

Oral Testimony to County of Hawaii Environmental Management
Commission
April 28, 2021 Meeting

Aloha Chair Adams and Commission Members,

I will not belabor how the Director's Report reinforces my view that the Ka'u LCC Closure engineering consultants have repeatedly failed to fulfill their contracts, but the observation that Pahala construction costs climbed "because WWTP site has steeper slopes than *predicted*" confirms that no engineering consultant VISITED the actual site or ever thought to look at a USGS flood zone topographic map.

But what I want to shed light on this morning is these consultants' lack of knowledge of the Endangered Species Act (ESA) that will place the current Naalehu project in violation of Section 9 of the ESA leading to potential expensive civil and criminal penalties.

While DEM has shown a great respect for Cultural laws, what they call Section 106, AIS, SHPD and SHPO, there is a definite lack of understanding of the nature of Section 9 "take" and why neither the County nor the State DOH are eligible for Section 7 consultation.

Per information in the attached *ESA Basics*, the "Section 7 by DOH pending final area of potential effect for all three CWSRF projects" (bottom of page 6 Director's Report) is only available to Federal agencies, like EPA on the Pahala project. As everyone can read for themselves in *ESA Basics*, the County and State agencies – DEM and DOH – HAVE to do a Section 10 Habitat Conservation Plan for the Hawaiian hoary bats, nenes and other assorted endangered species found in the Naalehu PONC conservation area.

Just like the consultant that produced the Pahala geotechnical report showing "lava tubes" at the construction site a year later than they had agreed to in their contract, AECOS has promised that the Naalehu project can have a Section 7 ESA consult, which is simply in violation of what the law actually requires.

But the good news is that citizens winning ESA suits can be awarded the fines collected from DEM, so there will be incentive to environmentalists to use the Courts to teach the County the difference between Section 10 and Section 7 ESA compliance.

Again – thank you for your service to the community! Sandra Demoruelle