

**LANA`I PLANNING COMMISSION
REGULAR MEETING
JANUARY 21, 2009**

APPROVED 02-18-09

A. CALL TO ORDER

The regular meeting of the Lana`i Planning Commission was called to order by Chair Sally Kaye at approximately 6:05 p.m., Wednesday, January 21, 2009, in the Lana`i High & Elementary School, Room L-16 (Home Economics Room,) Lana`i City, Hawaii.

B. APPROVAL OF THE MINUTES OF DECEMBER 17, 2008 MEETING

Ms. Sally Kaye: . . . Let the record show we have quorum with Commissioners de Jetley, Zigmond, Kaye, Ruidas, Castillo and Rabaino. First on the agenda is the approval of the minutes of December 17th. I sent some corrections around, and Bev did as well, so I'll entertain a motion at this time.

Ms. Beverly Zigmond: I move that we accept the minutes of January 21st (recorded as January 21st, but meant December 17th) as amended.

Ms. Alberta de Jetley: Second.

Ms. Kaye: It was moved and seconded by Commissioner Zigmond and de Jetley. Any discussion, any additional corrections or additions? Okay, all in favor?

Commission Members: "Aye."

Ms. Kaye: Okay, motion carries.

**It was moved by Commissioners Beverly Zigmond, seconded by
Commissioners Alberta de Jetley, then unanimously**

**VOTED: To approve the December 17th Lana`i Planning
Commission meeting minutes with the amendments.**

C. PUBLIC HEARING (Action to be taken after public hearing)

- 1. CASTLE & COOKE RESORTS, LLC requesting a State Land Use District Boundary Amendment from State Agricultural District to State Urban District and a Change in Zoning from County Agricultural District to M-2 Heavy Industrial District for the Miki Basin Heavy Industrial area encompassing about 6 acres off of Miki Road, adjacent to the Maui Electric power site at TMK: 4-9-002: portion of 001, Miki Basin, Island of Lanai. (DBA 2008/0002) (CIZ 2008/0003) (J. Prutch)**

- a. **Public Hearing**
- b. **Action**

Ms. Kaye: Next on the agenda is Castle & Cooke Resorts requesting a State Land Use District Boundary Amendment from State Agricultural District to State Urban District, and a Change in Zoning from County Agricultural District to M-2 Heavy Industrial District for the Miki Basin Heavy Industrial area. I believe we'll have the Planning Department's presentation first.

You know what Joe, give me one second because we have some people here that have not come in the past. Let me just indicate that what's going to happen is the Planning Department will make a presentation, and then the Commissioners will ask their questions. And I guess the applicant will make a presentation as well. And then there will be public hearing at which point anyone in the audience can testify to what they've heard. Each of the Commissioners will have an opportunity to ask you any questions, followed by the Planning Department's recommendation on this application, and further questions by Planning Commission. After all of that is done and public hearing is closed, then the Planning Commission has four courses of action. They can defer the application, approve the application, approve the application with conditions, or deny it. So that's our procedure.

Mr. Joseph Prutch: Thank you. Thank you. Nicely stated. It's perfect. Good evening everybody. Good evening Chair, Commissioners. I'll make my short presentation, and then if it's okay with you, the applicant will make their presentation or you can ask questions. I mean, however you choose to do so. The project before you today – you probably all know – it's located obviously on Miki Road, south of the 14-acre heavy industrial area, and just south of the MECo power plant. The 14-acre heavy industrial area was re-zoned to industrial M-2, and re-designated to State Urban back in September of 2000, and there were conditions placed on that project back in 2000.

The project site, the six-acre project site that we're talking about today, is undeveloped scrubbed land, partially cleared land. On the six-acre site there's some miscellaneous – a tool shed, some log and lumber piles. The area is not fenced and it's generally flat land out there. The State designation is, as I mentioned, is agriculture. The zoning is also agriculture. And the Lana`i Community Plan has it designated as heavy industrial. So the applicant today is proposing to redesignate the State Agricultural District to State Urban; and to rezone the Ag District to M-2 Heavy Industrial, similar to the 14-acres site, so that it will be consistent with the Lana`i Community Plan of Heavy Industrial.

As a condition of the zoning of the 14-acre site from 2000, at that time the applicant was required to prepare a detailed drainage and erosion control plan, as well as preparing a phase one environmental site assessment report back in 2000. Since that time, the consultant has also completed a phase one for the six-acres, which is part of the application. And they intend to consolidate and improve the six-acre site in their detailed

drainage and erosion control plan for the existing 14-acre heavy industrial area.

Ms. Kaye: Joe, could you just take a breath there and explain to us – because that was one of the questions – what is a phase one?

Mr. Prutch: Phase one – it's an environmental study of the site. It's kind of a catch all everything. They look at what's on the site. They look at the soils. They look at the type of soils. They look for any contaminants in the soils. They kind of do an overall study of the site, and walking the site. And if there's any details you need from that study, I can have the applicant go through some of the details from that study.

Ms. Kaye: But what I found confusing was somewhere in your analysis you said that in compliance with Chapter 343 was not require. So I wanted to understand the difference because that's very conflicting on facially.

Mr. Prutch: Okay. I'm sorry. For Chapter 343, well, one of the triggers if a need would be on this one is a Community Plan Amendment. That triggers 343 for example. So in this case, a Change in Zoning and a DBA, those actions are not triggered for environmental review. Had the Community Plan designation been agricultural and they needed to change that to heavy industrial that would trigger the environmental review, as an example. But the phase one is just a review document. It's kind of a study of the site – some of the details. It helps them later on with drainage issues. It helps them with if they were building anything with foundations and different things like that to let them assess what the soils are like and what they can handle as far as weights and all that kind of stuff. So it's kind of a detailed engineering draft research document.

Summary analysis – just some quick summary analysis – for traffic. Miki Road is a private, 44-foot wide roadway with approximately 14-feet of travel way. At some time in the future, the proposal is for some future subdivision of these 14-acres and the proposed six-acre site, into smaller chunks for sale as fee simple to somebody that might want to do some industrial business out there. At that time, the engineering report stated that improvements to the roadway will be needed. And at time, they will be evaluated and implemented at that the subdivision stage if they are required, not at the stage that we're at now. Under agriculture –

Ms. Kaye: Wait, wait, I have a question please.

Mr. Prutch: Yes?

Ms. Kaye: I think it would probably be more efficient if we just hit these as we go rather than have to try to remember them. A Change in Zoning – there was a lot of material in here in terms of what uses the applicant wants to make of this land. I'm understanding if I'm correct that, for example, laundry and the transportation department, that could all go down

there if it was re-zoned, but it wouldn't have to be subdivided correct?

Mr. Prutch: There was a condition back in 2000 that stated that 50% – and actually it's in the Community Plan too – that 50% of that site of the heavy industrial area has to be sold in fee simple land. So it has to be sold off to who, I don't know; or when, I don't know. I don't know when the need will arise, and somebody will need that land. But that's one of the conditions from 2000, and it's actually in the Lana`i Community Plan as well.

Ms. Kaye: That's not my question though. I'm referring to the applicant's response to some of the agency comments saying that we need two acres for laundry and two acres for our transportation. And so I understood from that – and that's a question for them, I know that – but if that's the case, they don't have to subdivide or even offer parcels for sale in order to be using the property if it's re-zoned.

Mr. Prutch: And that might be something I would have to ask them.

Ms. Kaye: I thought that would be one for you.

Mr. Prutch: What do you mean? If it's re-zoned, they'll have 20-acres of heavy industrial area.

Ms. Kaye: What you gave us indicated how many of those acres they would want to use and it made it sound pre-eminent. So my question to you is not what their plans are, but would there have to be anything else done besides the re-zoning in order to make those uses happen?

Mr. Prutch: If it's zoned correctly, no. To do a heavy industrial use, if it's a permitted use as it would be, building permits per se, if there's anything they're constructing. But if they're going to do, I believe, they've been wanting to do or propose to do in the future, subdivide that and sell off half of it to whoever wants to do something out there, at that point, they'll have to go through the subdivision process. There will be review at that time of agencies, transportation, everybody will get involved. And at that point, the Department of Transportation may decide there needs to be some road improvements or some widening of the travel way or some thing at that point. I don't know if that answers your question. I don't know. They might be able to tell you a little better of their plans for the 20 acres than I know. Thank you.

For agricultural purposes or for the Ag on the property, the land study bureau has classified this soil. I think we've talked about this. It has classified the soil as soil productivity of D. Just like grades – A being the best, and E being the worst. The elish maps describe it as unique lands. Therefore, the impacts of this project are expected to be minimal. As far as public testimony was concerned, I got one letter from the Lana`i Archaeological Committee which you gave me, so you guys have that copy already. And then I have one more letter

that I just received today, and that was handed out to you – I hope you have it – from the State DOT. That was given to me today at three o'clock before I boarded the plane and got here. And that was a letter with possible future concerns for Miki Road being within the Airport right of way or the airport's land. And if I can, I'd like to turn it over to the applicant to present their power point. We've got Mich Hirano, the consultant. We've got Steve – if I pronounce your names wrong – Steve Bumbar, who's the Senior Vice-President. We've got Clay Rumbaoa, Engineer for C&C, and we've got John Stubbart, who's the Director of Water for Castle & Cooke. So if I can turn it over to Mich. You'll have to come over here Mich.

Mr. Mich Hirano: Thank you very much Joe. Good evening Commissioners and guests. My name is Mich Hirano with Munekiyo & Hiraga and we're the planning consulting firm doing the permitting application for Castle & Cooke Resorts. John Stubbart is the Director of Water Supply. He's the new Director of Water of Supply and he will be as well going over some of the water distribution system that would service the site. I would also – we've prepared a power point presentation. I would like to take this time to just go over the power point presentation. And some of the questions that were asked to Joe, I think, in terms of the environmental assessments and the phase one environmental review, I could as well, clarify. But I'd like to just first of all start with the power point presentation to just give the Commissioners again a visual overview of the application and just highlight some of the attributes of the application before you today.

Of course, it's the Miki Basin. It's a heavy industrial area. The applicant is Castle & Cooke Resorts. It's part of a very large tax map key. This particular tax map key is in the order – it's many, many, thousands of acreage. It pretty much covers the island. And what will happen is that the Company will subdivide this portion out of that larger parcel and make a small subdivision, and then subdivide those lots.

Ms. Kaye: And when you anticipate that would occur?

Mr. Mich: Shortly after the application has been approved, they would go forward and subdivide. Their intent – the applicant's intent – and Steve Bumbar is not here tonight, but we had discussed the application before we came to the meeting tonight, and he indicated that the Company's position is the application and the priority is to subdivide those lots and the get the fee portion of the industrial subdivision available for investment by private industry or community members.

Ms. Kaye: Can you address why that didn't occur for the last eight years with the original 14-acres?

Mr. Hirano: I can't answer that. I don't know if there was a demand or not for that at that particular time. I know that they are going towards subdivision application on the property. They were starting to go through subdivision when this application came forward.

Ms. Kaye: Subdivision application on the six-acre parcel or that 14?

Mr. Hirano: On the existing 14. On the existing 14.

Ms. Kaye: And they did that this year?

Mr. Hirano: Yes. Well I'll show you on the map because this is what it involved. The location, of course, is the Miki Road, adjacent to the MECo power plant. This is Miki Road, Kaunalapau Highway, the Lana`i Airport and Miki Road, and this is the project site. And this is the subdivision application. We got this from the surveyor which was the larger area and as you can see, this is the existing MECo power plant. This is Miki Road. This is the existing 13.961 acres. A portion of that is being used right now. And then this application would be to extend the boundaries of the existing 13.9 acres and make the total area 20-acres.

Ms. Kaye: Mich, could you address why they didn't all at one time – all 20 acres.

Mr. Hirano: I don't have that history Chairperson Kaye. I don't have that history so I don't know why it wasn't done earlier.

Ms. Kaye: If it's over 15 acres, it has to go to the State Land Use Commission rather than us?

Mr. Hirano: Yes. The State Land Use classification is agricultural. The Community Plan designation is heavy industrial. County zoning is agricultural. So the approval sought would be to amend the State Land Use District Boundary from the Agricultural District to the Urban District, and to change the zoning from the Agricultural County zoning district to the H-2 Heavy Industrial District. In terms of the project's scope, it's to expand the existing heavy industrial zone property by 6.01 acres. This is just pictures of the site. This is looking north, and what we see is the construction base yard that's on the site right now, and in the background or in the mid-ground, is the MECo power generation plant. Again, this is another view of the project area. And again, MECo basin – this is one of the construction base yard buildings that's there. This is looking down Miki Road. The Miki Road right-of-way is 44-feet. It's a private road, and the existing pavement, there's pavement from the highway to just the other side of the Miki Power plant. And the road is paved, and then it's gravel from about this point on. The pavement width at this point is about 14-feet wide. Again, this is looking over the site, more to the west, and the expansion area is in about this area.

Ms. Zigmond: Mich, Mich, excuse me please. The buildings that you just showed us that's currently being used, is that on the 14 acres or the six acres?

Mr. Hirano: This is on the 14-acres.

Ms. Zigmond: Okay. So that's what's being referred to as approximately 2.53 acres is being used?

Mr. Hirano: Yes, this area here. Well there's actually a fence around the base yard. I'm not sure if these are within the – these containers – are within that area or not. But there is a fence that demarks the 2.53 acres that's currently used.

Mr. Gerald Rabaino: Mich? Commissioners Rabaino. In photograph #2, okay, I pass that place every time. I'm familiar with the site itself. You have that – where those Matson containers are in view in front of us. That area sits on the 14-acres correct?

Mr. Hirano: Yes.

Mr. Rabaino: Okay. Can you switch back to photo #3. Okay now that row – during Riki Hokama and Goro Hokama time, when I was appointed by Mayor Linda Lingle – that row was suppose be in negotiation with Castle & Cooke. I'm just giving you an update. I don't know how true or if it went through. That road was suppose to be a bypass road for easier access to and from Manele Bay Hotel to the Airport for the guests, as well as, an emergency road in case there would be a big fire like we had in the past months as an alternative route. From my recollection when I was a Planning Commissioner with Roland Kaopuiki, Bob Hera and myself and I forget the other members that we agreed that this site would go in with the 14-acres. My next question to you in photo #4. Can you switch to photo #4 please? You're going to add six acres, right, above there? What is that six acres addition for?

Mr. Hirano: I think there are two purposes to do the expansion. One is we had a list and I'll move to that now. This is the proposed uses that the Company has for the 20 acres area. The first portion is the fee simple area. They're potential uses and these are not commitment by any means, but they are potential uses that could locate into that area. And of course, it would be open to anyone else whose available who needs industrial land. But we've identified Hawaiian Telcom as a possible relocation for the Hawaiian Telcom facilities in Lana`i town. There's a scrap metal storage yard and that could be relocated to the appropriate zoned land for the site and miscellaneous uses. So those are the fee simple area – 10 acres. And then for the Company –

Ms. Zigmond: Mich? Excuse me, who is this scrap metal yard?

Mr. Hirano: Who's?

Ms. Zigmond: Yes. Is that Castle & Cooke?

Mr. Hirano: No. No. I understand there's a scrap metal on the Kaumalapau Highway just adjacent near the Airport.

Ms. Zigmond: Okay. And my second question is where on there is the two-point some half acres that's already being used?

Mr. Hirano: We haven't located it on here. We're saying that these could be other uses that can come up into that area as well.

Ms. Zigmond: I'm just trying –

Mr. Hirano: But there will be the existing two point could be as well incorporated in this area.

Ms. Zigmond: Well it should be, not could be. It should be and so that's not really an accurate picture then. Because I'm trying to see how we're getting 50% for fee simple when all these uses already designated included the 2 ½ that's already being used. So we don't have 50%.

Mr. Hirano: Well the condition states that 50% of the land will be available for fee simple. I think that would be kind of the first subdivision is to parcel out areas for fee simple sale. That's what the Company would like to do.

Mr. Rabaino: Mich, you have over there under fee simple Hawaiian Tel – I know for a fact that Hawaiian Tel, which is across International Market, that space is limited. Maybe that's the reason why they had want two acres more. Because everything surrounding Hawaiian Tel which owns that land currently today, need another facility. So I understand that. Plan B, scrap metal storage yard relocate to land zone. The one over here, we already have penalty and complaints about – that I'm aware. So in other words, you're saying, you're going to take this current scrap land because you don't have any of the Castle & Cooke people here – only just yourself. But from my knowledge is that I know that you guys are trying to relocate that area because you have other usage for that particular area which has already has been fined and closed down.

Mr. Hirano: It would be appropriate to relocate that to an appropriately zoned or to a zoned area because right now it's in Ag.

Mr. Rabaino: You're proposing that that two acres – relocation for Hawaiian Telcom – that in case they want to expand their building and being that their current facility at the location they are within Lana`i City, that area be open to them as one of the option for them to continue their telephone services for the Lanai Community. If I'm interpreting that in that direction.

Mr. Hirano: If they would choose to relocate, this would be an appropriate place for them to relocate to.

Ms. de Jetley: Commissioners, one of the things that I think we should remember is we have a number of contractors in the community who are storing containers on the road sides, and we have a number of contractors who are storing their heavy equipment along our road sides. So if we had fee simple lands available to them, they could set up their own base yards. And I think it's really important that we remember what we have especially if you look on Third Street, right off Ilima, we have people who are running car businesses in residential neighborhoods. They are all potentials who could go out into a fee simple area. We really need – we need desperately we need storage areas. We need it for residents. We need it for businesses. Who buys it? This is showing us who could be potential buyers of this lands. I think we would have a lot of people interested in buying fee simple parcels out there.

Ms. Kaye: I couldn't agree with you more Alberta, which prompted my question of why for eight years, nothing has happened. Also, when you provide these packets to us, we rely on opportunities for people to own property, to have their businesses, to create jobs, and I don't see many employment opportunities up there, and I see six acres potentially going to two people out of – which is more than half – leaving only four to be divided out. Now that's not necessarily a question you can answer. However, that having been brought up at this point, I would respond that down the line, I would have questions and I would hope other Commissioners would too on offering it fee simple doesn't mean it will be affordable and it doesn't speak to the process on how it will be offered, and in what order. I mean, there's some significant questions on exactly how this gets presented to the community.

Mr. Hirano: And those are important points to considering in terms of the fee simple lands. I don't think those details have really been worked out.

Ms. Kaye: Okay, then let me just ask you before you leave this slide. Go down to the Castle & Cooke. Those are the ones, those are the uses that I was asking you about.

Mr. Hirano: Those are potential – yes.

Ms. Kaye: Right. But those don't require anything. I mean, they could pick up tomorrow and move down there. Is that correct?

Mr. Hirano: They don't need to be subdivided into separate lots if it's all one company.

Ms. Kaye: Right. So these four uses could have been relocated to the original 14-acre parcel anytime over the last eight years. Correct?

Mr. Hirano: Yes, I think so.

Ms. Kaye: Okay, so why are you relying on that now for this new six-acre parcel?

Mr. Hirano: I think the question came up, what are the potential uses for the 20 acres as the application was being reviewed by the agencies. And the Company, at that point, suggested that these would be the uses that they would like to relocate to the area to use it.

Ms. Kaye: So essentially then – the fact that it appeared in your responses to the agency comments, is not to be taken as that's the reason you're coming in for this additional six acres because you could've done this before on the 14-acre parcel.

Mr. Hirano: That is partly correct because I think in order to develop the site, you would also need to upgrade the infrastructure on it.

Ms. Kaye: I'm sorry?

Mr. Hirano: You would need to upgrade the infrastructure – the fire flow – put fire flow capability at the industrial site.

Mr. Rabaino: Mich?

Mr. Hirano: Yes.

Mr. Rabaino: I need to know two things. Did they inform you that back in the 2000 that the base yard currently where our transportation department, mechanic fleet shop, utility shop is currently there – okay, the last I remember if my memory serves me well – that area was suppose to be relocated down to Miki Basin as the heavy industrial area – if my memory serves me correct. That's the reason why Castle & Cooke lists those four things. The last people currently today would be our fleet maintenance that supplies and services the hotels. That we would be the last department to leave this designated area that currently exists because a lot of the old plantation buildings there is turned into storage for other vendors that are coming to Lana`i to do projects on Lana`i and have no other place to be relocated. And two years ago they dug up where our busses are currently parked, across Lana`i City Service, in order to oblige by the environmental impact statement because they had two gas pumps there. And when they dig out, they took the soil out, so I'm aware of what's going on within that area.

But can you find out for me – if my memory serves me well – that the current property that we're looking at right now, between Richards, in front of Lana`i City Service and where they have the Courts currently, that area was suppose to be in exchange for the Miki Basin. That we move and relocate down there to Miki Basin so they can do a mall in there. Can you go and find out in back records if that still exists? Because if this is what they're going for and they listed those people there, I can understand. But as far as #D, laundry facility would mean the current facility that is located at Central. During the pineapple days that was the chemical plant where they use to go and take out, put chemicals, in the pineapple

field. Okay, but they already turned that to Central Building and laundry as we know it today. Okay, if they said that's for the hotel facility, for the employees of Castle & Cooke working for the hotel, and non-hotel which is golf course because they require uniform, then I would understand what the laundry facility is referring to. As far as the trucking services currently, we have the base yard down at Central, but we also have the trucking which is the cement truck, the utility truck that delivers freight to all our stores. If that's what they're doing currently should you find that out, then it's relocating everything down there away from the City. If my memory serves me correct.

Ms. Zigmond: Mich, don't go away please.

Mr. Hirano: Yes?

Ms. Zigmond: I would like to reiterate once more about the 2 ½ acres that are already being used and to have an answer because I can't really make my decision adequately without knowing if that 2 ½ acres is already in there. While I couldn't agree more with Commissioner de Jetley on the need for this, but if that 2 ½ acres isn't in there, then the numbers are wrong again. And you know we have this thing about numbers. And #2, it's really unfortunate that Castle & Cooke is not here to respond to some questions because I have an issue with the laundry facility being out there because that means we're not really trying to conserve energy. We're not really trying to be green. We're going to make all these employees and everybody else go all the way out to Miki Basin how many times a week to get their laundry. And that just doesn't seem very green to me.

Mr. Hirano: I'll answer your question and I know that we do have problems with the numbers. The 2.5 acres will be included in the 10 acre portion that is going to be retained by the Company. The total – and this is the proposed condition for the 10 acres. For 20 acre over industrial subdivision is that 10 acres of that will be available in fee – 10 acres – and the Company will retain 10 acres which will include existing uses.

Ms. de Jetley: You know the 2 ½ acres that's fenced off now, when I drive by, it looks as if it's being used as a storage facility for construction materials that has come into the hotel. When they were building down at Manele, all of the supplies were held at Miki Basin before being transported onto the job site. And I know, speaking as a board member of CDFL, we have storage container there within that 2 ½ acres. And I think there are several other private companies that have storage facilities there. But the whole thing has just sprawled piece meal and it's a mess. It's been used a dumping ground. It's been used as a place just to keep building materials that nobody is using. So if we move ahead and have this land allocated so that it can be a heavy industrial area, it will benefit all of us. It be won't just beneficial to Castle & Cooke. It will be beneficial to the whole community because this is something that we have been waiting years and years and years for.

Mr. Hirano: I'd just like to move to the Palawai water main improvements. And at this point,

I'd like to just ask John Stubbart who's the Director of Water Supply to just go over the proposed improvements to the water system.

Mr. John Stubbart: Commissioners, attendees, John Stubbart, Director of Utilities. What I wanted to do is brief you on a project that we have commenced. This is a new pressure reducing station below the Hi`i tank. I'll be bringing up a map in just a minute. I'll give you a little more orientation. These include special valves that reduce the pressure to the Palawai Basin area and beyond. We have had our PRECON meeting and we have a set completion construction date of June 1st. The contractor is starting to mobilize. What I'd like to point out on this slide is the location of the Hi`i tank, right here. Here's town, right here, and the road running down to Manele. The Airport out this way. The Hi`i tank on the right, the location of our PRV station at the bottom of the hill, below the Hi`i tank; and the current flow of water – in the blue with the arrows here – the current flow of water to the Miki Basin - MECo area. As noted earlier the pressure reducing station will reduce the current high pressures in the Palawai Basin area. These reach more than 250 pounds. Right now at the Airport, it's 250 pounds, and here it gets up to 400 pounds of pressure. The typical water system operates at 60 to 100 pounds of pressure in a typical water system. So the pressures out here are very high. These pressures put stress on the pipes, and these leads to main breaks, leakage and loss of water. Having these special valves in the location here – right here – will allow us to reduce and better control the pressure in these pipe lines and this transmission system, and reduce the leaks, the breakage and provide a more stable system. So this is one of our first steps in moving ahead with stabilizing the pressures in the area. So this is probably the most critical thing to do to reduce the continued problems that have been going on in the area. Yes?

Ms. Zigmond: I didn't hear any mention of the Director of Water Supply's comments to you all regarding the existing 10-inch water line that needs to be replaced because it's prone to leaks.

Mr. Stubbart: Right. What our first efforts is to get the pressures handled because the pressures are causing the breaks and the leakage. If we put in another pipeline at the kind of pressures that we have there, those could also leak. So I think the first step in any water system would be to get control of the water pressures in the area and get them down to a more reasonable standard, best practice, in water system design. Then I think we need to evaluate at that step and then to look at the pipelines that need to be replaced in this system. There are hot spots that I will be tackling.

Ms. Zigmond: I mean, they're talking about a 1952 pipe. That's pretty old. So you're not planning on doing that any time in the near future?

Mr. Stubbart: No. This is the first step. There are technologies that I am currently investigating that I've been bringing to the Company on how to go about doing pipe repair and/or replacement. So there are some new technologies that we are going to be looking

at.

Ms. Kaye: John I want to follow up then, if you don't mind, since we're there, that the Department has put on a condition that –

Mr. Stubbart: Yes. I've read the conditions.

Ms. Kaye: – and that must be satisfied before the zoning goes through as the way I understand this process.

Mr. Stubbart: The thing we'd like to do is they never address the pressures in their report, and I don't know why they didn't address those because they'll be the first thing the Water Department would want to look at. I'd like to suggest that by handling the pressure issue, we'd look at that and see where we are at, and say we're going to be installing it, we'll have it in by June – say a 12 month period. And if that's really solving our problems, and we can tackle and spend our money wisely on the areas that need to be replaced rather than trying to replace this whole line all one shot which could be very expensive, do the prudent thing which would be to get hold of the pressures first.

Ms. Kaye: Did you have this discussion with the Planning Department Staff Planner?

Mr. Stubbart: I have not personally.

Ms. Kaye: That's what is in front of us tonight as a condition.

Mr. Stubbart: I have not have this discussion with them.

Ms. Kaye: Have you made a presentation to the Lana`i Water Advisory Committee on this?

Mr. Stubbart: No we have not.

Mr. Hirano: We understand the condition that is placed on this application, so the discussion will be carried out with the Department of Water Supply and the Lana`i Water Advisory Committee on this system.

Mr. Stanley Ruidas: John?

Mr. Hirano: Because they do have approve it. It is to the satisfaction of the Department of Water Supply.

Mr. Ruidas: John, you ever seen or talked to the Fire Department, what kind of water pressures they require?

Mr. Stubbart: Yes.

Mr. Ruidas: What's the number?

Mr. Stubbart: They require 20 pounds of pressure at the flow rate of 2,500 g.p.m. It's in the County's standard in their report too. So they have a minimum fire requirement.

Mr. Ruidas: Just 20 psi?

Mr. Stubbart: Yeah, 20 psi at the hydrant, at that flow rate.

Mr. Ruidas: Okay because I've got some friends at Maui Electric and they store up to 250,000 gallons of diesel. They've got a cart, a phone cart, probably the only one on the island, that can put out that diesel fire besides the crash and rescue. And at 270 psi that cart can't run. So you're talking about dropping pressure right?

Mr. Stubbart: Yeah.

Mr. Ruidas: Below that?

Mr. Stubbart: Yeah, standard typical operating pressures of the a water system anywhere.

Mr. Ruidas: So you're going to down to 20 psi, lower than – what you said – normal pressure is 60 to 100?

Mr. Stubbart: Normal pressure. But all the fire system designs are based on the minimum pressure of 20 psi.

Mr. Ruidas: Joe, I'd like to see that from the Fire Department.

Mr. Stubbart: There's some fire standards in the report on one of them. We'll pull that up.

Mr. Ruidas: Okay, as far as this pressure relief valve system you're putting in –

Mr. Stubbart: They are pressure reducing valves (PRV).

Mr. Ruidas: And that's – so you're going to put valves and then see if it breaks, if the pipe breaks.

Mr. Stubbart: Well, that's the reason to spend that money is to – or the expectation is that in any system that you have with those kinds of pressures, they are above typical design standards for a water system. And so you would want to bring pressures in to a reasonable number for the materials that any pipe design is going to be below that 120 pounds. Get

around 150 pounds in any system, then you're going to start having problems in breakage – pressures on your pipes, any kind of pipes. So to bring it into best practices.

Mr. Ruidas: So you're going to bring it down to what stable pressure?

Mr. Stubbart: We'll break the pressure, and the pressures here will still be higher but down around the Airport and these areas, it probably be 100 - 110 psi. I haven't done the calculations myself, but I could look at one I have out over here. I'll go over it when I get there.

Mr. Ruidas: Because it seems to me that it's always been band aided over the last 10 years we get breakages. In the last meeting Joe said, it's in the minutes, two to three times a week, up to three weeks at a time, and without fire protection down at the power plant, if something goes wrong, we're in deep you know.

Mr. Stubbart: Right. It's a big problem.

Mr. Ruidas: So when you plan to do this, you're going to be shutting off daily or for a long period of time where you put the PRV's in?

Mr. Stubbart: No, they'll be shut off for one morning and one afternoon, and everything will be done on a by-pass system around the construction site and then reconnected. So everything will be prepped, disconnected, rerouted temporarily around the site, put back on line, finish the project and then turn it on. So a minimum interruption. But the idea here is that you've got to get the pressures down. A lot of rant systems, a lot of plantation systems have these high pressures, steel welded pipes and they all have problems. But by reducing the pressures, bringing them to where pipes and systems are designed to be, then you'll have a successful system. I'm not saying that these pipes that are old and the bad spots are not going to leak. We're just going to reduce that potential. I'm sorry, I'm getting a little dry mouth. We're going to reduce that potential. And then as we go forward, any materials that we use will have a longer life. We'll have less risk of leakage.

Mr. Ruidas: Okay John thanks. Joe, I'd like to see that paper . . .(Inaudible. Changed cassette tapes) . . .

Mr. Prutch: . . .(Inaudible) . . .

Mr. Stubbart: There are trials of peak demand of 250 core g.p.m., and 2,500 g.p.m. for domestic and fire flow purposes. I'm looking for a pressure here. There's no pressure here on this one, but there is, I saw it in another exhibit, and I can go and see if I can find that in my paper. I think it was in the engineering study that was presented.

Mr. Ruidas: . . .(Inaudible. Did not speak into the microphone.) . . .

Mr. Stubbart: 2,500 is a standard for fire flow. 2,500 is standard.

Mr. Ruidas: Your system?

Mr. Stubbart: Will be able to –

Mr. Ruidas: Will be able –?

Mr. Stubbart: Yeah. It will be able to provide that flow of g.p.m.

Mr. Ruidas: Yeah, that g.p.m. flow.

Mr. Stubbart: Yeah.

Mr. Ruidas: Okay.

Mr. Stubbart: Yeah it will. Yes.

Mr. Ruidas: Thanks.

Mr. Stubbart: I'm going to look for that real quick.

Ms. de Jetley: John, you know, you talked about reducing pressure. Anything that you can do to reduce pressure that will lessen breaks in the line, I would greatly appreciate. Because that line coming across from the highway, diagonally across towards the Airport, that crosses right under my – yeah that line – that comes right under my farm, and it will impact all of my fruit trees which have been in the ground for six years. So if they have to dig up that line, I'm toast. So anything that you can do to reduce breakages by reducing pressure, I would greatly appreciate it.

Mr. Stubbart: We're reducing the pressure, but we're bringing it into normal design water system practices. And the pipes and all the materials are designed and engineered for certain pressures. So right now we're operating outside those pressures. And that's just not good water system operation.

Ms. Kaye: Okay, before we move on, I'm going to read this into the record because it's from the minutes last month. Commissioners Ruidas asked a question of your predecessor about the breakages in that area, and Joe said "basically for each break, we take a day to drain and a day to repair and fix and then turn it back on. That's the best we got. We tried doing it one day, turn off the water, drain, and do the repairs, we couldn't do it. So the shortest time is two days. And the longest was three weeks. But actually we cut that down. That was just one occurrence. I think now, the longest would be, I think the longest we had was four days or something." Commissioners Ruidas, "So in that time, in those

areas, we don't have water for fire protection." Joe, "That's right." Stanley, "So if a fire was to happen –." Joe, "We're in trouble."

Mr. Stubbart: That's correct.

Ms. Kaye: So you see what's motivating our questions?

Mr. Hirano: While John is just getting some information on the water pressure, I'd just like to clarify the phase one environmental assessment that was carried out and how that differs from environmental assessment under Chapter 343. The phase one environmental assessment looks at really potential contamination of the soils in the area based on past usage. And it's a field reconnaissance where they look at what they call potential environmental indicators such as oil spots in the soil. And if they find areas where perhaps there were past agricultural practices that used and stored heavy pesticides. And if those are identified during the reconnaissance, then they go into a phase two which is a chemical soil analysis. So phase one environmental assessment is generally used and if there is some consideration or some potential hazardous substance or hazardous waste in the area, they'll do a phase one assessment. And often before financing some financial institutions require phase one environmental assessment.

Chapter 343 environmental assessment, using the same words environmental assessment, is more of a disclosure statement that looks at an environmental impact of a project, and they look at the more social economic parameters to assess impacts, as well as physical parameters. But those are kind of the main differences between the two. John?

Mr. Stubbart: It was just part of a R.M. Towill report, and basically the water standards and the 20 fire flow requirements and the 20 psi minimum pressure requirement for fire flow. And this is what the system would deliver and they want –. And I think one of the requirements was that a certified engineer review anything that's done that would go to the Department of Water and get, you know, engineer would certify that this was all correct. Hence, they'll make that available to the Commissioners.

Ms. Kaye: What was that last?

Mr. Stubbart: I guess, they'll make it available to the Commissioners – the information. But it's basic AWWA standards which the water industry designs to.

Mr. Hirano: That concludes our presentation, so mahalo. But, we'll be available for questioning.

Ms. Kaye: Thank you Mich. I'm sure. And John before you sit down, I have a follow up question on the Department of Water Supply letter dated August 27th. It was pointed out that the prevailing plan projection for 15 acres is 0.9 million gallons per day, and you're

suggesting tonight to increase that by five acres and there was sort of a blanket promise that they will keep within that, but not much detail on how that would be accomplished. So I wonder if you could address that. And also when it was pointed out that there were problems with the system, the response from the consultant basically said, we'll repair and replace as necessary, indicating that wouldn't happen until subdivision. So could you clarify that?

Mr. Hirano: In terms of the usage, if that is a condition that, you know, you don't use more than 90,000 gallons per day and these sites are metered, then that is a limit. And that's how I read that. In terms of looking at past sort of practices, data on the existing base yard, for example, the construction base yard at the heavy industrial site, the average usage of water for that particular facility was 200 gallons per day. So it uses very little water. Some of these uses, the only one that probably is fairly heavy on the water usage would be the laundry facility. But the other uses, I think, normally wouldn't take and use a lot of water.

Ms. Kaye: Do you have a projected –

Mr. Hirano: It would be just basically metered and monitored I think, and that's how you would comply with it.

Ms. Kaye: Do you have any information on what the laundry facility is currently using in terms of water?

Mr. Hirano: I don't have that information right now. No I don't.

Ms. Kaye: Okay. How about – I would like to ask since subdivision has come up – at that point would the – I think it's Bill 68, the water availability bill – would that come up in context to this project? Would it apply?

Mr. Hirano: Yes it would. And I think, you know, with the Hi`i tank and the wells, Lana`i could produce long term sustainable source of water supply. I think it can – Lana`i could –.

Ms. Kaye: I'm sorry, I don't understand that.

Mr. Hirano: The bill for water, the water bill on subdivision, is Director of Water Supply has to confirm that the project has long term sustainable water supply. So I think with the Lana`i water system they could support that as a sustainable supply of water to service the site.

Ms. Kaye: I thought an independent engineer has to certify that to the Department of Water Supply's satisfaction.

Mr. Hirano: Yes.

Ms. Kaye: So what are you saying?

Mr. Hirano: I think that can be done with this particular system.

Ms. Kaye: Okay, aside from –. The laundry facility will require potable – a great deal of potable use. You have, I mean, aside from saying we'll stay under it, you don't have any projections? I mean, I know you can't guarantee the part that would be offered fee simple, but at least you could estimate what water usage would look like for the Castle & Cooke's 10 acres. You've already identified which facilities that involves people, so the base yard, the scape metal yard at 200 gallons a day I don't think is relevant to the additional users. Would you speak to that?

Mr. Hirano: We could verify that information and find out what water is used.

Ms. Zigmond: Mich, I have two questions please for the moment and then there's some more I think. I'm looking at DLNR letter of comments to you all. And there is a hand written note at the bottom, which I don't understand. I'd like somebody to explain. And it was curious to me why it wasn't referred to anywhere. It says, "we still need to acquire lands from Lana`i Company pursuant to land use amendment conditions. If we are not going to take lands near airport, we should acquire lands at Miki Basin." Could you please enlighten us on what that means?

Mr. Hirano: Which exhibit are we –?

Ms. Zigmond: It's the DLNR. It's dated July 11, 2008. It's their comments to you all. It's about maybe 60% through, or more than half way through. 13.

Mr. Hirano: Thank you.

Ms. Zigmond: It's after the pictures.

Mr. Hirano: I'm not sure what that refers to.

Ms. Zigmond: Well, somebody thought it was important enough to put on their comments, and nobody has addressed it.

Mr. Hirano: I thought I did address that, and just said that if the Company would negotiate with them with respect to whatever lands in order to fulfill their land use conditions.

Ms. Zigmond: Could you give us some background on that?

Mr. Hirano: I don't have the background on that. I don't know what the Land Use Amendment conditions were for the Lana`i Company. This, I would think, would be the State Land Use conditions. But they, as well, haven't –

Mr. Rabaino: Mich, I'm going to interrupt. Commissioner Rabaino. Can you flip the next page, Exhibit #14? Doesn't that answer the Exhibit #13 if I'm reading this correctly? Because when I'm looking at this, yeah, well I'm letting them finish up whatever they're questioning you because I found something over here that's going to refer back to the photos. But does #14 answers #13?

Mr. Hirano: No. I think Exhibit #14 is a separate comment letter. Two different.

Ms. Zigmond: Actually, I have a question on Exhibit #14, and it says that – about midway through the big paragraph – “The record in the docket indicated there were no potential users of the lot except for a 2.4 acre portion. The application similarly stated there are no potential users of the subject property at this time.”

Mr. Hirano: That's why we came up with that table to respond to these comments that there are users. The Company had identified users for the 10 acre parcel that they were seeking – well the six additional acres and the 10 acre parcel that they would acquire through and use as part of this heavy industrial site. So we put together that table in response to this comment because the application – we justified the application on the basis first of all the Company did have plans. We didn't specify in the application what those were, but we indicated that the Company wanted to expand to be consistent with the Community Plan and to anticipate potential uses in the future.

Ms. Kaye: Okay, I'm going to ask you a question on that because that was on my list, I can knock if off. The Lana`i Community Plan is about to expire. It's going to be redone. I think the process is suppose to start in a couple of months, and I noticed that your responses to agency comments rely very heavily on that and it's about to go out the door. So how can you in good conscience rely on a community plan that's about to be redone?

Mr. Hirano: Well there's no indication that the land was going to be reused.

Ms. Kaye: Absolutely not. Well, and that was – my second question was – I know, I can see, in fact I brought the maps with me tonight, the community plan map has an area. But no where in the Community Plan can I find an acreage or a quantum of land that is suppose to be, and I wondered if you could point me to that. I'm sure I'm just over looking it.

Mr. Hirano: Well this is the Community Plan designation for the area.

Ms. Kaye: But I don't see any acreage designation and I didn't see it in any of the verbiage

either. In other words, there's nothing that I could find that says this has to be limited to 20 acres or that it's required to have six acres more – you know, which raises all the questions about timing and why now? In other words, is there any reason why you're not putting 50 acres and doing 25 of it fee simple?

Mr. Hirano: Well, as I understand it, it was to comply and get the acreage at least consistent with the community plan designation of 20 acres.

Ms. Kaye: But I don't see anything in the community plan that says that those 20 acres are designated that way.

Mr. Hirano: I don't have an answer for that. We got that as 20 acres from the applicant, and as well from some of the zoning information that we have, and the survey information of the 20 acre area.

Ms. Kaye: Is that in our packet?

Mr. Hirano: The survey – I believe – let me see here, what do you have? I guess the original –. This is the survey information. Well, there's the site plan, that's in your package as exhibit #2.

Ms. Kaye: Right, but it doesn't go to where that started. Where did you come up with 20 and you rely on the community plan for that, and I don't see it in the community plan. So it's like circular.

Mr. Hirano: Yeah.

Ms. Kaye: Do you see where I'm going?

Mr. Hirano: I understand your point.

Ms. Kaye: Right. Similarly, on December 23rd, the letter that was sent back to the Land Use Commission, in the second paragraph you say, "as a condition of the change in zoning for the 2000 application, 50% of the 13.981 acres will be offered for sale and fee." That's a condition that's eight years old. We can't belabor the point, so you don't really know why 20 as oppose to 50?

Mr. Hirano: It was to be consistent with the area in the Community Plan.

Ms. Kaye: Okay.

Mr. Hirano: I'll find that out for you.

Ms. Kaye: Thank you.

Mr. Rabaino: Mich?

Mr. Hirano: Yes?

Mr. Rabaino: Sally, I was trying to explain to you, you know this various land use ordinance, I'm looking at this and it says this is a bill 79, the year 2000 – where the condition of zoning, exhibition B – because according to this, the 15 spells it out right?

Mr. Hirano: That was for the 14 acres.

Ms. Kaye: That's for the 14 acres that was done eight years ago.

Mr. Rabaino: I understand. But if you if you go to this tax map thing that says application boundary amendment for changing in zoning for Miki Heavy Industrial Area tax key map, and then it goes into the one, two, three, all the way up to six items explaining the acreage.

Ms. Kaye: Gerry, is there a question there or are you trying to answer a question or what?

Mr. Rabaino: It doesn't add up to the one he's saying because it's less than 20 acres, and then you have 4.5 acres, where is that coming from? Is that equivalent to the six acres that are you looking for now currently?

Mr. Hirano: That's the existing zoned area.

Ms. Kaye: Did you at any time, has anyone, either the applicant or you as the consultant had any community meetings to see any demand study to see exactly what the demand might be for a heavy industrial area that would indicate that six additional acres is all you need?

Mr. Hirano: No, there wasn't a demand study. It was based on really the Company's requirements and what they projected and felt that they would need. Are you kind of implying that there should be more or should be less?

Ms. Kaye: I'm implying that you don't know, and that makes me a little uncomfortable because I understand you know what the applicant knows what its needs are. But the fact that 14 acres have sat, not offered for eight years, and I'm not making this up, this is in your packet. There's several agencies that responded why are you doing this now because there is no demand, and yet the demands that you're seeing up there, don't speak to a community wide need and there are a number of people in this community that probably could use it, and I don't think they've been approached. I don't think there has been any way for them to communicate that, so that's why I asked.

Mr. Hirano: But you are saying that there is a community need for the 10 acres. That's what I think you are saying, or you don't know.

Ms. Kaye: Actually, no. I was told. I was contacted by one person who said that they had asked for land out there sometime in the previous couple of years and were denied and was told there wasn't any available. But that person isn't here tonight so I don't know any more detail. But that in turn made me think that this potentially is going to immediately take care of your needs, the Castle & Cooke needs, for those four facilities. Which then cascades into the thought that if they got relocated out there first, you are going to have significant water issues and traffic issues. That you say in your responses were going to go way down the line when it was subdivided, so I keep going around in a circle.

Mr. Hirano: Well when we talked about the traffic issues, the concern was basically for the narrowness – from the Police Department – the narrowness of the existing Miki Basin being 14 feet wide pavement. And part of the recommendation would be to widen the pavement to 20 feet for Miki Road, to widen the road to make it safer. So I think that was the traffic kind of concern. I don't think that there was any concern about the levels of services in turning and the traffic is not that heavy on the highway.

Ms. Kaye: If you relocate your laundry facility, it will be. I mean, how can it not?

Mr. Hirano: There will be more traffic on the road, but I don't think it will lead to congestion.

Ms. Kaye: And if you put – Gerry knows this probably better than me – I don't know what kind of big trucks and equipments you have, but if they're going up and down that road, that is an issue too.

Mr. Hirano: That's why the widening was recommended.

Ms. Kaye: But you don't recommend doing that widening or committing to it until after it's subdivided. And you don't have to subdivide until you're going to offer it for sale. You don't have to subdivide to do those four. That's what I was trying to get clarification before on. When are you committing to doing those improvements?

Mr. Hirano: Well, they will be triggered with the subdivision.

Ms. Kaye: Okay.

Mr. Hirano: And the Company would go ahead and do that. I mean, I don't have the time line on it, but they will proceed to implement this heavy industrial subdivisions as soon as possible.

Ms. Zigmond: So prior to –

Mr. Hirano: And after the entitlements.

Ms. Zigmond: Prior to the subdivision, the laundry facility could already be in place, necessitating the need for traffic control for the widening of the road or whatever. I mean, we've got employees going every day, every day.

Mr. Hirano: I think relocation of any of those facilities would require the improvements as well.

Ms. Zigmond: But as Sally said, you've not committed to that anywhere. You keep saying when it's subdivided, but if it needs to be done before the subdivision and you've not committed to doing that.

Mr. Hirano: Well, if the Commission feels that there is a requirement or it could be established as a condition that the improvements be done prior to any relocation for the facilities, and that the Company proceeds the subdivision.

Mr. Rabaino: Mich. Commissioner Rabaino. It seems like we're stuck on this little thing. Why won't you just set the condition, give us the details on how you're going about it because that's a little too vague. If you can make it a little more detailed and clarify, okay, for each category in the Castle & Cooke. The relocation of the office and base yard, yeah, that's a must because we need to move out of the City in order to make the City expand. So please clarify and give definition. The fleet maintenance, like I said earlier, yeah, is the last to leave that current location. Spell it out. When will the fleet leave that area as the development for this heavy industrial area that you guys are asking for? But you guys also asking for the six acreage right?

Mr. Hirano: Yes.

Mr. Rabaino: Okay, but you also have the trucking facility. Okay, it says heavy. It can be any kind of heavy – freight, warehouse, hauling equipment – spell it out. Equipment and warehouse – is it hotel warehouse or joint? – hotel, Castle & Cooke? – as well as the stores in the City that needs and requires warehouse and other vendors that come to Lana`i for construction purposes that need a warehouse to store their things. The last one is the relocation of the facility. Is it for the community laundry or strictly for the resort? Because when I'm going through these pages here, yeah, we're going back and forth and I understand that you know the hotel workers and our golf course workers and transportation all is required by Castle & Cooke as the sole employee of this island that needs the facility. And it's also open to the public.

Mr. Hirano: Maybe I'd like to suggest a different path and that is if the concern is with the fee simple acreage that the condition could be said that prior to any relocation of facilities that the Company would make the lands available for fee simple concurrently with the

development of the first or the subsequent lot or any first relocation of the proposed Company uses.

Ms. Kaye: Are you suggesting, I'm sorry, that no Castle & Cooke relocation would occur until all infrastructure improvements pursuant to subdivision applications?

Mr. Hirano: That could be a condition. That could be a condition of the zoning, and that the fee simple 10 acre lots be available.

Ms. Kaye: Are you prepared at all to talk about how these lots would be offered and what sizes, at what price?

Mr. Hirano: No. I can't say. I can't speak on that.

Ms. Kaye: Okay. Thank you.

Ms. Zigmond: I don't know if you've had a chance to review the letter by Martha Evans, Chair of the Lana`i Archaeological Committee, and I was wondering if you could comment on that please?

Mr. Hirano: Yes I – she recommends archaeological monitoring and I think that would be a standard. Although the Planning Department, and the SHPD, in their letter, had accepted the archaeological survey that was carried out by Cultural Surveys which didn't require monitoring. That could be a condition that is a fairly a common condition in terms of archaeological monitoring during ground and surface disturbance. So if that is a condition that the Planning Commission recommends then I think the Company would oblige by that. I have that letter, thank you.

Ms. de Jetley: Mich, can we go back to, you know, the usage of this new subdivision – this whole project? You know, it's possible that when we get hung up on details like the laundry facility, it's possible that the laundry facility in town will continue to exist to service hotel employees and uniforms, and to service private laundry requirements by new residents to this island. If the hotel occupancy runs up to, say if we were very fortunate in the economy, and we were running at 90% - 95% occupancy, if you go down the laundry facility now, it's too small even with our present occupancy. They've over flowed into the parking lot. They have to put up temporary tents when they have big loads coming in. So it's possible that just the hotel laundry, which would be the towels and the sheets and that type of laundry – the linens for the restaurants – it's possible that they will build the new facility for that kind of laundry services at the new Miki Basin plant. But what I'm looking at is that this new base yard will be used by people with heavy equipment. It will be used by contractors. It will be used by landscapers. We have tons of equipment stored all over this town that needs to be moved out of the town. And they will need minimum services, possibly just asphalt areas that they can buy and park their equipment on. So they won't be using

water. They won't be using what a laundry would be using. So we really have to start thinking long term. Build it and they will come. Build it, open up this darn area and people will come and they will buy. But it has to be made available because when you look at this, this project has been waiting in the wings so long, we really need this. We really need a place to store equipment. We need a place for the stores to build warehouses where they can hold inventory. You know, we've got to start it somewhere.

Mr. Rabaino: Alberta, I share – I'm in agreement with you too. We got to start growing, and we need all of these things because right now, everything is getting too tight and concentrated in Lana`i City. We need to expand.

Ms. Zigmond: I don't think any of us are in opposition to that. We just want some answers on things like the water pipes and putting in the infrastructure.

Mr. Rabaino: Well Beverly in respect to you and Sally, have them come back to the next meeting with a better projection of that and clarity. And then we can discuss this again and we'll just detain this and wait until they come back with a better presentation with more clarification.

Ms. Kaye: Okay, Gerry, thank you very much for that, but I think we have to have to take public testimony on this and then decide on our course of action. And just to calm things down, I think we all agree this is needed. I think even Alberta has admitted though that there is no plan here because we don't know. We don't know who wants it. We don't know how it's being used. We don't know how it will be sold. So there are a lot of questions, and I think if we could take some of – Commissioners, have any more questions for Mich specifically, now would be the time. And if not then, we can do some public testimony.

Mr. Hirano: Thank you.

Ms. Kaye: Leilani has anybody –? Okay, first on the list is Pat Reilly.

Mr. Fairfax "Pat" Reilly: My name is Fairfax "Pat" Reilly, 468 Aahakea Street. You can not pass this tonight. You must defer this. If I only have three minutes, that's all I'm going to say. Castle & Cooke needs to be here. Commissioners can not speak for the Company. Castle & Cooke needs to answer these questions. You must defer. I have a document here, June 28th. This was 1994 Castle & Cooke deed 25 acres, 10 acres shall be in the vicinity of Lana`i City. This is related to Land Use Commission Docket A89-649. You don't know how hard we worked to get this provision to allow the residents of Lana`i to purchase business lands. This is critical. And I respect you Commissioners. You came prepared tonight. You got questions. You need the answers. Do not pass this tonight. You must have them come back. The devil is in the details. Whether it's water; the questions you asked about traffic; the price of gas - everybody going to drive out there? They've got to drive farther. It's not that the community doesn't need this. And the last thing I'll say

probably in my 30 seconds I have left, we've got to get the damn Community Plan going. Please Planning Commission, let's get our Community Plan underway. This is exactly what happens. People are trying to squeeze it in before the new Community Plan is developed. This land will be vacant. How are they going to use the land in the community? Once they move these properties, these lands will be available for what? You don't know. Let's find out. Thank you very much!

Ms. Kaye: Pat, we didn't put a limit on tonight. We always do that at the beginning of the meeting, so if you have other comments, feel free.

Mr. Reilly: I just exhausted myself.

Ms. Kaye: Well then Commissioners, do we have questions for Pat?

Mr. Reilly: I would agree with the archaeological study. I hear the distinction between the EA and EA, but in reading Martha's letter and listening to the Archaeological Committee comments, you can't tell me there's nothing out there. You need a good assessment of the land, a quality assessment. And not just for the oil. I'm not looking at that. I'm looking at what is the cultural heritage of that land and are there? And I agree with monitoring, but you might need more than that. The devil is in the details. And I keep looking at those numbers. I mean, 20 acres, I guess, divided by 50% is better. But, to me, these are no guarantees. You're talking as if this is really going to happen. All you're doing is reclassifying and re-zoning the land. They don't have to do this. They can come back and do something else. You can't get a commitment on this because this is just reclassification of the land. And for those of you that have attended – if this were 16 acres – 15.5 acres – it would go before the Land Use Commission. And for those of you who have attended Land Use Commission meeting, they take quite a lot of time and ask very detailed questions. There are a lot of conditions that I would recommend and you've already presented some of those. But the water issues, you've got to put more conditions on this before you're going to be satisfied and the community is going to be satisfied that there's some control to this.

Ms. Kaye: Pat, I have two questions for you. I'm glad you said that about the Land Use Commission because that was a question that I had. One of the letters in the packet dated 7-14-08 specifically said because there's no demand, they asked the applicant to address the need to urbanize the subject property at this time. And that's what I think we were trying to do tonight, and will probably continue to do going forward. But are you suggesting that that's the kind of thing that would have happened had this had to go to the Land Use Commission?

Mr. Reilly: Yes.

Ms. Kaye: And what kind of detail would the land Use Commission have wanted

information?

Mr. Reilly: Well most of them are lawyers, and so they would ask very detailed information. And just in reference to that, the note that you referred to at the bottom of the DLNR is critical because it stems from the previous agreement in the intervention to the Manele. And that's where this all started where it was an agreement with the community to provide fee simple lands to start businesses, right? We've got to keep that. And there's no guarantees that the –. I know what Commissioner de Jetley is saying, but there's no guarantee that the people whose businesses we're referring to can actually even afford the fee simple properties. And I would agree with the infrastructure. Man, you better have the infrastructure there before you start doing anything down there because I agree with Commissioner Zigmond, it could be horrible down there. And Commissioner Ruidas, the issue of fire at Maui Electric. I mean, if you've got heavy equipment, you've got traffic going down there all the time, no, there's a lot of details that need to be worked out before you proceed.

Ms. Kaye: One last question Pat. You started out by talking about – you had a document in front of you – could you clarify? You went a little too fast for me.

Mr. Reilly: Well, I have a copy. I will provide it tonight.

Ms. Kaye: Yeah, but just for the record, just tell me what it is. You don't have to read it.

Mr. Reilly: It's an agreement to convey, and essentially, it says "whereas, by decision and order, dated and entered on to April 16, 1991, Docket A89-649 of the Land Use Commission, reclassified certain lands on the island of Lana`i for the development of the Manele Golf Course subject to certain conditions including condition #1 requiring Lana`i Resort Partners as petitioner is said docket to make available to the State at no cost on a fee simple basis 25 acres of land on Lana`i."

Ms. Kaye: Okay, right there, are you saying that hasn't happened?

Mr. Reilly: Do you see it?

Ms. Kaye: No Pat, that's a serious question. I really don't know. I don't know the history.

Mr. Reilly: It has not happened.

Ms. Kaye: Okay.

Mr. Reilly: And whether this actually ever happened, I have no clue because that was some of the research I was trying to find. But this refers to that and I was looking at every document that I have to try to see if this actually was promulgated and it's clear to me.

Ms. Kaye: Okay. Thank you.

Mr. Reilly: Thank you very much.

Mr. Ron McOmer: My name is Ron McOmer. I'm one of two people in this room that saw all this happen folks. Pat Reilly and I are the only two people in this room that was involved in this whole thing in 1991. So Pat speaks because he sat in the Land Use Commission hearing just like I did. We dealt with Castle & Cooke to get three parcels. One is 10 acres of commercial for stores to expand the City. And you know where that ended up? That ended up in the corner of Kaumalapau and Manele Road. And we asked for it right where now is Hale Kupuna. When the Company found out that we were going to do that, the Company hurried up and started their project. When we did the Community Plan, that's where we were going to put it. Hale Kupuna became an issue when the Company didn't want to put that 10 acres in town because we didn't want it out somewhere else to start a second part of this town. So Hale Kupuna was born. How could LSG and this community fight senior housing? And it's true, you can't. So we had to take second best on that.

Second parcel, from the Land Use Commission hearing, was 15 acres of light-industrial. And the target area was the old truck station. We were going to put and we talked about moving Nishimura's Service Station out there – put the gas station out in the middle of town, and move car rentals out there and any other light industrial that would fall under that – car rentals, service station, whatever. Then we got 25 acres. I don't know where this 20 acres came from, but we had 25 acres of heavy industrial that was going to be put into Miki Basin. And my question is, is the six acres that Maui Electric got, is that considered part of that 25 acres or is it separate? That's a question you've got to ask.

Ms. Kaye: Ron, excuse me or I'll forget. This 25 acres that you're talking about, how did that come about? Was that through discussion or land use?

Mr. McOmer: It was an agreement between Castle & Cooke and the Land Use Commission. See these were all conditions that we were dealing when we were doing the hotels at Manele.

Ms. Kaye: Are they memorialized anywhere? Are they written down anywhere?

Mr. McOmer: Well they should be in Land Use Commission.

Ms. Kaye: Land Use Commission?

Mr. McOmer: Yeah. They should be in the archives, and we'll see if we can scrape those up. Pat scraped up part of it, and we'll see if we can scrape the rest of it.

Ms. Leticia Castillo: . . . (Inaudible. Changed cassette tapes.) . . . I still have those old

records, and I will dig all those records.

Mr. McOmbler: Find them please. Okay now, again, I'd do the same thing Pat does. I recommend surely that you do not pass this tonight. They've got to give you more answers than this. The reason for the 25 acres – they were going to split it. That means 12.5 to fee simple, and 12.5 to Castle & Cooke to develop however they wanted to do it. Well right now, it looks like it's going to be a lot less than that. And if you go by the chart that was up here, they've already picked who they think they're going to put out there. You know, we have people in this community doing car repairs. They're doing all kinds of boat repairs and they're doing all kinds of things that could be out there in the heavy industrial – away from the City. It isn't that we don't need it, we do need it. But our obligation on the community plan will be to find out how many people would be interested in doing that. And we'll put that in the community plan because it's a force of law. But until we find out what's out there, here's another bogey you've got to look at, everyone of us that goes out there especially you who work out there, since they've put the fence up, it looks like they cleaned it up. But you should've seen what that looked like before they put the fence up down there. There's oil, grease, no telling what was out in that soil. So you need a soil check, a complete soil check of that whole area because if not the people who are going to work out there are going to be in danger in the health wise, and it's never been done. They need to go through there and scrape soil and take deep soil samples because that was just an unbelievable ugly looking thing. All they've done is scrape the top of the earth, leveled it out, and put some containers out there. So this is why a Planning Commission, from people that live on Lana`i, is very important. And it's the people like us that stand up and talk about this. I'm not trying to gouge anybody, but Lana`i does not deserve this. If Castle & Cooke – they're already out there working. You know, they've got a fence out there. They've got stuff out there already. Why didn't they have to put water? Why didn't they have to bring the water up to par and the roads up to par in 2000 when they got their 13.9 acres to go ahead and start doing that in 2000? There were no conditions in here for that. That should've been the same thing you folks are going to be asking for. You know, it says in here, one of the conditions is you will improve the water system. Waiting for this gentleman over here to put reducers and see if that's going to work, then you wait until he finds it's going to work or not. You don't say, well, okay, if it doesn't work, then what do you do? Don't do that folks.

Your question on that note from DLNR – I'll tell you where that came from. They want to move because they have moved. If you watched DLNR's office in town, it's been moved from this place, where Bank of Hawaii is now, and it's been moved to here and it's been to there. They want a permanent spot and they thought because of hunters and guns and all of that, the light industrial area by the old truck station would be a perfect place to have that because people can come from the Airport, check into the check in station, check back out, bring their game over there, there would be no animals in town – perfect. Well, we haven't heard about that folks. And we're going to ask that specifically from the Company when we do the Community Plan – what are you going to do with your 15 acres? When are you

going to do that? They don't have any money folks. That's why Bumbar is not here. He can't answer your questions because he doesn't have any money. All he knows how to do is go around cut people's job. So this is why he's not here and you folks need to make a note of that. Castle & Cooke representative isn't here and it's on the camera. Mr. Bumbar, you ought to be here.

Okay, now, Pat's right on. Please do not pass it, and take heed of what Martha has wrote to you and all of that. But one main thing out there, please have them do a complete soil check and show you where they took the samples because that is an ugly, ugly, ugly place out there. It doesn't look like it if you drive out there now. They've got a nice fence around it. Everything is all organized, but you should've seen it six months ago. It was a hell hole. So anyway, thank you for your indulgence. It know I took more than three minutes. But I sit over there and I just die when I hear this stuff because again we went through this already folks. This is ancient history and thank God that you're being brought up to date, and thank you. Any questions? I'm sure there's not.

Ms. Kaye: Questions, Commissioners, for Ron?

Mr. McOmber: They don't want to ask me any questions.

Ms. Kaye: Thank you Ron.

Mr. McOmber: Aloha, and happy new year folks.

Ms. Castillo: Sally, I just wanted to share with you.

Ms. Kaye: Is there any other public testimony? Anyone else wants to testify this evening? Okay, sorry, Letty, yes?

Ms. Castillo: I just wanted to share with you, you know, when Castle & Cooke came about, I was one of the planters at that time. When they requested that bakery – if you folks know, that bakery's site was where they mixed all those chemicals and everything else. And then they offered the dental office where they also mixed chemicals or pesticides. So I don't know where we are at, for Lana`i, because whoever were the Commissioners at that time, they have gone and approved those places. So far, I don't know, because one year later, they are the only ones that are testing the water. The Department of Health doesn't test it. They just send in the testing, you know, for the Department of Health to test. And one year later, after the breakdown of the stomach flu, and then they come back, sorry, we have contamination in the water. And it's been quite some time that they haven't done that.

Ms. Kaye: Well, maybe we could follow this up Mich, if you wouldn't mind. Mich, Ron's questions and Letty's observation, I think, if you could respond to that. Those are serious

concerns. And I did follow you, but maybe, not well enough, to know whether you could say at this point that you've done enough study that you could answer Ron's concern. It sounded to me like you did an aerial and that did not justify doing an actual soil sample. And if I got that wrong, I apologize.

Mr. Hirano: This is in reference to the phase one environmental site assessment – and they did a field reconnaissance. They went out and actually looked at the site.

Ms. Kaye: Walked it?

Mr. Hirano: Walked it. Some of the things, and I'll just go over what they were looking. Some of the things that they would look for – hazardous substances and petroleum products, storage tanks, underground storage tanks, above ground storage tanks, in ground hydraulic equipment, waste, waste water, storm water, discharge, septic systems, oil/water separators, clarifier sumps and trenches, asbestos containing materials – so they walked the site and look for those if there is – lead paint –.

Ms. Kaye: And the result was they did find nothing that required further study?

Mr. Hirano: They did –

Ms. Kaye: No test were done – no actual physical test?

Mr. Hirano: They didn't find enough that would warrant soil test. But there were surface areas suspected asbestos containing materials on the surface that were in some of the debris.

Ms. Kaye: Well, how do we resolve this? What would you recommend?

Mr. Hirano: They said that the finding is not considered a recognized environmental condition because there is no evidence of hazardous substance releases in the heavily vegetated portion of the subject property. It said, "however, the subject property should be monitored during clearing and grubbing activities for planned industrial development."

Ms. Zigmond: You know 50 years ago, they said thalidomide was safe for pregnant women to take. I'm not comfortable with that. Somebody going, and walking, and looking and saying, it's okay, we don't have to test this. I need some more warm and fuzzy feelings about this.

Mr. Hirano: What would that be? I mean, this is kind of standard for industry kind of assessments that are done.

Ms. Kaye: Well, I don't know we can solve it this evening, but we probably can figure out

a condition that would be acceptable to satisfy Ron's and Letty's concerns, and other people's concerns as well.

Mr. Hirano: Okay.

Ms. Kaye: Okay. As long as you're there, I have one more question I forgot to ask you. There are two letters –

Mr. Hirano: In terms of clarification, I thought Letty's question, I wasn't quite clear where that was, that area.

Ms. Castillo: You know where the bakery is?

Ms. Kaye: It's not in his parcel.

Mr. Hirano: It's not in this parcel.

Ms. Castillo: It's not in that parcel.

Mr. Hirano: It's in town.

Ms. Castillo: Yeah, it's in town. But, at that time, that use to be the mixing place of those pesticides.

Mr. Hirano: I see. Yes.

Ms. Kaye: I think what you're hearing communicated is some long term resident mistrust of systems that were put in place long ago –

Mr. Hirano: Yes. That part I understand.

Ms. Kaye: – that you should not have to pay the price for, but unfortunately they linger.

Mr. Hirano: There's a history to it with problems, yes.

Mr. Ruidas: Mich?

Mr. Hirano: Yes?

Mr. Ruidas: I don't know if this is from you or what, page #10, attachment #3, it's a really bad aerial or whatever.

Mr. Hirano: Is that in the staff report?

Mr. Ruidas: Yeah. So aside of that, from Miki Road, towards the ocean, does the parcel for this zoning go beyond this channel? There's a channel behind the fence. Does it go past the channel or before that? How far down does it go?

Mr. Hirano: John?

Mr. Ruidas: Because I don't see a map saying, in detail, how far it is.

Mr. Hirano: Which map are you looking at Commissioner Ruidas?

Mr. Ruidas: Page #10, attachment #3. I don't know if it's from you or whatever.

Mr. Hirano: That's the staff report.

Mr. Ruidas: But that's the closest thing I can find to a square footage for your parcel, your zoning. I just wanted to see the area. Because there's a channel that runs behind that, that goes to a dump. And I think –

Mr. Hirano: That's the archaeological survey? I think that is - page #10.

Mr. Ruidas: Okay, so do you have your own?

Mr. Hirano: I just have to kind of check with the staff report.

Mr. Ruidas: Okay.

Mr. Hirano: So, the question – this is – I'm looking at the topographical survey that is in the engineering report, and what you're saying is page #10.

Mr. Ruidas: Yeah. Can I come over and look?

Mr. Hirano: Yeah, come over because I can't –. This is the addition right here. This is Miki Road.

Mr. Ruidas: . . .(Inaudible. Did not speak into a microphone.) . . .

Mr. Hirano: This is the storage building yeah.

Mr. Ruidas: . . .(Inaudible. Did not speak into a microphone.) . . .

Mr. Hirano: This is the six acre expansion area, and this is the existing. No, this is Miki Road here, right? So it's below. The channel is down.

Mr. Rabaino: The runway is where? Up here right? The runway –.

Mr. Hirano: The run way is way up here, yeah.

Mr. Rabaino: . . . (Inaudible. Did not speak into a microphone.) . . .

Mr. Hirano: That is part of –

Mr. Rabaino: Because the slope goes down, right?

Mr. Hirano: That's right. Yeah, that's part of the channel.

Ms. Kaye: Gerry on the mic.

Mr. Hirano: Okay, the question is yes. Part of that channel is within the project site. It runs kind of –

Ms. Kaye: Okay, Gerry and Stan, what were your concerns in trying to determine that?

Mr. Ruidas: I just wanted to see exactly where it is because out of all presentation, we don't see it, you know?

Mr. Hirano: Does that answer the question?

Mr. Rabaino: Because the slope is there yeah, and when you're reading this pamphlet over here, it says swells, curbs, and drainage. Because of that thing coming down from Miki Road going down towards south, even though it's close to the runway. Not really close, but close to the runway, that thing levels off. It's like a slope. So when you have heavy rain, it will drain downwards. So where they are locating and want that six acres, you need to do a lot of grading in order for the rain and water to run off. But there's a channel there during the pineapple days where the water drains into that channel and is diverted elsewhere.

Mr. Ruidas: Yeah, the reason why I asked Mich is because I wanted to see how far it went. The channel that we were talking about that runs to the left towards a basin, another catchment basin. So if you did soil samples or anything, I would go beyond the channel and subsequent around the area because that area use to be like the second emulsion plant. They had storage, pesticides, herbicides, whatever you call it. So I would like to see some kind of report on that.

Ms. Zigmond: . . (Inaudible. Did not speak into a microphone.) . . .

Ms. Kaye: Emulsion. Mich, can I interrupt you or not?

Mr. Hirano: Yes.

Ms. Kaye: There were two letters in the packet, both signed by Nancy McMahon. One is dated January 24th and appears to be responding to a grading permit, and it agrees that it didn't appear that there would be any archaeological issues. Then we have one from September 2nd, which appears to be responding to this particular application. This is just the reverse and recommends that an archaeological inventory survey assessment be conducted. That does not appear as part of the Planning Department's conditions, and you didn't address it either. Now, to me we have –

Mr. Hirano: I did address this. It's on the back of that letter. And I think that's why I attached the cultural survey's archaeological assessment that was carried out.

Ms. Kaye: But the archaeological assessment was carried out before this letter was written, and we didn't get anything from Mrs. McMahon changing her mind. In other words, the archaeological survey – you had the grading permit, you had her response to that. You had the archaeological survey and then you have the letter in September saying you need to do an archaeological inventory survey/assessment. If we can't solve the dates tonight that's not as important to me as to make the point that we have two archaeological concerns on the table. One is DLNR's suggestion made in September that you should have an archaeological inventory. And if this person has already read the report that you referred to from the archaeological survey that was done, then she still has additional concerns. And if she didn't see, she should've seen it. Do you see my confusion? So we have –

Mr. Hirano: Yes. I think –

Ms. Kaye: I'm sorry.

Mr. Hirano: No, go ahead.

Ms. Kaye: So that's my first concern. And the other concern was Martha Evan's letter, the Lana`i Archaeological Committee. So it seems to me in this area there are two things on the table. Is this assessment, has it been done to the satisfaction of Mrs. McMahon and the Lana`i Archaeological Committee, and will you consider having a monitor?

Mr. Hirano: Yes. No, I said that we were.

Ms. Kaye: Because just to do the assessment, the monitor would be – okay. But this is still outstanding to me because I can't make sense of the timing.

Mr. Hirano: As I recall the sequence of events was that this application, this document, which didn't have the archaeological assessment in it, was distributed for agency review.

The earlier letter about requiring an archaeological inventory survey was in response to the application document. At that time, then, I contacted the applicant about the archaeological comment, and they said they had an archaeological survey done as part of their grading application for the site which was after we submitted this document. So I responded to Nancy McMahon's letter saying that there was an archaeological survey done of the site for the grading permit, and that you had accepted that. So, you know, it indicated that a determination that no historic properties would be impacted by this project which they agreed with. But we haven't had a response to that, but I think the sequence of events was that the application document went in first, the letter was responded, the first letter was responded to with respect to the document, and subsequently there was an archaeological survey done as part of the grading permit. And that's what I brought to her attention.

Ms. Kaye: The archaeological survey is dated February 2007, okay. So the chronological, that's where I'm struggling is the chronology. You have the survey done in February of 2007. You have the first letter from Mrs. McMahon in January of 2008. Then you have your application, and then you have the second letter from her saying you need to do a survey. So either she has not seen this but I think it behoove the applicant to contact her and clarify it for us to some extent.

Mr. Hirano: Will do. I thought if she would disagree with this, I think we would have gotten a response back that no, you know, you need to do the inventory survey. I take it that no response –

Ms. Kaye: But she did. That's what the September 2nd, 2008 letter is. That's the most recent communication.

Mr. Hirano: Yes. But then my response was in response to that September letter.

Ms. Kaye: I don't have that. I have a September letter written. I'm sorry, October 9th. But she didn't respond to that.

Mr. Hirano: No.

Ms. Kaye: I see, it was attached in reverse order.

Mr. Hirano: Yes.

Ms. Kaye: Okay, Commissioners, any other questions? Would you like –? If you want to testify, then you come and introduce yourself and sure –

Mr. Kepa Maly: Aloha. Thank you and I'm sorry. I've been thinking about this. And perhaps it's across the street from where you are, but I'd like to raise it just for your information. And I think it's something that's important for this community that immediately

across the street – that 14-foot wide bit of pavement in front of just past the MECo plant and where this parcel is – sits the last harvesting machine on this island. And the harvesting machine was moved there specifically some 15 years ago as I understand it to preserve it and keep it as part of this community’s heritage. About three months ago, the 55-foot boom on it was – they were doing some dozing along the side of the road, and put a couple of containers on the mauka side, the Lana`ihale side of the existing road –and the boom was banged up and knocked in half and moved now in front of the bin and the harvesting machine.

I have been talking with Harry Saunders and Steve Bumbar, Jon Shimizu when he was here and other staff members about this. But I would just like to bring it back to your attention that that’s an incredibly important part of this community’s heritage. And it’s immediately adjacent and I can just see work being done on the 14 feet makai of there, impacting this last resource that I’m hoping that we can get an agreement with Castle & Cooke and with this community as participants and stewardship of its history to ensure that we don’t lose that machine – that we get it out of there. It’s sitting on a bin right now. The boom is still there. It’s in worst shape than it was three months ago, but the potential is that we would have –. I told Castle & Cooke on several occasion and written it that I believe it would be the most photographed part of this island just having that harvesting machine and the bin put back together with some short rows of pineapple in front of it. People from the Cultural Center – I’m here as a community person – but you know, everyday, we have people coming in asking “where’s the pineapple.” Today I did an interview with a 99-year old Lana`i resident. We had several 80 year old family members in here, and next month, Jack Ross who is the engineering department superintendent from 1957 to 1962 is coming. These are people that help develop this equipment. Lana`i was the leader in this, and we’re on the verge of losing the last piece of that equipment. So I’d just like to ask that maybe you would also consider whenever you take this up that we think a little bit about that part of the island’s heritage and try to make sure that it isn’t just pushed over to the side and completely destroyed. I’m sorry, that’s just my small little addition.

Ms. Kaye: Thank you Kepa.

Mr. Maly: Thank you very much for your patience.

Ms. Kaye: Commissioners, any questions for Kepa?

Ms. Castillo: In connection of what Kepa is talking about, my thinking of that old post office that was really, really hurting to me to get that down. Because I was asking the Company at that time to preserve that to be the archaeological site of the island. But unfortunately they have destroyed almost everything that’s the history of this island. And I have been begging the Company that, please preserve some of the things that people can see that it use to be. It was promised to us before that they will save at least a couple of fields, at least by the airport, for the pineapple, for people to see how it was use to be, but nothing

happened.

Mr. Rabaino: Well, what she is referring to is the voluntary fireman house, as well as the post office. There's also, if you go down behind the Police Station, next to the old power plant – that was about 20 years ago – you have the old boy scout building that hasn't been restored. And, under Patrick Birmingham, that was suppose to be restored. But since Castle & Cooke has a revolving door, everything is lost by word of mouth or not even written and documented to restore.

Mr. Ruidas: Kepa thanks. I agree with you on that harvesting machine. And there's still mechanics that can fix it. They're around. I'm sure you can find help, no problem. So, James, can you take that back, Mr. Archive Man? Okay, can you give us like one brief history of Miki Basin that you know of?

Mr. Maly: The Lana`i Archaeological Committee took up, and I don't speak for them. I'm sorry. I'm advisory. I consult with them at each of their meetings. But the idea was that there is a unique history. Miki, Puu O Miki, is a part of the Kaunolu Ahupua`a which is really a unique land division, one of three unique land divisions on this island. And there are only two others in the entire island group that cross an entire island area. It was a noted chiefly land. This does not deal specifically with Puu O Miki, but they are part of that land unit. And the Hawaiian mind works with things in contiguous. It's not the modern boundaries and lines that we put on them today. So, the critical thing is that we find that in Kaunolu, at Kaneapua, the small island in front of the heiau at Kaunolu that was a landing point. In fact, it's named for one of the akua, one of the Hawaiian Gods. Kaneapua was sent by his elder brother Kame and Kaneloa into the uplands, reportedly in native traditions. And this pre-dates the Kaaluualau periods, so it pre-dates roughly the 1,400 period. In antiquity, we find that Kaneapua is sent to the uplands and at Puu O Miki he finds a spring with which these Gods are able to collect water and mix their awa for a ceremonial drink. So there's noted significance, traditional significance, so the Archaeological Committee, through discussions with the Office of Hawaiian Affairs and Committee Members, was concerned that it's too easy for us to just say nothing on the surface. Of course that's sort of superficial, sub-surface plowing activity removes those traces, but the sub-surface traces which is why that boulder sits there marked 1935 in the middle of the park, the Hawaiian memorial, identifying those in unmarked and unknown location of Hawaiian burials and other features that are part of this landscape that, you know, they're trying to honor them. So I think that the idea was let's at least be aware that this is part of a significant historic landscape, and a simple request that even if the archaeology tends to look for the biggest pile of stones and bones that that's not what it's always is.

One of the most significant sites on Lana`i in its native traditions is a puku and a coral rock that's about four inches across. And it's tied to the whole story of the killing Pahulu and how Lana`i was freed of its ghosts. It's not a major heiau – a big pile of bones – but it's a

little puku this big. So the idea was – and I believe that was the spirit and the intent of the letter – let's just be safe rather than stumble upon things unaware as has happened like on Lana`ihale where dozing occurs to widen the Lana`i hale Munro Trail, and burials were dug up because no one is watching. You don't know. And so a year and a half, two years ago, we reinter eight individuals who were exposed and part is a result of dozing activity.

Ms. Kaye: I have a follow up question then. I suppose in a perfect world, we'd have an assessment and a monitor. But would a monitor, in your opinion, if there was a monitor done on it, would that satisfy the assessment requirement that Mrs. McMahon was suggesting? I don't know enough about archaeological surveys.

Mr. Maly: I can give you my opinion which is based on some 30 years of experience, is that if an assessment is required, and if it wasn't done, a simple monitoring would not satisfy the condition. But I believe that a cursory or pedestrian survey was done by Cultural Surveys. And I think part of the problem was when we were sitting in LAC meetings about four months ago, Lana`i Archaeological Committee meetings, reports that were thought to have been turned in to SHPD weren't turned in. Thus letters, like the one you were referencing the date to, they actually haven't see the reports. As I recall, there were, I think, four reports. One of them was the Miki Basin report as I recall, by Cultural Surveys Hawaii that had not be turned in. And so what happens is, I believe that this would satisfy the conditions because of previous plantation activity. What was suggested by LAC and through the Office of Hawaiian Affairs discussions at those meetings was that let us just go ahead and take this one extra little step. So that if there is something encountered, we know how to take care of it, versus the extra step of the cultural monitor or the archaeological monitor during the heavy ground activities.

Ms. Kaye: So you have seen this then? Did you see it tonight?

Mr. Maly: No, I saw about, let's say, a couple of months ago.

Ms. Kaye: So, I'm sorry then, that discussion was irrelevant. This has been done? We don't need. This is the assessment?

Mr. Maly: No. I would go back and clarify it. I believe what happened was, as I said, I think it was four months ago, four meetings ago, which was actually five months now, it was raised that SHPD hadn't seen all of these reports. Cultural Surveys thought they'd been turned in. Shelly Barfield was then working with Jon Shimizu when it end. And what happened was they realized that the reports hadn't been turned in to SHPD. And it would have been – I'm sorry I just lost the name – Jenny Pickett and who worked with her before her? Melissa Kirkendahl – thank you – that somehow it hadn't gone from their office to the Honolulu office. It may have actually been an internally SHPD thing. So I think that's what generated the letter that Mr. Hirano was talking about, the subsequent letter, and why Nancy may not have responded. But one can never tell with SHPD, so, you know. Thank

you.

Ms. Kaye: Thank you.

Mr. Maly: Mahalo. Save it.

Mr. Prutch: My voice is loud enough anyway. If I may, and I believe Mich would be okay with this. We had talked about this earlier and in the recommendation, we haven't gotten to that, but there is a condition #9 which states that in the event of historical and cultural artifacts were uncovered, blah, blah, blah – it goes into a little bit of detail – but the LAC letter from Martha goes into a little more detail saying that there shall be a monitor on site during ground disturbing activities. I talked to Mich. Mich seemed okay. My idea was just take out the old condition #9 that's in the recommendation and replace it with the condition that Martha is requiring, which will involve monitoring at the site, rather than just leaving it up to if they find anything out there, then stop construction. This way a monitor is on site while they are scraping the ground. I believe, Mich, if you're not okay with that, say something.

Mr. Hirano: . . . (Inaudible. Did not speak into the microphone.) . . .

Mr. Prutch: Okay, so we can change that condition and that the new condition does say, "an archaeological monitor shall be assigned to observe ground work during subsurface features, or during grubbing and grading." That should help the archaeological issue.

Ms. Kaye: Commissioners, any other questions, comments at the moment? If not, we're going to take a short break. It's 8:15 p.m.. At 10 minutes we'll be back.

(The Lana`i Planning Commission recessed at approximately 8:15 p.m., and reconvened at approximately 8:30 p.m.)

Ms. Kaye: I'm going to put it on the record, it's James birthday today, so we're all singing happy birthday! Okay, we're back in order. We have had public hearings and now I think really we have to listen to the Planning Department's recommendations. Joe?

Mr. Prutch: Yes, yes, yes. Okay. Well, I'll say staff's recommendation – our conclusion of law was that the applicant complied with the applicable standards of the State District Boundary Amendment and the Change in Zoning. We recommended that – well, the Department of Planning recommends that the Lana`i Planning Commission recommends approval of the State District Boundary Amendment, and further the Department recommends that the Commission recommends approval of the Change in Zoning subject to the conditions of approval that are listed in your recommendation report. Nine standard conditions and three specific conditions from the Department of Water Supply, with the change to condition #9 for the archaeological discovery to the condition as stated in Martha

Evan's letter from January 20, 2009.

There was a – well – this is up to the Commission, but I heard during your deliberations that one of the conditions, it sounded like you wanted to add, and this will be up to you if you decide you want to add this or not, was an additional condition that generally said, “the applicant shall improve Miki Road to the proper width from the highway to the heavy industrial area prior to relocation of any user to the heavy industrial area site.” That one is up for discussion, as is the change to condition #9.

Ms. Kaye: Could you just tell us how you would word that Joe? It's a little vague to me still. Are you borrowing Martha's language or did you have something else in mind?

Mr. Prutch: I'm sorry. I can read that into the record here. The condition would read “during any grubbing and grading, an archaeological monitor shall be assigned to observe the ground work to ensure that subsurface features are not encountered. Should such features be encountered, work in the area shall end until the context of the artifacts can be documented. Should human remains be unearthed, compliance with HRS Chapter 6E and burial laws shall be complied with.” So that would be the condition #9, rather than what's in the recommendation report.

Ms. Kaye: Commissioners, is that –? We all sat here and listened to what Kepa had to say. Does that cover the concerns that he evidenced, do you think?

Mr. Rabaino: He was referring to the picking machine too. Should add that picking machine in.

Mr. Prutch: I didn't add anything in with the picking machine – what's it called? – the harvesting machine, correct, because it sounded like it was off site. I don't know if that was an issue for this project. It sounded to me like that was concern. Maybe it needs to be address, but I don't know if it needs to be addressed through this project.

Mr. Rabaino: I wanted to make it as a condition.

Mr. Prutch: You guys can suggest it, and we can see how they feel about that, Commission, sure.

Mr. Rabaino: And the other one I said earlier about giving more clarity, the one they had on the video.

Mr. Prutch: Clarity for the archaeological or clarity for –?

Mr. Rabaino: Their plans. You know what I mean?

Mr. Prutch: I don't know if that was a condition of approval you wanted or that was something you're referring to them that if this was deferred, you wanted them to come back with a little more detail.

Mr. Rabaino: Yeah, if it was deferred, more details – yes – clarity.

Mr. Prutch: That was my understanding. If you guys decided to defer, that was something you were going to defer it for because you wanted to see more detail.

Ms. Kaye: I've been keeping sort of a list of things that I think if this is deferred tonight that a fair notice should be given that should be addressed. So I think we need to be a little more specific on what it is we want. So we will just save – I'm sure everybody has done the same thing I have – so hold that thought Gerry. Is that it?

Mr. Prutch: That's it except for my standard – in consideration of the foregoing, the Planning Department recommends that the Lana`i Planning Commission adopts the Department of Planning's report and recommendations, and authorize the Director to transmit said report and recommendations to the Maui County Council. That's it.

Ms. Kaye: Thank you Joe.

Ms. Zigmond: Madame Chair, I would like to make a motion to defer so we can get some more information so we can have the applicant here to answer our questions. And I think we probably have a number of items that we would like clarity and more information on. So I'm not sure how to proceed. That's my motion that we defer.

Ms. Kaye: The motion on the table is to defer. I think what we can save for discussion if we get a second is for how long and what additional information we need to have provided to us.

Ms. Castillo: I second the motion.

Ms. Kaye: Okay, the motion has been second. Now we have discussion on –. Let's so do it the other way around. Let's think about what it is we want further clarification on and then we can address how long to defer it for. I know next month is jammed. Kepa is doing a water report and we've got a housing study so it's fair game after that. Let's see the quantum of what we need to have clarity on and we'll figure out how long do defer it from there. So do we just want to go down the row? Gerry you want to start?

Mr. Rabaino: I just want clarity on the items listing of the acreage and explanation. And on top of that, it would be a lot stronger to have the proper Castle & Cooke individuals present – I'm being diplomatic – individuals present. That way we're not mind readers here. Everybody can express to them and they get a proper response. And I would like to defer

to get more information. And the other one is the grading of that area for your swells, sewage and drainage since you're going into that six acres proposal that is running to the lower half to the channel, to the old channel where the water is drained to another area. As Commissioner Ruidas stated that you should go further down for soil samples to see any contaminant has moved down since the flow is going to the south side which is going to the Kaunolu area. Letty?

Mr. Ruidas: I would like to see a copy of that tax map key, Mich, that we looked at earlier so that all the Commissioners can see that. It's a more detailed tax map. Not anything blurred or pictures.

Mr. Prutch: You're just talking just the tax map key because that's just pretty plain. You mean of a site plan?

Mr. Ruidas: Yeah, the site plan that he showed us earlier there. Can that be forwarded to us?

Mr. Prutch: Do you know which one he's talking about? I'd rather find it and be specific on what page, what figure it is, otherwise tax map key –

Mr. Ruidas: While you're looking for that, also as far as soil samples – yeah, can you show Joe? – that's the one. . . (Inaudible. Changed cassette tapes.) . . . soil sample or whatever can be done on that area.

Mr. Prutch: You want that map?

Mr. Ruidas: That map. That map, so that everyone can be on the same page. We don't know what we're looking at.

Mr. Prutch: . . .You all want – a copy for everybody.

Mr. Ruidas: Unless you're familiar with the area, you don't know what you're looking at. Okay, there's a channel back there that when it rains, everything goes to the channel, and it dumps into a basin. It's not Miki Basin as a whole, but Miki Basin holding area, like a reservoir, water catchment, and that's where all the junk end up at.

Mr. Prutch: . . .(Inaudible. Did not speak into the microphone.) . . .

Mr. Ruidas: And then the other one would be the clarification on the road. I seen a letter in there from the DOT, and from what I recall, they own the road. They past the road. So I was wondering if that would be –

Ms. Kaye: I'm sorry, the Department of Transportation owns the road? Is that what you're

saying?

Mr. Ruidas: Well, the Airport.

Ms. Kaye: The Airport?

Mr. Ruidas: Yeah, DOT.

Ms. Kaye: Owns which road?

Mr. Ruidas: Their acreage goes from aeronautics which is that capsule way in the front by Kaunolu, all the way back. If you look at that map, remember we was in this room –?

Ms. Kaye: I have it.

Mr. Ruidas: Joe, you have that map? There's a fine line. No, not Prutch. The one with the pony tail.

Mr. Prutch: That Joe.

Mr. Ruidas: Yeah, I can not remember his name. She's going to bring out the map. But, can you also – go ahead Mich.

Mr. Hirano: Chair Kaye, can I just respond? Yes, on the TMK map, the airport boundary does go over Miki Road. It extends out to Miki Road and over and cross it. The recent letter that was received from Planning from the State DOT, Airports Division, said that they have no opposition to the Miki Basin proposal, but at some future date when the airport needs to relocate or expand their airport, that Miki Road will have to be detoured around the airport extension.

Mr. Ruidas: Yeah, that's why I was asking because this is about planning. So if you plan for the future now, you don't have to worry about that later. At least you have a contingency plan, if it belongs, like you said, it belongs to them. And what else did I have on there? Water – I think we had fire protection on there. I want clarification on that. I know John had the thing, but I just wanted something from the Maui County Fire Department, if they had anything on that. Because it's a industrial area, I would think you would want to put out a fire there if there was one. Hold on from me.

Mr. Rabaino: Commissioner Rabaino. Just going back yeah James – Joe – oh, Joe P. Okay, add to that, you know what they said about Miki Road, they're going to widen it? And then I said earlier that under when Goro was alive and Riki Hokama that we was looking at that road as a possible by-pass? And maybe you want to check if that's still privately owned road by Castle & Cooke or has a portion of it been turned over because

MECo is located there now by the State because County has no money, yeah? As a curiosity and inquiring, yeah, and then from there we can move forward. Thank you.

Mr. Ruidas: Okay, my last one is archaeological. There use to be a Miki Town there, old town, and I think like only two or three people are still alive. I was wondering if someone could mark it out on that map showing exactly where the structures were or their camp was. And if it was out, it was out. If it was in, it was in. Just to show us where it was. And that's it for me. Letty?

Ms. Kaye: Okay, I'm just going to just pick up where Stan left off and say that we are a Planning Commission. And what I have made a list of is what we don't know. No one knew when the applicant wanted to move the facilities. No one knew why 20 acres weren't done at any one time. No one really answered the question why is this six acre parcel relevant today, or whether there had been any demand or independent use of the 14 prior acres that have been around for eight years.

Mr. Prutch: Sally, can you please slow down, I'm trying to jot all of this down and I'm not getting it all.

Ms. Kaye: Okay, well, let me just say that the caveat that we're going to wait for the minutes anyways, so we'll at least have one month because I don't trust my own list at this point. Okay, what did you miss?

Mr. Prutch: . . . (Inaudible. Did not speak into the microphone.) . . .

Ms. Kaye: I'm just going through what we didn't have answers to. When CCR was going to move the facilities, they indicated they wanted to put them on the 10 acres, they're reserving themselves. Why weren't the 20 acres done all at one time? Why is this six acre parcel relevant now today, when the 14 prior acres had not be accessed or offered for sale. No one knew whether there had been any demand for independent use of the prior 14 acres that have been around for eight years. Or whether any of them had been offered. I have also that there was no answer for the notation on the July DLNR letter, "we still need to acquire lands from Lana`i Company pursuant to the land use amendment conditions." It's in our packet. I think that requires some explanation. And overall, I think we need a better plan. I would like to see, here's our time frame going forward, John took a big step tonight doing that in outlining the steps of what they intend to do with the water initially. But that has not come to the Water Advisory Committee, and I think that body needs to discuss not only the notion that 15 acres has now grown to 20 and yet we're going to stay below what was allotted. But we don't know how much water is currently being used by the four concerns that Castle & Cooke wants to relocate there, not to mention, the unknown people that could be using it going forward. There's just no study. There's no demand study here. I would like to see the subject of how these fee simple parcels will be offered, what process will be used to figure out who needs them. To just throw three people up there and take

care of 10 acres does not answer Alberta's very cogent need for lots of people in this community to be using that. So we don't know. We don't how many people want to use it, and think we need to think about that going forward before this is approved.

The Land Use Committee letter, because there is no demand, please address the need to urbanize it. I don't think that was satisfactorily answered tonight. I had just as a suggestion, okay, just to throw this out there – when I was going through this packet and looking at the conditions because I know what we do when we've had to do this on the other permits, I had thought and wrote this down that when parcels are offered fee simple that an arms length selling relationship with a qualified commercial agent be developed to handle that part of the process. Additionally, that parcel is offered for fee simple sale, be offered at market rates, as determined by a qualified independent commercial property appraiser. And one that I wrote down that you suggested – or Mich did actually – that no one be relocated or located on that site until all engineering required, subdivision infrastructure improvements, however you want to characterize that, be completed.

Yeah, I'm sorry, I think I'll just wind up by saying, you know, how you set the price of the parcels, how you set the size of the parcel, it's just too ambiguous to think about at this point because we just don't have any information.

Ms. Zigmond: You know my last name begins with a Z, and I'm always last, although, I'm next to last.

Ms. Kaye: Dwight is here.

Ms. Zigmond: But, no, what I'm referring to is that everybody said everything, I believe, that I was going to say, except I'm not sure if I heard – I would like to have addressed the CCR Land Use Commission agreement that Mr. Reilly spoke about. I need to get more clarity on that please. Thank you.

Mr. Dwight Gamulo: Is it clear now that if these lands that are going to be offered are going to satisfy the agreement to convey? That was originally reached in 1994. And this is – you're talking about 20 acres here and this was talking about 25. So is it 25 acres include MECo? And where is the 10 acres for commercial? And even though this does, we do, if this 20 acres is used the way it is, does it fulfill this agreement to convey? Or do we have to say whether or not it does?

Ms. Kaye: Sorry, I just found two more. One of the things that I think is unfair to Mich and John who are sitting here tonight is a lot of the problems that you've heard expressed is because of turn over. There's just no institutional memory. And these are legitimate questions. Those are legal documents that Pat passed out tonight and we don't have the answers for that. So this isn't going to be something that just goes away with this permit. It's just something to be aware of. And also one concern that was expressed to me that

I think you should be aware of is that several people thought that this was just red herring, that really, all this is just to get things out of town and that the real objective was to do something with what's freed up in town. And some of the community members would like to either have more information on that or be included in any conversation about how that land is or those properties are redirected if the relocation takes place. Okay, so that's it for what we need, and again the caveat that we need, I'm sorry, I'm handicapped in that I really need to see the minutes before I know what I said, and what other people said. So we have at least have a month's breather for this.

So Commissioners what's your pleasure? We know February is full. And I don't know what we have in March. I don't know that you folks have enough time. How much time would you –? That's a pretty full list. Do we have any idea what the March agenda looks like?

Mr. Prutch: You want to wait until you get the minutes from this meeting which I guess –

Ms. Kaye: That's what I'm struggling with because it doesn't complete the list tonight unfortunately. I mean I think we probably hit most of the high points, but –

Mr. Prutch: I think so, but yeah.

Ms. Kaye: But if we do get the minutes, could we all agree that we communicate anything that we missed that we didn't write down tonight? Or do you want to put it on and then just deal with formally in March? And if we have to defer again, we have to defer again?

Mr. Prutch: My first question is Leilani, just nod your head yes or no, since she doesn't have a microphone – will the minutes from this meeting be available for them to review and approve in February? I wanted to make sure they were available.

Ms. Kaye: They always come by the meeting, before the next meeting, yes. So we have motion on the table to defer and we had a second. We've now had our discussion and so I suppose we could amend the motion – someone can amend the motion to add the deferral until March.

Mr. Rabaino: I move the motion. I move to amend the motion to defer action on this item until March.

Ms. Zigmond: Second.

Ms. Kaye: Okay, so we have a motion on the table to defer the application this evening, and we have an amendment and a second to the amendment to defer it until March, all in favor?

Lana`i Planning Commissioners: "Aye."

Ms. Kaye: Oppose? Motion carries.

It was moved by Commissioner Beverly Zigmond, seconded by Commissioner Leticia Castillo to defer the project and requested additional information as discussion.

It was then moved by Commissioner Gerald Rabaino, seconded by Commissioner Beverly Zigmond to amend the motion to defer the project until the March 18, 2009 meeting.

VOTED: Unanimously to defer the project until the March meeting, and requested additional information as discussed.

D. DIRECTOR'S REPORT

1. Past Commission Chair's request to discuss the following:

The feasibility of changing the zoning of the remaining 65 acres of land donated to the County of Maui by Castle & Cooke for affordable housing. The change would go from its current zoning to the appropriate type of zoning that would make the land ready to be improved.

Workshop by County Department of Housing and Human Concerns scheduled for the February 18, 2009 meeting.

Ms. Kaye: Okay, next on the agenda is the Director's Report, and that will be Kathleen. Welcome Kathleen.

Ms. Kathleen Aoki: Hello. For those Commissioners that don't know me, my name is Kathleen Aoki and I am the Deputy Director for the Planning Department. I have that in purse. I will give it to you. So the next meeting, yeah, Joe will be back. So as far as the Director's Report, all I really have to report is that as you know the workshop from the Housing and Human Concerns' office will occur at the next meeting, as well as the public hearing for the Council Resolution concerning allowing the solar energy generating sources. So that will occur at your next meeting.

Ms. Kaye: Kathleen, I'm sorry. It says we were going to schedule tonight. You're saying it is going to be on the next one?

Ms. Aoki: From what I understood, it is. It's going to be scheduled.

Ms. Kaye: Okay, because I know Kepa – Joe, I think, confirmed Kepa for February as well. And he's probably the most valuable of the three. If you think that the Housing workshop and this is sufficient for one meeting, we could ask Kepa to come in March as well, and that's all it would be.

Ms. Aoki: So is Kepa suppose to come on the 18th as well?

Ms. Kaye: Yeah.

Ms. Aoki: Let me talk to Clayton and we'll figure it out.

Ms. Kaye: Right. Let us know. If it is in fact scheduled – I don't know how long a public hearing on this Council resolution. I assume this is the follow up to the problems we encountered when –

2. Open Lana`i Applications Report.

Ms. Aoki: Right. Okay, I'll follow up with Clayton on that. And then you also got the project open list, which I looked in your last minutes, and it looks like you went through most of these in detail. So nothing really new has changed. The only two that look like they may be new that you didn't know about was this Lana`i Recording Studio, which is a Conditional Permit, and Danny Dias is the planner on that. You're going to have to excuse me because I don't know in detail what these are about.

Ms. Kaye: I actually looked it up.

Ms. Aoki: You did? Okay.

Ms. Kaye: It's a Conditional Permit, and it's 311 Ehunani, so I'm assuming that's Heather's house. So it's a Conditional Permit to do a Lana`i Recording Studio.

Ms. Aoki: Right, in a residential district. And the other one is just a landscaping plan. Again that came in from the Palms. So that's just administrative, that wouldn't come to you. And then all the other ones, you seemed to talked in detail at the last meeting.

Ms. Kaye: Kathleen, I read on the news today that Maui County is taking control of the landfill here.

Ms. Aoki: You know, I got a press release too on my email.

Ms. Kaye: Do you know any more about that?

Ms. Aoki: No, not other than what was in the press release. So it looks like some kind of

an agreement was reached though, which is a good thing.

Ms. Kaye: Yeah. And the recycling center, I think, was part of it, if I read the news article correctly.

Ms. Aoki: Yes. It was. It was. Yes. I'm sure Environmental Management is very pleased with that because there's a lot of different areas, not only on Lana`i, but on Maui where they're trying to expand the recycle facilities, and it's difficult to get the land. First it's difficult to get the land, and then it's difficult to have the right zoning to put that facility. So it looks like this is really beneficial for you guys, and it's great.

Ms. Kaye: Commissioners, any questions on the open project report? Okay.

Ms. Aoki: And that's all I have as far as the Director's Report is concerned.

3. Scheduling of Public Hearing for Council Resolution concerning allowing for solar energy generating sources as a permitted use in the County Ag. District for the February 18 meeting.

Ms. Kaye: Okay, next we have is a little clean up, if you will, from the minutes from last month. I sort of made a list of things that we all sort of agreed we would do, and I can tell you about two of them. On page #22, Matt Mano, who's not here tonight, tried to express the question about upgrading the waste water treatment storage, and Clay Rumbaoa asked that the question be put in writing to the Planning Department to send to Castle & Cooke so they could respond to it. This was with respect to overflow during rainy period. Castle & Cooke isn't here and Matt isn't here, but I didn't want this to run away. So I'm just saying that we're going to deal with that next month, and Matt, hopefully will be here and we'll figure out what he wanted to say and put it in writing so it can go to Castle & Cooke. Is that acceptable to everybody?

Okay, and then I offered to follow up with the USGS about the high tech water data that the golf course guru talked about at the last meeting. And I got a response from them that they don't accept furnished data. So I just wanted to let you know that, and said that if there was any water data that would be useful, he thought that the National Weather Service would use it, but USGS won't accept it. I had on my list to get the Castle & Cooke's presentation from last month, and James provided it. Thank you very much. We're going to send you home real soon. We're almost all done.

And then, I'm struggling, and this is a procedural question for you. Castle & Cooke came for a five-year extension two-years ago. And we struggled with conditions to put on it, and ultimately granted it. This went over a span of many months. One of the conditions was that they provide a semi-annual report regarding water usage in the project district, Manele Project District. We have had two reports, and they've submitted it on time. This is not an

action item for us. We don't get to approve or disapprove them. But, for the second time now we have said it's indecipherable. It doesn't make sense, and we've asked for additional information. That was in – we asked for a letter that was not included last month. We asked for additional figures that Clay Rumbaoa offered to provide. And also, the relevant SMA materials which, and they agreed to these, and we've had nothing. So my question is at what point do we explore the option of finding them not in compliance? Because just providing a document that is not useful and doesn't make sense, to me, is not compliant with the condition.

Ms. Zigmond: If I can just add on to that. At the last meeting, when we had asked specifically for that information which was the relevant pages of the SMA, relevant water, and the letter from, I think his name was Blaine, David Blaine. We were promised we would have it before this meeting. They promised. I ain't got it. Do you?

Ms. Kaye: Anyways, so it's a procedural question. It may come between now and next month, but this is getting very frustrating to be provided figures that don't make sense and that we can't use to get what we wanted which is simply to be able to gauge the irrigation usage at Manele. This is only non potable. It's metered. It should be easy, but the figures just don't jive. So, anyways, that's what we asked for, and we didn't get it. So, perhaps you can just let us know what happens.

Mr. James Giroux: Sally, I understand the report is coming out of a condition of a Special Management Area Permit, so that would fall under the –. The Planning Commission have the ultimate authority over the CZMA according to the Charter. And I have to look specifically in your rules, but I would say that at some point if the condition isn't being met that the Planning Director is kind of the head of the enforcement arms of the County for SMA issues. So I would assume that there would have to be coordination between the Director – this body, the Director, and probably his Zoning and Enforcement team and their investigators as far as to actually start an investigation as to why or if a condition of zoning has not been complied with. And I guess the conversation would start here, but it would have to go full circle in order to have some type of enforcement type action. And I guess what I'm saying is it's probably the Director should be part of that discussion. As far as, you know, usually what happens is that somebody does something without a permit. Or somebody has a permit, but doesn't do what they said they were going to do as far as the development. And then an investigator goes out, looks at the report, says okay there's a discrepancy and then cites the person for a notice of violation. And then the person who is accused of infraction then appeals the Director's decision to this Board. And then the Board would do what's called a contested case proceeding. That person would have a due process right to present their case, say why they didn't violate, and then the Director would put on their case and say why they did violate. And then this Board would actually be the adjudicator. So you would actually be –.

There's kind of a weird twist in that every island has their own SMA rules. So I would have

to actually into your rules and find out what the exact procedure would be. Because, I think, under 205A, it actually says that the Director will have a contest case hearing. We've, in the County, been looking at that as kind of redundant in that why would the Director have a contested case hearing if this CZM – if the ultimate authority is the Commission, the appropriate Commission. So that's something we would have to sit down with the Director to say, you know, if this were the scenario, how would the Department handle it? Because it is kind of unique in that it would be an issue of whether or not a condition has, you know, substantially been met, not been met, met unsatisfactorily and ultimately the authority to make that determination would be this Commission. But then there's a due process issue of, you know, are you playing two roles. Are you the sheriff and the judge? And the other issue is do your rules allow for a citation process? Is the person, you know, given a citation for it? What's that process to, you know, challenge that, that citation, and then what body or what person is going to actually hear that appeal. And that's always going to be determined by your rules. So that's something interesting that we should probably need to sit down and pick through your rules and see if there's an issue there. I mean, is there a gap in enforcement, you know, between administration and commission? Do your rules sufficiently cover this scenario in order for there to be an enforcement of these conditions. So that's something really important for Commissions to do every once in a while because the law is clear that if you have the authority to grant a permit, you also have the authority to enforce it. And that's the important thing. As we heard from Pat Reilly, the devil is in the detail. Again, if your own rules don't adequately address it then that's something that we need to go back in, and look at, and say where is the gap? What kind of amendments do we need to make or clarifications in order to make sure that you feel that you are in a position where your condition will be carried out, met, and if they're not met, there's consequences.

Ms. Kaye: So as a procedural matter, is it proper that you and I can talk about this? So I can look at the rules too, figure out, and then report back to the full Commission next month?

Mr. Giroux: Yeah, we can –

Ms. Kaye: That's easy enough.

Mr. Giroux: We can have a phone conference, or we can do e-mail. We can kind of go through it and kind of set up an overview process. And in the interpretation of rules, there's always people who see it differently. And the beauty of it is that this body is in control of your own rules. You just have to follow the procedures to get to where you want to go. So, we can do that.

Ms. Kaye: Thanks James.

Mr. Rabaino: Joe, the whole island of Lana`i is under SMA, right?

Mr. Giroux: No, just the –

Mr. Rabaino: Shoreline management –

Ms. Kaye: Not yet.

Mr. Rabaino: – is the whole island right? The rest is all cliffs.

Mr. Giroux: I think if you talk to Thorne Abbott because technically because it's an island, it's all under coastal CZM. But for your jurisdiction there's a line that was created, you know, so far away from the shoreline where if there's any development between the shoreline and that line, then you have to do an assessment, and then you have to determine whether it's a development or not. And then once that's determined, then it falls under your rules in order to follow through with application procedures and enforcement.

Ms. Kaye: Just for your information, Gerry, Moloka`i is attempting to do that, to have the entire island.

Mr. Gamulo: All right, let's say you do that. You go through that and you find out that we don't have any way to enforce it, then what are we going to do? You're going to fix it and then how long does that take?

Mr. Giroux: Under Chapter 91 or 92 there's a process for amending rules. And basically it's not that difficult. First you have to clarify the issue that there's something in the rules that you want to address. We would come up with a draft. The Planning Department and Corporation Counsel would most likely work on a draft to present to the Chair. The Chair would present it to the Board. And at that time, you would set a date or basically put on notice to the Department that you want to go forward with amending your rules. And then there would be a public notice and then a public hearing. And then after the public notice and public hearing, you would vote on either tweaking whatever draft is before you or deciding whether you want it or don't want it.

Mr. Gamulo: So how long would take? Like a year?

Mr. Giroux: You know, sometimes, I've seen very simple modifications of the rules where it's just a matter of just bracketing one word, and underlining another word, and those types of very fine – it's just house cleaning type of fixes. I mean, it shouldn't take more than six months. If it did, then it would be very inefficient. If it's crafting a major portion of rules where you're kind of going into new territory, you know, I would say, yeah, maybe a year if Corporation Counsel and the Planning Department were basically having to go through their procedures to get some type of draft that they could both agree on. What usually happens is we put Planning Department of notice that there's something that could possibly be deficient with the rules. Because they're the administrative agency that has the

expertise in planning, we usually let them take the first crack at developing their rules because they're ultimately going to have to administrate it. Then it goes through the Corporation Counsel review process where we kind of look at with a legal eye. And then we try to get back together with the Department and find out whether our legal analysis will work with their administrative capabilities. So it's a circular process where the end result is what we give the Commission. It's usually something you comply with but it's not written in stone. I mean, you're the ultimate authority. You know, like I said, if reasonable minds can disagree, you can pick parameters. You know, sometimes, it's a matter of feet. Like I said, six months to a year, but depending on if it's a minor change compared to a major change, we can do it faster.

Ms. Kaye: First of all, we're borrowing trouble here because we don't know that the rules are deficient. We haven't looked at them yet, so let's not go down that road. But we did do this once before. Dwight, remember we had the rules changed, our rule changed, so that the exemption, the administrative exemption. And that took, I think, four to five months.

Mr. Gamulo: If there's a gaping hole in our rules, and we need them fixed to enforce to make sure that conditions can be enforced, shouldn't we not allow or approve any permits that have conditions until after you fix the rules? Everything has to be done before we give the permit?

Mr. Giroux: In the sense that enforcement is something that – it's an administrative process in the sense that just because somebody has a permit is not an assumption that they're going to violate it right away. From our perspective is that you do have rules. Your rules are legal. And there is an assumption that you have the ability to enforce them. From your legal counsel's perspective is the caveat is it's always good to look at your rules and make sure that if you can tighten them up, tighten up. If you have the opportunity to tighten them up, tighten them up. So I'm not saying that you don't have the ability to enforce your rules. But what I'm saying is that because looking at the unique issue of this condition of compliance where it's a tricky balance between is it an administrative duty of the Planning Department to go out and give somebody a citation. Or is the Planning Commission going to take it upon itself to determine that they're not getting something that would meet their criteria if they put in a condition. We need to look at that and say can we avoid a legal issue by looking at our rules and if it's a matter of just a small tweaking, like I said, underlining a couple of words, bracketing a couple words, then that's something that we should look at.

Ms. Kaye: Okay, the last thing that I have, Joe Alueta last month, offered to follow up with Clayton Yoshida regarding whether comments on the wind farm EA which was a question that came up when the open projects report last month came before the LPC. I don't even remember who asked that at this point. But I e-mailed Joe when I found out he wasn't coming because I think it was unfair to lay it on Kathleen to have the answer on that. And

what he wrote me back was that Clayton has confirmed that it would not formally come to us. Any comments that are received by the Planning Department would not formally come to us. And that's all I have. If there's anything else?

Bev pointed it out, I had made a list for myself and I left one off. Everyone got a copy of the letter from Harry Saunders about the conditions we put on the solar farm which have now evaporated because the State law changed. In fact, the workshop on that is on our agenda for next month. A review of that letter to me suggests that most of the conditions that we negotiated with the Company were addressed with the exception, once again, of the long range plan. We had specifically said, please let us know, during the permit period, to come back with what are your long range plans for sustainability island wide and not just limited to the solar farm. And that was left out of the letter. So I don't know if there's anything we can do about it. I just wanted to point out that it was not there. If anyone has any comments about the letter, now would be the time to add it on. Okay, anything else? Okay, thank you very much. We'll see everybody next month. Everybody is going to be here in February that you know of Commissioners? Okay, thank you. Good work. Thank you. I thank you all.

4. Agenda items for the February 18, 2009 meeting.

E. NEXT REGULAR MEETING DATE: February 18, 2009

F. ADJOURNMENT

There being no further discussion brought forward to the Commission, the meeting was adjourned at approximately 9:20 p.m.

Respectfully transmitted by,

LEILANI A. RAMORAN-QUEMADO
Secretary to Boards and Commissions I

RECORD OF ATTENDANCE

PRESENT:

Sally Kaye, Chair
Stanley Ruidas, Vice-Chair
Dwight Gamulo
Beverly Zigmond
Alberta de Jetley
Gerry Rabaino
Leticia Castillo

EXCUSED:

Matthew Mano
Darlene Endrina

OTHERS:

Kathleen Ross Aoki, Deputy Planning Director
Joseph Prutch, Staff Planner
James Giroux, Deputy, Department of Corporation Counsel