment today, but a practical
24 matter suggests that's just not going to happen
25 because it does take three to five years to do that

1 whole process, and I don't want to shutdown the
2 facility for three to five years while we pursue that
3 and have it operated illegally.

4 Maui County needs it. And this is a good
5 plan. I'm just concerned if we submit ourselves to
6 an endless series of permit amendments, as the
7 population grows and as the situation changes, we're
8 going to find Maui County is going to find themselves
9 in this dilemma that they're going to start running
10 into some resistance one way or another.

11 And I think that to settle that once and
12 for all, would be the successful district boundary
13 amendment process, which I would support as well, I
14 think, at this point in time. That's why I added
15 that condition to it.

16 CHAIRPERSON SCHEUER: Thank you,
17 Commissioner Giovanni.

18 Commissioner Chang followed by Commissioner
19 Aczon.

20 COMMISSIONER CHANG: Thank you, Mr. Chair,
21 I greatly appreciate Commissioner Giovanni's
22 explanation, as I think it is very sensible, and I
23 too support the direction the County of Maui is
24 going.

25 We have had other landfill issues on Oahu,

1 and the Commission has spoken very strongly about the
2 dba, so while this may be appropriate for special use
3 permit, I think the fact that the County of Maui has
4 been having very serious discussions about the dba,
5 only reaffirms that I think we're all thinking the
6 same things.

7 So I appreciate Commissioner Giovanni's,
8 his amendment permits the landfill and the County to
9 move forward, but it also provides them direction,
10 rather than worrying about what the intention, it's
11 very clear. But I think it is more efficient, what
12 the County of Maui is suggesting, putting everything
13 in the same place. It makes a total amount of sense.

14 But then there is some predictability for
15 the community that through the dba a lot of the kinds
16 of questions we may be struggling with will be fully
17 vetted through that process.

18 So it does appear to be sort of the best of
19 both worlds, but I am inclined to support this
20 amended motion based upon that clarification.

21 So thank you very much.

22 CHAIRPERSON SCHEUER: Thank you.

23 Commissioner Chang. Commissioner Aczon.

24 VICE CHAIR ACZON: Thank you, Mr. Chair.

25 I also plan to vote for the motion. In my

1 mind DEM has adequately met the guidelines for
2 amendment to special permit. I also understand that
3 there's some concerns about this and, you know,
4 denying this motion, unfortunately, we only have
5 certain options, and by denying this special permit,
6 it would create some safety issues for our community.

7 Having said that, I believe that there are
8 several conditions attached to this motion that
9 hopefully will alleviate some of the concerns until,
10 like Commissioner Giovanni's motion, to submit for a
11 dba within five years. And I hope that alleviate
12 more -- some of the concerns.

13 So I would be voting for this motion, Mr.
14 Chair.

15 CHAIRPERSON SCHEUER: Thank you.

16 I'm going to note for -- perhaps seeking
17 some clarification from our Executive Officer, Mr.
18 Orodenker -- but at this point the motion before us
19 does not include the proposed language from OP, also
20 requiring within 12 months addressing of the IAL
21 designation issues.

22 Is that correct, Mr. Orodenker?

23 EXECUTIVE OFFICER: That's right, Mr.
24 Chair.

25 CHAIRPERSON SCHEUER: I'm just citing for

1 Commissioners that the motion before us, which has
2 been amended once, does not include that proposed
3 language from OP.

4 We're in deliberation.

5 COMMISSIONER WONG: Chair.

6 CHAIRPERSON SCHEUER: Commissioner Wong.

7 COMMISSIONER WONG: For what area we're
8 talking about?

9 CHAIRPERSON SCHEUER: For the 22 acres of
10 Important Agricultural Lands, which is part of the
11 subject special use permit, and I will allow on this
12 narrow point for OP to restate what their proposed
13 amendment would be -- conditions, excuse me.

14 Ms. Apuna?

15 MS. APUNA: Yes, Chair.

16 CHAIRPERSON SCHEUER: Would you restate
17 what your proposed condition was regarding Important
18 Agricultural Lands?

19 MS. APUNA: Actually we proposed two
20 different conditions, but the first one is with
21 regard to the IAL, that Petitioner shall submit a
22 Petition for Declaratory Relief to the LUC to
23 withdraw the 22 acres of Important Agriculture Land
24 from the Important Ag Land designation within one
25 year of the Land Use Commission's Decision and Order

1 for this special permit.

2 That's the first one. Did you want to me
3 to read the second?

4 CHAIRPERSON SCHEUER: Go ahead.

5 MS. APUNA: Petitioner shall instruct the
6 construction employees during the preconstruction
7 meeting or similar circumstances of the possibility
8 of discovering funerary objects and burials during
9 construction.

10 Further, should burials be found, the
11 Petitioner shall consult with State Historic
12 Preservation Division and cultural and lineal
13 descendants of the area to develop a reinterment plan
14 and cultural preservation plan for proper cultural
15 protocol, duration, and long-term maintenance.

16 CHAIRPERSON SCHEUER: Clarifying for the
17 Commission that those were two proposed conditions
18 from OP that are in the record before us, but they
19 have not been incorporated into the motion.

20 Commissioner Ohigashi followed by Cabral.

21 COMMISSIONER OHIGASHI: Obviously, I'm
22 speaking against this motion. It's a simple reason
23 why. I'm kind of guided by what I believe the law
24 is. And as I reviewed this matter, it came apparent
25 to me that what we're trying to do is utilize an

1 amendment process for existing special permit to
2 create a new project on land.

3 The amendment process, even if we aren't
4 saying that, yes, there should be a special use
5 permit process, should focus in on what that new use
6 was.

7 It should also include what I believe is a
8 finding as to whether or not it should be better
9 handled as a dba, as a district boundary amendment.
10 I believe that that analysis hasn't been done.

11 So I take a look at this, again, what we
12 are trying to do is create -- what the County is
13 trying to do is create a 40-acre industrial park.

14 It is not an accessory use at this point.
15 It hasn't been supported in any of the documents.
16 What they're trying to do is create an industrial
17 park, which I don't say they can't, but they should
18 follow the requirements of the district boundary
19 amendment by granting them a special use permit.

20 What we are on saying is -- technically
21 what we are saying is that we are guaranteeing
22 district boundary amendment in this matter. Similar,
23 I guess, to the Mauna Kea case which was granted a
24 use permit but held a contested case later.

25 The second part that really bothers me is

1 that if they were fighting on this five years ago,
2 why didn't they come up five years ago, or why didn't
3 they come up when it when it was ready and done, and
4 ask for a declaratory order or declaratory relief as
5 to why, or whether or not this (indecipherable) --
6 special permit.

7 We require these types of things from every
8 developer. We scrutinize every developer in terms of
9 what are they trying to do. We make them go through
10 all the paces.

11 But for this purpose, the County of Maui
12 has decided to try and leverage an existing permit
13 and amend it for that purposes.

14 I don't know. I don't -- I think they
15 gambled, and my position is, if they gambled, then
16 they should back the record up with significant
17 evidence to show how this is crucial to the landfill
18 operation, and not come in at the last minute and say
19 this is crucial.

20 So for all intents and purposes, I believe
21 that a remand is necessary, but I'll go along with
22 the Commission.

23 CHAIRPERSON SCHEUER: Thank you,
24 Commissioner Ohigashi.

25 I have Commissioners Cabral, followed by

1 Giovanni and Okuda. Commissioner Cabral.

2 VICE CHAIR CABRAL: I would like to amend
3 my motion to read that, as OP has stated, that they
4 would withdraw their IAL lands, make the application
5 to withdraw their IAL lands within one year.

6 The second one would be that if any type of
7 burial sites are discovered, that they would be
8 reported and dealt with.

9 And, again, the wording from OP would be
10 acceptable to me, although I would have assumed
11 burial grounds or burial sitings was already a
12 requirement, but...

13 CHAIRPERSON SCHEUER: So I'm not enough of
14 an expert in Roberts Rules to know if a movant
15 amending their motion is normally allowed, but we'll
16 just say it is.

17 So the amended motion would have now five
18 conditions, the two conditions proposed by DEM, one
19 condition proposed by Commissioner Giovanni, and two
20 conditions proposed by OP.

21 Does the seconder agree?

22 VICE CHAIR ACZON: Mr. Chair, actually I
23 misunderstood the first motion. I thought it was
24 DEM's condition is in addition to OP conditions, so
25 I'm fully in agreement with the motion.

1 CHAIRPERSON SCHEUER: You agreed to what
2 you thought you had already agreed to?

3 VICE CHAIR ACZON: That's correct.

4 CHAIRPERSON SCHEUER: So, folks, we have an
5 amended motion with five conditions before us.

6 Commissioner -- you had nothing further,
7 Commissioner Cabral?

8 VICE CHAIR CABRAL: I agree with
9 Commissioner Aczon. I had thought that too, that in
10 my first amendment, they're going to replace that
11 land, but it did not say they were going to withdraw
12 it, so better wording would have covered both, but
13 good to go as far as I'm concerned.

14 CHAIRPERSON SCHEUER: Commissioner Giovanni
15 followed by Okuda.

16 COMMISSIONER GIOVANNI: I concur with the
17 motion, five conditions as you just summarized. No
18 further comment.

19 CHAIRPERSON SCHEUER: Thank you.

20 Commissioner Okuda.

21 COMMISSIONER OKUDA: Thank you, Mr. Chair.

22 I think what Commissioner Giovanni stated
23 makes a lot of sense as far as public policy and
24 planning moving forward.

25 This is my concern. Because we don't

1 really act as a legislature here, this is
2 quasi-judicial, and as much as we might not like the
3 laws and procedures that have been passed, that's
4 what we're charged with following.

5 I'll tell you what kind of -- and I think
6 the proper word would be "upsetting" about this case.
7 And it's not necessarily just directed at the County
8 of Maui, because we see this from other government
9 agencies sometimes.

10 I agree with Commissioner Ohigashi that,
11 you know, we hold private developers to a certain
12 standard, but sometimes when the government agencies
13 come in front of us, it's like, well, we didn't
14 really do all the things which a careful developer
15 does, but please look the other way, because we
16 didn't think about this, or we didn't review these
17 precedences -- and by the way, the Waianae
18 Neighborhood Board case is back in the '80s, so it's
19 not a Hawaii Supreme Court case, which is some type
20 of secret or anything like that.

21 But then we're faced with the situation
22 where we're faced with not only what I would think is
23 a good project, but also a project which might have
24 need in the community. But then we're basically
25 argued to or told we will look the other way on

1 violations of process or procedure because the end
2 result justifies. Frankly, a sloppy way we went
3 about this.

4 I believe that the presentations, and
5 especially in response to the questions that
6 Commissioner Ohigashi raised, is that there's a
7 serious issue here regarding Important Agricultural
8 Lands.

9 And I think we have to look at what the
10 State Constitution says, Article XI, Section 3. I
11 mean, this is overriding public policy, which is in
12 the constitution from 1978. And it says:

13 The state shall conserve and protect
14 agricultural lands, promote diversified agriculture,
15 increase agricultural self-sufficiency, and assure
16 the availability of agriculturally suitable lands.
17 The legislature shall provide standards and criteria
18 to accomplish the foregoing.

19 And then, in the constitution, which is
20 followed up with the statute, there is a section that
21 deals with Important Agricultural Lands. The
22 constitution says:

23 Lands identified by the State as Important
24 Agricultural Lands needed to fulfill the purposes
25 above shall not be reclassified by the state or

1 rezoned by its political subdivisions without meeting
2 the standards and criteria established by the
3 legislature and approved by two-thirds vote of the
4 body responsible for the reclassification or rezoning
5 action.

6 So, in other words, that's the mandate
7 that's spelled out by the constitution, which is also
8 spelled out or laid out by the section of the law.

9 And the testimony has been, the record has
10 shown this is prime Ag land. I'm not saying leave it
11 that way forever, because, yeah, it's true, the
12 record shows agriculture has changed. But clearly
13 the process of taking Important Agricultural Lands
14 out of the designation, is not being followed.

15 Perhaps IAL designation is simply a
16 planning tool. But if it's really something that we
17 should and need as a government to pay attention to,
18 then we really need to follow the process.

19 If it's simply going to be something like,
20 oh, no big deal, then from now on when these
21 petitions come before the Land Use Commission, we
22 really shouldn't spend that much time evaluating,
23 because it's not really a big deal.

24 But I think the constitution makes it
25 clear, it is a big deal. And the Waianae

1 Neighborhood Case makes clear too, you can't do a
2 district boundary amendment through a special permit.

3 And if the County had been previously
4 considering doing a district boundary amendment, then
5 I understand in the past, short cuts have been taken.
6 I understand in the past, perhaps the Land Use
7 Commission never had a reputation of enforcing the
8 law sometimes, but that really is not an excuse for
9 us not to enforce the law at this point in time.

10 I agree with Commissioner Ohigashi, what we
11 have here is an Urban Industrial Park. That's what
12 we have. I think it's a good project from what I can
13 tell in the record, but it is what it is.

14 And I don't believe that this special
15 permit complies with the black letter of the law, and
16 definitely it does not comply with the constitutional
17 statements of what the accepted public policy is in
18 this community.

19 So at this point in time, I'll be voting
20 against the motion. But I'm willing to listen to
21 what anybody else has to say about this. Again, I
22 understand it's -- it may ultimately be a good
23 project based on the record, but what do we do about
24 this continued behavior by -- and I'm not just saying
25 the County of Maui -- but many government agencies

1 simply to look the other way, and sometimes, we could
2 conclude, ignore what the law says. What do we do
3 about that?

4 Thank you, Chair, I have nothing further to
5 say.

6 CHAIRPERSON SCHEUER: Thank you,
7 Commissioner Okuda. Commissioner Aczon.

8 VICE CHAIR ACZON: Thank you, Mr. Chair. I
9 just want to comment that, you know, I really do
10 appreciate Commissioner Ogata's (sic) comments, and
11 also -- Commissioner Okuda.

12 And just for the record that I just want to
13 put on record that I fully agree with those comments
14 with the exception of opposing the motion, I fully
15 agree with their comments. Thank you.

16 CHAIRPERSON SCHEUER: Thank you,
17 Commissioner Aczon.

18 Commissioners, I believe we have heard from
19 all the Commissioners.

20 Commissioner Wong, do you want another
21 statement on the matter in this, at this point?

22 COMMISSIONER WONG: No, that's okay, Chair.

23 CHAIRPERSON SCHEUER: Commissioner Cabral.

24 VICE CHAIR CABRAL: I wanted to also
25 followup and thank that in a sense opposing opinion,

1 because, in the big picture, I absolutely see that.
2 And I think we often feel like we need another
3 category of zoning or something that is the middle in
4 between, because it -- clearly we don't want a,
5 quote, landfill in the middle of an Urban zoning area
6 with neighbors and businesses all around, and yet
7 we're not looking to necessarily make the middle of
8 the Agriculture area Urban in order to, what I would
9 call, recycle and refuse facility.

10 So I think the lack of the big picture
11 being in a better condition has forced everybody into
12 the middle of this. And I do agree that I probably
13 feel like that the need of the society is forcing me
14 to a position.

15 So I am in favor, but I can appreciate the
16 need to have more options. Thank you.

17 CHAIRPERSON SCHEUER: Commissioners Chang
18 and Giovanni, then I would like to share my thoughts
19 as well. Commissioner Chang.

20 COMMISSIONER CHANG: Thank you, Mr. Chair.

21 I guess this is maybe in response to
22 Commissioner Okuda's concerns. And maybe it's
23 because I worked in government before.

24 But I think that the County of Maui was
25 operating the landfill historically like all the

1 other landfills. The landfills were done by special
2 use permit. Was that the right mechanism to do in
3 hindsight? Maybe not. But I don't think that they
4 were trying to do something totally extraordinary
5 from the past practice of all of the other counties
6 and landfills.

7 So I guess I'm not as offended by the
8 County of Maui's actions in this respect. I do
9 believe that the County has heard the Commission's
10 concerns, and they have expressed that they are going
11 to look for 22 acres to replace the 22 acres that
12 they will take out of IAL and put that back into IAL.
13 So in other words, to make the IAL land whole.

14 Quite frankly, right now, when I look at
15 those lands, I don't that they're IAL. They're
16 currently being used for the landfill. So I would
17 rather them look at true Ag land that can used for
18 IAL.

19 So in my view, I think there is a remedy,
20 an appropriate remedy to address the concern raised
21 by Commissioner Okuda, that the County is going to
22 look for replacement Ag land that they will put into
23 IAL.

24 It's not a condition, but I'm going to --
25 that's their intention.

1 With respect to Commission Ohigashi -- you
2 know, I always give such great deference to those of
3 you who live on the island where the project is being
4 considered, because you know this community better
5 than anybody else.

6 Again, I guess in relationship to
7 Commissioner Ohigashi, I believe that Commissioner
8 Giovanni's amendment to require them to file a dba is
9 consist -- there's no guarantee that they will get
10 it, but they're going to go through that process.

11 So to me there is a remedy to begin
12 changing the trajectory of saying SUP's are the way
13 to go. I think this Commission has spoke very
14 clearly consistently with the other landfill project
15 on Oahu, that those are better uses in a dba not in
16 Ag land through an SUP.

17 So in my view, the actions taken by this
18 Commission in relationship to, one, Commissioner
19 Giovanni's amendment, and the County's own intention,
20 I am comfortable that those actions will remedy some
21 of the concerns that have been raised by Commissioner
22 Okuda and Commissioner Ohigashi.

23 So, again, I am inclined -- I will be
24 supporting the amended, amended motion. Thank you.

25 CHAIRPERSON SCHEUER: Thank you,

1 Commissioner Chang.

2 Commissioner Giovanni.

3 COMMISSIONER GIOVANNI: Thank you, Chair.

4 You all know that I am not an attorney. I
5 am not well-versed in the law and the constitution
6 and the legal record within Hawaii. And I have
7 nothing but respect for those who are, in particular,
8 to my two Commissioners who have raised very
9 legitimate, valid and important issues, Commissioner
10 Ohigashi and Commissioner Okuda. Very sensitive to
11 your feelings.

12 And it comes across to me as a personal
13 frustration of my own, because I really feel that's
14 what's happening here is kind of a process by which
15 the County, even though they considered a dba
16 previously to submitting this request for an
17 amendment to the permit, for whatever reasons, they
18 rejected it and went the permit route anyway.

19 And I concur with the admonishment that has
20 been offered by Commissioner Okuda for their process
21 and their logic and their determination to proceed as
22 they've done.

23 But at the end of the day, I agree with
24 what was summarized just now by Commissioner Chang,
25 in that it doesn't -- what's before us now in terms

1 of a motion and five conditions does not make all the
2 wrong right, does not correct all the problems of
3 history, but as a practical matter, it's in the
4 public interest of the people of Maui, none of which
5 showed up to oppose this project.

6 I support going forward with the motion and
7 its amendments.

8 CHAIRPERSON SCHEUER: Thank you,
9 Commissioner Giovanni.

10 If there is nothing further, I would like
11 to say a few words as to how I am thinking about
12 this.

13 I'll begin by noting, because it requires
14 noting, we're just living in extraordinary and
15 difficult times. And I really want to make it clear
16 to all of the participants in this proceeding, my
17 fellow Commissioners, the staff, those folks in Maui,
18 none of our deliberations are made to increase your
19 suffering in any way during what is already sort of
20 unprecedented in our lifetime, ridiculous, difficult
21 times. We're doing -- instead we're actually just
22 trying our best to do the job that we committed to do
23 despite the difficult times that we're going through.

24 So I hope you understand that we are
25 sympathetic to the times that we are living in.

1 We're trying to be consistent with our duties yet not
2 be tone deaf to what we are going through.

3 My second comment is, and I've raised a
4 question about do we need five votes or six votes on
5 this. I think if you follow the constitution, we
6 need six votes. I think if you follow our statute
7 for special permits, and our administrative rules, we
8 need five. I think the jury is out, and that unless
9 this gets litigated, it won't be resolved.

10 So I think very clearly a vote for this
11 motion, which would make IAL into something other
12 than IAL by practical affect, would seem to indicate
13 that you should be having a two-thirds vote. But
14 it's not resolved. So being not resolved, it's quite
15 possible that a five to three vote by this Commission
16 is sufficient to let the permit be granted with
17 amendments.

18 My last two comments have to do with -- and
19 to echo Commissioner Okuda -- we're not legislators.
20 We're handed the task of implementing the laws and
21 rules that have been developed before us. And in
22 this case, we have two really, in my opinion,
23 extraordinarily bad statutes.

24 The IAL statute, in my mind, I would come
25 close to saying it's a farce. It does very little to

1 protect Agricultural land in Hawaii. It does very
2 little to protect the agricultural industry or
3 promote domestic, robust agricultural economy, and
4 the fact that we can actually have successfully,
5 apparently, put a landfill on IAL land is further
6 indication of how stupid, stupid the statute it is.

7 Similarly, and this is not at all -- to be
8 very clear -- a criticism of Maui County, but
9 generally speaking -- like the old thing about
10 attorney is, an attorney who represents themselves
11 has a fool for a client -- when the County's
12 authorize special permits for their own projects,
13 just by the nature of it, you're never going get the
14 kind of sharp consideration of conditions that you
15 would if another body was considering it.

16 And it's just human nature. But that is
17 how our process is laid out, and some of the most
18 difficult special permits we have had, has been us
19 reviewing permits that were issued by the County for
20 a County project. I think it's a flawed part of the
21 process and should be changed.

22 With all of that, I echo the significance
23 and the lack of desire to have Maui County operate
24 without a landfill. I think overall, based on the
25 limited amount I know now, if this was coming before

1 us with a dba I would be inclined to very strongly
2 support the project, but I think it's very clear to
3 me that this is a permanent change in the land, but
4 that a special use permit is not the appropriate
5 vehicle. And for the many reasons stated by
6 Commissioners Okuda and Ohigashi, and I will be
7 voting against the motion.

8 If there's nothing further, Mr. Orodener,
9 I would like you to poll the Commission.

10 EXECUTIVE OFFICER: Thank you, Mr. Chair, I
11 don't think I really need to.

12 The motion is to approve a special permit
13 with conditions submitted by the County, the two
14 conditions submitted by Office of Planning, and with
15 the additional condition that the County be required
16 to seek a district boundary amendment within five
17 years from the approval of the special permit.

18 Commissioner Cabral?

19 VICE CHAIR CABRAL: And in addition, the
20 two amendments that were offered by OP to withdraw
21 the IAL land within a year, and to be sensitive to
22 any burial sites.

23 EXECUTIVE OFFICER: Correct.

24 CHAIRPERSON SCHEUER: The motion before us
25 is a motion with five conditions, approve with the

1 two conditions from DEM, the two conditions from OP,
2 and the condition voiced by Commissioner Giovanni.

3 VICE CHAIR CABRAL: Maybe I didn't hear
4 that. Yes, I'm in favor, yes.

5 EXECUTIVE OFFICER: Commissioner Aczon?

6 VICE CHAIR ACZON: Yes.

7 EXECUTIVE OFFICER: Commissioner Chang?

8 COMMISSIONER CHANG: Yes.

9 EXECUTIVE OFFICER: Commissioner Giovanni?

10 COMMISSIONER GIOVANNI: Aye.

11 EXECUTIVE OFFICER: Commissioner Ohigashi?

12 COMMISSIONER OHIGASHI: No.

13 EXECUTIVE OFFICER: Commissioner Okuda?

14 COMMISSIONER OKUDA: Nope.

15 EXECUTIVE OFFICER: Commissioner Wong?

16 COMMISSIONER WONG: Yes.

17 EXECUTIVE OFFICER: Chair Scheuer?

18 CHAIRPERSON SCHEUER: No.

19 EXECUTIVE OFFICER: Thank you, Mr. Chair.

20 The motion has five affirmative votes and three
21 negative.

22 CHAIRPERSON SCHEUER: Which, according to
23 our administrative rules, the special permit is
24 granted, correct?

25 EXECUTIVE OFFICER: That is correct.

1 CHAIRPERSON SCHEUER: There being no
2 further business, I believe. Are there any
3 announcements, Mr. Orodener? Otherwise my intention
4 is to declare the meeting adjourned.

5 Is there anything further, Mr. Orodener?

6 EXECUTIVE OFFICER: Once again, thank the
7 Commissioners for very hard work. None of these have
8 been easy this week.

9 CHAIRPERSON SCHEUER: Thank you very much
10 to all the participants on Maui County, and to my
11 fellow Commissioners. This meeting is adjourned.

12 (The proceedings adjourned at 2:13 p.m.)
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CERTIFICATE.

1 STATE OF HAWAII)
2) SS.
3 COUNTY OF HONOLULU)

4 I, JEAN MARIE McMANUS, do hereby certify:

5 That on July 9, 2020, at 9:00 a.m., the
6 proceedings contained herein was taken down by me in
7 machine shorthand and was thereafter reduced to
8 typewriting under my supervision; that the foregoing
9 represents, to the best of my ability, a true and
10 correct copy of the proceedings had in the foregoing
11 matter.

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

15 Dated this 9th day of July, 2020, in Honolulu,
16 Hawaii.

17
18
19 /s/ Jean Marie McManus
20 JEAN MARIE McMANUS, CSR #156
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