

**LANA`I PLANNING COMMISSION
REGULAR MEETING
APRIL 15, 2009**

APPROVED 05-20-09

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, April 15, 2009, in the Lana`i High & Elementary School Cafeteria, Lana`i City, Hawaii.

Ms. Sally Kaye: Okay, I'm going to call the – what's the date today – April 15th Lana`i Planning Commission to order. Let the record show we have quorum with Commissioners Zigmond, Rabaino, Castillo, Gamulo and Kaye. Okay, first on the agenda tonight is the election of officers for 2009 - 2010. Any nominations?

B. ELECTION OF OFFICERS FOR THE 2009-2010 YEAR - CHAIR AND VICE-CHAIR

Ms. Beverly Zigmond: Madame Chair? You have done such an outstanding job this past year. I would like to nominate you if you would be so kind to continue your hard work for another year.

Ms. Kaye: Let's see if we get a second.

Mr. Dwight Gamulo: Second.

Ms. Kaye: Okay, all in favor?

Lana`i Planning Commissioners: "Aye."

Ms. Kaye: Okay. All right, now we need a nomination for Vice-Chair.

Ms. Leticia Castillo: If I may, can I get all the officers back in their own seats?

Ms. Kaye: Would you like to nominate Stan Ruidas?

Ms. Castillo: Yes.

Ms. Kaye: Then, okay, is there a second?

Ms. Zigmond: Second.

Ms. Kaye: Okay, all in favor?

Lana`i Planning Commissioners: "Aye."

Ms. Kaye: Okay, so we have our officers.

It was moved by Commissioner Beverly Zigmond, seconded by Commissioner Dwight Gamulo, then unanimously

VOTED: Commissioner Sally Kaye as Chairperson for the Lana`i Planning Commission for the 2009-2010 year.

It was moved by Commissioner Leticia Castillo, seconded by Commissioner Beverly Zigmond, then unanimously

VOTED: Commissioner Stanley Ruidas as Vice-Chairperson for the Lana`i Planning Commission for the 2009-2010 year.

(Assenting: Commissioners S. Kaye, D. Gamulo, B. Zigmond, L. Castillo and G. Rabaino

Excused: Commissioners S. Ruidas, M. Mano, A. de Jetley, D. Endrina)

C. APPROVAL OF THE MINUTES OF THE MARCH 18, 2009 MEETING

Ms. Kaye: Okay, next on the agenda is approval of the minutes for March 18th. I sent around some corrections. I know Beverly did too. I trust that you all read them. I'll entertain a motion at this time.

Ms. Castillo: I move that we approve the minutes as corrected.

Ms. Kaye: Second?

Mr. Gerald Rabaino: Second.

Ms. Zigmond: Second.

Ms. Kaye: Okay, all in favor?

Lana`i Planning Commissioners: "Aye."

Ms. Kaye: Okay, minutes are approved.

It was moved by Commissioner Leticia Castillo, seconded by Commissioner Gerald Rabaino, then unanimously

VOTED: To approve the March 18, 2009 Lana`i Planning Commission meeting minutes with the corrections as submitted.

D. COMMUNICATIONS

- 1. MS. CHERYL OKUMA, Director, DEPARTMENT OF ENVIRONMENTAL MANAGEMENT requesting a Special Accessory Use Approval to operate the Lanai Recycling Center on approximately 1 acre of land located in the M-1 Light Industrial District, off 12th Street, behind the Castle & Cooke baseyard on Fraser Road at TMK: 4-9-014: por. of 013, Lanai City, Island of Lanai. (ACC 2008/0005) (J. Prutch)**

The Commission may take action on this request.

Ms. Kaye: Okay, next is communications, Ms. Cheryl Okuma, Director, Department of Environmental Management requesting a Special Accessory Use Approval to operate the Lana`i Recycling Center on approximately one acre of land located on the M-1 Light Industrial District. And I think Joe is going make the presentation.

Mr. Joseph Prutch: Yes new Chair. Congratulations again. Okay, we have before you today the – an application by the Department of Environmental Management, Solid Waste Division. What they're requesting is a County Special Accessory Use Permit (ACC) in order to operate a recycling center, redemption drop-off, collection, baling and shipping off-island. The reason they're coming before you for a County Special Accessory Use Permit is because they're in the M-1 Industrial District, however, the M-1 District does not permit recycling. It does not list recycling as a permitted use. It's unfortunate but that's the way it is for now. Hopefully that will be changed sometime in the future here. As far as the site and the project description, I will leave that to the applicant to do after I'm done with my brief presentation. They'll give you a little more elaborate information on what they plan to do out there. Their State Land Use designation out there is urban. The Community Plan designation is light-industrial. The zoning, like I said, is M-1 light-industrial. It all lines up to make sense for a recycling type of use.

The applicant has – they have a three-year lease to use this site from Castle & Cooke, with options for an additional seven and an additional five years, to make a total of up to 15 years. The first three years what they're doing is they want to propose to do it as kind of a test period, a test pilot, at this site to do a recycling center, with a long term goal of most likely moving down to the Miki Basin area possibly, or staying at this site. It's kind of not quite sure yet where it's going to go. But work here for three years, do a test pilot, see how it goes, and then after the three years, reassess – stay here or move down to Miki Basin. Some of the issues with the site that did come up, as you know – well, let me just tell you at least where it is – you can see it up on the plan there. It's on Twelfth Street behind

Castle & Cooke's – I guess – those are office buildings. Twelfth Street as you know from Fraser on down is unimproved. It's got quite a few – a couple of pot holes down there. I mean, it's a little uneven. The Public Works Department originally wanted them to improve that from Fraser all the way down to the site. After discussions with Solid Waste, came to an agreement to allow them to operate for the first three years with some minor improvements to the road, mainly just filling in the pot holes and doing some concrete driveway entrance to their property. With the understanding that if they do remain at this site after the three year test period is over, at that point, they will have to improve Twelfth Street from Fraser down to their property. So at some point if they continue to stay at that property, they will have to do that. And that is a condition of approval in the staff report too. And the applicant did agree to fill the pot holes, pave the entrance driveway to their site, and then maintain the pot holes, the driveway, that kind of stuff, for the duration of the permit.

As far as water issues – really not a whole lot. The applicant proposes to use only about 100 gallons per day essentially to clean bins and stuff on the site associated with recycling. The Department of Water did submit a letter saying they agree that this 100 gallons per day does seem reasonable to them since they're only cleaning bins and there are no flushing toilets on the site. They'll only have portable toilets for their use. They did request that the applicant uses brackish or reclaimed water. The applicant was advised by Castle & Cooke that there just isn't this type of water in the area to provide to the site. It's just not anywhere nearby. And then the applicant stated that their proposed low water usage just doesn't economically justify the development of brackish or reclaimed water system for this use.

As far as the Maui County Code is concerned, I mean, although recycling is not a permitted use in the M-1 District, it does allow – the M-1 District does design to contain – mostly this is straight out of the Code – contain mostly warehousing and distribution types of activity, and permits most compounding assembly or treatment of articles or materials with the exception of heavy manufacturing and processing of raw materials.

In the M-1 District, what it does permit is it permits – and this is the reason we're asking and recommending approval of this – within the M-1 District, one of the permitted uses is any uses that are permitted in the business districts. And within the business district there is kind of a catch all condition, or permitted use, that says any other retail business or commercial enterprise which are similar in character of rendering sales and commodities or performance of services to the community – I think that's the important part there – the performance of services to the community – and not detrimental to the welfare of the surrounding area, provided however, that such uses shall be approved by the Commission as conforming to the intent of the code. It's staff opinion that, although not listed as a permitted use, recycling use clearly is an industrial use that does provide a service to the community. It is not going to be to detrimental to the surrounding area. With that, I think I'll leave it over to – we've got Cheryl and Irene, from Solid Waste – let them do a little presentation on some of the proposal. And then if you want, we can get back to the

recommendations and the conditions.

Ms. Kay: Thank you Joe.

Ms. Cheryl Okuma: Good evening everyone. I'd like to just introduce the people from the County of Maui, Environmental Management Department, Solid Waste Division. With me tonight is Irene Cordell, who's from the recycling section and she's basically in charge of this project. And also joining us is Patience Gaia who's currently our abandoned vehicle administrator. We've very happy that we still have her in the Department's division, but she's the one who actually started this project from the beginning. So we're happy that she's been able to join us as well too.

We appreciate the opportunity to be here today. As Joe has mentioned we're here for our Accessory Permit which is important for us to obtain so that we can then move forward to getting our State of Hawaii, Department of Health permit and then begin to operate this recycling redemption center. One of the really exciting things about this project is that it is a public-private partnership between the County of Maui, Environmental Management, Solid Waste Division which is basically providing grant monies to Tri-Isle RC&D to do planning design and ultimately the operation of this facility. And of course, we're fortunate that we have the approximately one acre site which has been provided by Castle & Cooke. And if I may, I would just like to mention that there are some representative from Tri-Isle RC& D here. We have Project Coordinator Stuart Funke-Degnuff, who's back here, and with him is Val Magee. And also Wilfred Aoki who I understand is the General Manager of the current redemption center and will be moving over to this new project once it is completed.

I guess one of the main things that I want to say is that this particular project does fit into the Solid Waste Management Plan. Some of you may have heard about that, maybe familiar with it. I know that Darlene Endrina was a representative from Lana`i on that committee. And we have recently completed and presented that Solid Waste Management Plan to the Council back in February. And one of things about that plan and the reason why I'm mentioning it is this project actually fits into the goals, desires and objectives and recommendations coming out of that plan which is to basically keep our recycling rates up and in fact do a lot better on it. Right now, Maui County is at about 30% which against national average is probably a pretty good rate. But there is a desire on the part of the community and coming out as a recommendation to increase that rate to 60%. So the purpose of this recycling and redemption center would certainly fit into that plan.

Just a few things that I would like to emphasize – Joe has touched upon it – this is a three year pilot project. The purpose of which we'd like to see how it does, and we will be gathering information and data. At the end of that period, that data will be evaluated to determine whether to continue to the project or not. And with the terms of the lease that we entered into with Castle & Cooke, we do have the option to extend that lease for

ultimately an additional 12 years, so, you know, that's a total about 15 years on the property. Of course, at the end of the three years, we evaluate and we will have to go in and negotiate with Castle & Cooke on that site. The intent is basically to be able to move to this new recycling and redemption center. One of the things to keep in mind is that your current redemption center, that lease ends December of this year. So, you know, one of the intent is to be able to meet that date and actually be out of there and moved over. And the next steps would then be to go into more traditional recycling of paper, cardboard and gradually see what we can phase in over time. So with that, what I'd like to do is either open it to questions or perhaps if Irene has a few more details. You want to explain what you have up on the front there?

Ms. Irene Cordell: Hi. Good evening. We have a design plan that was done by Zero Waste Inc. out of Boulder, Colorado. They design many, many recycling centers. It's pretty simple. We're just going to have – the first move would be the redemption center, the existing redemption center, where we're going to be placed here. To orient, this is Twelfth Street, north and let's see, I think we're coming in here, so this area here. So we're going to move the redemption center. Just to correct detail, sorry – but it's not a lease that we have – it's actually the permit by rule with Department of Health that's up on December 31st that we need to move to a new location, and we're hoping this is going to be the new home for the redemption center. So that's our primary objective – is to get the redemption center moved off of that property, onto this property. At which point, we'll then move into collection of traditional recyclables and we're planning on doing some minor processing. We're going to Tri-Isle. We'll be doing the construction and infrastructure work. And then we'll be purchasing a couple of pieces of equipment – a baler, a conveyer and a forklift. And we're going to collect the recyclables in the totes right now, the way we're collecting them now, but we'll be increasing with card boards, newspapers, office papers perhaps depending on what the markets are going to be. We'll be putting it on a conveyer and baling them, putting them into shipping containers and shipping them off island to Oahu market. And that's basically what we're going to be doing. We're going to have shipping containers on the site, a baler, a conveyer, some totes on the site here, and we're going to have a canopy structure – some kind of canopy structure, to give shade structure over the redemption center, and we'll have some type of structure over the equipment, to protect the equipment. Let's see, what else can I say? We're planning on putting some drainage into the property as well, a fence line, as well as planting around the fence line to make aesthetically pleasing for the community. Any thing else? Any questions about –?

Ms. Kaye: I have.

Ms. Cordell: Yes Sally?

Ms. Kaye: Assume that you walk out of here tonight and the permit is okay, walk us through the time line. When does the lease start?

Ms. Cordell: The lease actually has already started.

Ms. Kaye: Well, okay, that's what I was wondering. So the clock is ticking and how long will it take you to do the infrastructure? I mean, what kinds of permits besides the DOH?

Ms. Cordell: The DOH Solid Waste Permit we've already started on. You know, we're starting to write up the process. We need to, I believe, get an engineer's design. That would be the next step of which point we would have to get a, probably a grading permit from Public Works, DSA Division. And we do not need a fence. We're putting a six foot fence up right now, so that doesn't require a building permit. The other permit, I think, it's really the solid waste. I'm sorry – thank you Patience – we are going to be putting a cement slab, so we're probably going to need a permit for that to put the equipment on.

Ms. Kaye: From whom would you get that permit?

Ms. Cordell: It would be Public – well, I'm not sure about – I'm not sure where I'm going to –

Ms. Kaye: Do you have a commitment to be able to obtain the concrete on island? Do you know where your concrete is going to come from?

Ms. Cordell: Stuart do you know that answer?

Ms. Kaye: Sorry. Sorry. On the mic.

Ms. Cordell: Stuart from Tri-Isle. His organization is going to be putting the infrastructure.

Mr. Stuart Funke-Degnuff: Hi, my name is Stuart Funke-Degnuff, and I'm the Executive Director of Tri-Isle. We've looked at – only beginning to look – we're trying to use existing materials and existing staff all on the island for everything we can. Castle & Cooke is, in conversation with them about the rest of the site which is using what they call crusher waste, and working with them to get the crusher waste on the site. The cement has not been selected. It's just been identified as that's what needs to be on the design drawings.

Ms. Kaye: Because as I've understood that just from local conversation that finding cement on Lana`i is difficult.

Ms. Cordell: It might very well be.

Ms. Kaye: You want to investigate that sooner rather than later.

Ms. Cordell: This will be the second stage of the project. However, the first phase is just actually putting crusher waste down, and moving the redemption center over. And so we will have some lead time on finding source of the cement and anything else we're going to

need.

Ms. Kaye: So when do you think – you're shooting for December to be up and running – everything done?

Ms. Cordell: Yes. Yes. Redemption Center. Just the redemption center. Whether we have the equipment here, that's still, you know, we don't know if we'll have the equipment here. But we are shooting for December to have the redemption center moved from its existing location to this location and starting to collect those recyclables.

Ms. Kaye: So you're really not going to have a full three year period to see whether this works for you financially – how the project –

Ms. Cordell: Well because we're starting later?

Ms. Kaye: Yeah.

Ms. Cordell: I would say we would still have the three years. Yeah, definitely.

Mr. Rabaino: Planning Commissioner Rabaino. You said your permit is – you already started DOH permit already, yeah? It's been processed?

Ms. Cordell: DOH? The Department of Health?

Mr. Rabaino: Yeah.

Ms. Cordell: We're starting to write it up. You know, we haven't made any application to the Department of Health, but they do know that we're considering this.

Mr. Rabaino: Okay, so that hasn't been submitted yet?

Ms. Cordell: No. No.

Mr. Rabaino: You talk about this is a private and State venture?

Ms. Cordell: Private, County and non-profit venture.

Mr. Rabaino: So, it's a three way item?

Ms. Cordell: Three ways.

Mr. Rabaino: Your fencing, how high will it be?

Ms. Cordell: Six feet.

Mr. Rabaino: You also answered the other one where you'll be using existing employees that is on Lana`i. What is your number of employees on Lana`i?

Mr. Funke-Degnuff: We currently have three.

Mr. Rabaino: Do you plan to hire any more employees?

Mr. Funke-Degnuff: Yes because we have to – when we move into the second stage which is actually the baling and the loading of the recycled materials, that we'll have to have additional staff from Lana`i.

Mr. Rabaino: Okay. Your lease is subject to the three years as stated in the –?

Mr. Funke-Degnuff: The initial lease is, and then there's the provision to re-negotiate for five and seven years.

Mr. Rabaino: And the existing area that you're going to which is 7.7, you said your conveyer belt is the one that's going to be the one that's being installed first before any others?

Ms. Cordell: The equipment you mean?

Mr. Rabaino: Yeah.

Ms. Cordell: The baler and the conveyer belt are all one piece. They come together.

Mr. Rabaino: Has that been ordered?

Ms. Cordell: No. We haven't done anything. We're waiting for the go ahead from the Commission to get the Accessory Use Permit and then once we get that, we can proceed with everything else. We have done research on the kinds of balers, you know, that we are looking at. And we have suppliers and things of that sort, but we haven't actually done any ordering yet.

Mr. Rabaino: Okay, so the existing – let's say, just out of the blues, you get accepted – that's wishful thinking, but – from the time that you get that, how soon will you relocate your current area to the other area?

Mr. Funke-Degnuff: That's going to be dependent upon a number of things. The relocation – the current redemption site is operating from the Department of Health – what they call a Permit by Rule. It doesn't have the Public Waste Permit. So we're operating by a Permit by Rule, and Oahu has said all we have to do is revise the operational plan. The

operational plan is not going to be changing as much. The only thing that's going to be changing actually is the location itself. It is within the realm of possibility that the movement of the redemption center is going to be done prior to the end of the year.

Mr. Rabaino: Okay. Thank you.

Ms. Zigmond: Hi. I just have a couple of questions. When you said you were going to relocate the redemption center, so that's just anything right now that has the HI-5 on it, which we're doing, I think, beer cans and soda cans, and beer bottles and that's it?

Ms. Cordell: Juice – any kind of beverage container – water, juice, beer, soda, anything.

Ms. Zigmond: Okay. Then I haven't been doing my homework.

Ms. Cordell: It's all inclusive of every beverage container.

Ms. Zigmond: Okay, any kind of –.

Ms. Cordell: Go ahead Patience. Patience is our deposit beverage container program expert. She is the one who actually implemented it.

Ms. Patience Gaia: My name is Patience Gaia. The beverage containers containing includes almost all beverage containers up to two liter sizes and all kinds of different liquids, fluids, drinks except for liquor and wines, or most wines, so it's a very broad coverage. But it doesn't include condiments and other kinds of plastics and that sort of thing. So that would be those kinds of items would be able to be collected probably fairly soon. We can't really say with strong certainties when we can collect those sort of things, but you'll be able to include a lot more bottles and cans that are not beverages soon.

Ms. Zigmond: Great. Because I was going to say something like a mayonnaise jar, you don't do now.

Ms. Gaia: We cannot.

Ms. Zigmond: Okay. Thank you. When you start accepting plastic which is down the road, can you tell me how you compact that? I'm just curious.

Ms. Cordell: The plastic. The plastic would go on the conveyer, into a baler, and basically what the baler does is it compacts it into a bale, and the bale is put into the shipping container. That's what the baler does.

Ms. Zigmond: Thank you. I didn't know how that works.

Ms. Cordell: It's like a brick. It's a brick thing.

Ms. Zigmond: Gee, I should try to look at that sometime and see how it works. And just one other question. Assuming that the project is successful and you continue on after three years, are you going to install like regular bathrooms or is it going to stay the out houses, or you haven't really thought about that? I just hate to use out houses and I thought whoever works there –

Mr. Funke-Degnuff: At this point in time that decision has not been made. We've been using the out house for the three people at the redemption center because it has limited use and limited hours. Obviously, at the end of the period, in the time of three years, when we're looking at going permanent or extending the pilot program, that will have to be addressed. But right now the idea is use port-a-potties right now.

Ms. Kaye: Okay Letty? Dwight? Any questions? Letty? Okay, I have a couple additional ones. The water usage that you suggested, how did you arrive at that figure?

Mr. Funke-Degnuff: Basically what we did was we looked at the current usage that we're having. The water usage is not necessarily going to be cleaning out the bins. It's actually for private usage cleaning up after the use of the port-a-potty and that sort of stuff. Our current water usage at the site is like five cents a month or something like that. We have a minimal fee of \$5, and then usage of very, very minimal. And so we took a look at what a normal household would use on a daily basis and just projected out the 100 gallons.

Ms. Kaye: Okay. And have you thought, or do you have any thoughts on how this will work from the home side? Right now Wilfred is great in getting us these little containers that we can dump our cans into, but when it's going to be mixture – I know in places in the mainland there's different containers for newspapers, plastics, and glass – is there –?

Mr. Funke-Degnuff: If I can answer that. Yes, the same procedure. The one for the redemption is going to be continued. What they're calling the separation of the materials, there will be on the site there, there will be bins that will accept the paper, and the card boards, and the plastic and the glass. So it will be –. You know, when somebody comes in on a daily basis and brings their redemption – and we're hoping the – we have, I think, about 80% redemption on island now. And we're hoping to increase that, you know, even more when people have the ability to recycle the normal recyclable things. Castle & Cooke has indicated that they're willing to bring their stuff over in what they call a separated containers. Some places have single source, no separation, and the cost – not the cost – but the value that you get for that resource or that material is lessened because it's not separated. And so what we've looking at is starting out the process of having it separated. And also the marketing portion of it which is on Oahu right now, is looking at giving us more for separated than they would for a single source.

Ms. Kaye: Okay. I know in some places I've read on the mainland, projects like this have started and then all of a sudden there's a lot of paper. That seems to be the biggest issue, and they'll stop taking paper because they just get too much a day. Do you foresee that being an issue here?

Ms. Cordell: You know the markets vary. They're commodities. And it's possible that could happen right now because of the economy, we're having to – I'm not sure if I'm standing in the wrong place or whatever – but we're having to store some materials until the markets starts changing. So I think before we even collect paper – I mean, our initial – we're going to initially collect the card boards and the news papers. The mixed paper is a little bit different. But before we collect the paper, we will make sure that there are markets that take paper rather than collect it and then hold on to it.

Ms. Kaye: And with glass –

Ms. Cordell: Yes?

Ms. Kaye: Any color requirements? Anything not acceptable?

Ms. Cordell: Not at this time. We are going to be collecting, I think – you're not separating color now – no – so we can collect all colors.

Ms. Kaye: So we're talking about mayonnaise jars to wine bottles to liquor bottles to anything that's glass.

Ms. Cordell: Yes, but just to be clear about this is that the redemption center – the redemption glass will be separate from the other glass. We will be shipping it all together, but it will be separate. Because the redemption glass has a value to it – a monetary value – where the other glass will just be shipped to the processor on Oahu along with redemption glass but they'll be shipped in separate containers. In the same shipping containers, but they're be in separate totes. Does that makes sense?

Ms. Kaye: And we'd finally be able to get our laundry tubs recycled?

Ms. Cordell: Yes. Yes.

Ms. Kaye: Tops and all?

Ms. Cordell: Laundry soap. You're talking about laundry soap – yes.

Ms. Kaye: Thank you.

Ms. Cordell: You're welcome.

Mr. Rabaino: I've got one more last question. I was looking at the fire on exhibit #12. You only have one entrance yeah?

Ms. Cordell: One entrance, yes. Right here, a 20-foot gauge. Yes, right now, we have one entrance.

Mr. Rabaino: I was wondering usually you have two yeah?

Ms. Cordell: Well, I think the design – when he did the design, he was having people come in and out of the same entrance, so that's how Zero Waste had design this facility. And that's how we'll probably initially start at the center. We're going to be going with this design. Design – if that doesn't work, we can improve, but this is the way he designed it, and he's done many, many designs on the mainland for a recycling center. Any other questions?

Ms. Castillo: If you have one entrance, is there one way of going outside, or how will it be? Is it one-way? Is there an exit or something?

Ms. Cordell: She wants to know about the exit/entrance. And I thought there was a, on one of the designs, we had the traffic flow coming in and out here. But it's not on this one.

Ms. Gaia: The site has been designed with one entrance and exit, and so that customers come in here, pull in, takes care of their business, and pulls out this way. If you're looking at –. Do I understand you're concerned about an alternate exit in case of fire?

Ms. Castillo: Yes.

Ms. Gaia: Yes.

Ms. Castillo: In case of emergency.

Ms. Gaia: Right. Understood. Currently that has not been incorporated into the design. The Fire Department reviewed it. Apparently they didn't see the need.

Ms. Castillo: Especially if you folks are fencing that – six feet – you know, the people that are going to be inside, in case there's a fire, how are they going to be –?

Ms. Cordell: Well all the activities will be taken place right here, very close to the entrance –

Ms. Castillo: Very close to the entrance –

Ms. Cordell: No one is going out over here.

Ms. Castillo: But if the incident occurs by the entrance.

Ms. Kaye: Letty, I'm not sure what your concern is. The Fire Department reviewed this and didn't have a concern. So I'm not sure what could catch on fire.

Ms. Castillo: Well –

Ms. Kaye: And it's very close, I would think, the fire hydrant, plus the Fire Department. And I looked at that too, and I thought 20-feet is pretty wide to get in and out. They were only talking about, I think, as a former comment, unrelated, to 14 – and broadening it. Do you know the width of this road now? I've been on it. It's really a mess.

Ms. Gaia: . . . (Inaudible) . . .

Ms. Kaye: Commissioners, any other questions? Let the record show that Commissioner de Jetley has joined us.

Mr. Prutch: Are you going to open it up to public?

Ms. Kaye: I wasn't sure if you had anything more to offer.

Mr. Prutch: No, what I wanted to do is my recommendation and kind of go through the conditions.

Ms. Kaye: Okay, we'll open it up for public hearing. Ron McOmber is first.

Mr. Ron McOmber: Good evening. Ron McOmber. Resident of Lana`i. It's a great expansion of what we've already started. The boys that are working down there right now are working under really bad adverse conditions as you know. This is a great thing for Lana`i to have a recycle. I – with the echo in here, it's kind of hard to hear the explanation. I'll ask it, and you can probably give me an answer. How soon before you start doing the major recycles, like refrigerators and washing machines and that type of things?

Ms. Kaye: I think you just tell us which questions you want.

Mr. McOmber: Okay. I won't address them, but I didn't hear that. I couldn't hear it back there.

Ms. Kaye: That's a good question. It wasn't addressed.

Mr. McOmber: Okay. How soon can they do that? And that would be a good question for you to ask. The way the operation runs right now, they're doing an excellent job down there. We're probably recycling a larger percentage on this island than probably any where

else right now. Look around your city, you don't see any cans on the roads. It's very seldom. We've got three or four ladies that are out every morning with big carts full of beer bottles and soda cans and water bottles. My hunting houses all have recycle bins in them, and they're full every weekend. So it's working. But we do have a problem and we need to find out how we're going to address the cars, the refrigerators, the tires, the batteries – all of these stuffs needs to be built into this. And that's probably more important right now because I think you've got a real good handle on the smaller stuffs. So we hope that the recycling in the County will get busy on that, and we need it desperately because we have no place to put cars. And that little area is not going to be big enough when you do that. So when you expand it, we're going to have to look at it because we've got beaucoup of old cars here. And we can't even get them off the road because there's no place to take them. So thank you very much for you application and I whole heartedly support it. I think it's a great thing. And the boys who are working down are already doing a hell of a job!

Ms. Kaye: Thank you Ron. Commissioners, any questions for Ron? Next is Pat Reilly.

Mr. Fairfax "Pat" Reilly: Thank you Commissioners. Pat Reilly. 468 Ahakea Street. I'm looking at the conditions. One of my concerns and I support Commissioner Castillo. You can argue that the gates are wide enough but my own experience in an industrial or semi-industrial area is anything can happen at any time and block an entrance. And I'm not sure what it takes to redesign a second exit, but I would support that. And plus if you're going to have fire equipment that would need to go in there, that needs to be taken into consideration in the design. And I would look at that as a condition.

Secondly, I'm concerned about the personnel who work there. Apparently there will be personnel that work there, and the working conditions under rain, wind, and I'm not sure how often this will be staffed, but I believe in sewage and water and a place to get out of the sun, and the wind and the rain. If you're working some place, there's a working condition. And I'm sort of surprised that they would use a portable john which is another expense of somebody having to come and pick it up and transport somewhere.

Thirdly, I noticed there were couple comments about the paving and the road and the width of the road. And again, I'm looking at safety again that the roads should be accessible and sufficiently wide to handle emergency or fire vehicles. I always look at that first to protect the workers and any incidental issues that happen. And I'm not sure about security. I don't think we have much security down there or whether you need security but you will have equipment and other things there.

Lastly I would say – and I'm safe to say that all of us – that we definitely need a recycling center, and this has been going on for years. And we started one many, many, many, many years ago, and that fell through. Electronics – I just had a discussion here at school the other day about electronic recycling and how to do that. And hopefully that will get into our community plan at some point. And whether or not the community plan would sustain

the center at this particular point. If it moved to Miki Basin and that probably is not an issue today, but eventually that's another long drive for people to go down there. So I wholeheartedly support the plan but I would ask the Commissioners to look at some of the safety issues for the personnel. Thank you very much.

Ms. Kaye: Thank you Pat. Commissioners any questions for Pat? Okay. Anyone else wants to offer any public testimony? Okay, public hearing in closed. Joe?

Mr. Prutch: Can I? Cheryl, do you have some answers for some the testimony questions that you want to answer?

Ms. Okuma: Respond to that? Starting backwards, thank you for bringing up the concerns about the working environment and safety conditions. We certainly want to make sure that the workers are safe in terms of the environment they work in. So I can say that we'll look at that, particularly, should this project becomes a permanent project. So we'll take note of those issues and concerns. I'm also told by Irene that there is a plan for an e-cycling event and we're taking a look at that now so thank you for bringing that up. And in terms of the issues about automobiles and appliances, undoubtedly, that is a very tough issue for us, all of us. And basically this particular project is to number one, move the redemption center, the HI-5 portion, and then to phase in other types of recyclables like paper and cardboard and the other non-HI-5 items. And so it does not address the automobiles and appliances, however, I will say that it is something within the entire County, including Lana`i, that we are well aware of is an issue. And I can say that here with us tonight, I won't put her on the spot, is Patience Gaia. She is the abandon vehicle administrator. She has come from the recycling section, and she knows that this is one of our issues they're working on. She's been in this position for barely eight months. So we are looking at it. Thank you for that comment, and we will consider that as we move forward in our abandon vehicle section. Thank you.

Mr. Prutch: Chair, are you ready for our recommendation?

Ms. Kaye: I am Joe, yes, unless the Commissioners have any other questions?

Mr. Rabaino: Entrance – you going make one-way entrance or you going redesign down the future?

Ms. Okuma: I think right now if you can just – you know I asked – this is a temporary site. It's a pilot, and we will make note of that comment. We can go back and discuss it. And I think, certainly, as we move forward into should this project become permanent, then we can look at that kind of issue as well. But we do hear the concerns.

Mr. Rabaino: I have a problem with the word "temporary." This is three year pilot project, right? And when you use the word "temporary," then this only on borrowed time.

Ms. Okuma: The reason we say it's temporary is because this lease that we negotiated with Castle & Cooke is only for three years. We have the opportunity to negotiate for an additional five, and then an additional seven years. So it is a temporary site. It's being run as a pilot project at this point. With the information we gather and if we're able to renegotiate with Castle & Cooke at the end of the three years, then there are many things that we would look at to make this, you know, suitable, in terms of something more permanent.

Ms. Kaye: Okay. Joe, I think we're ready for you unless there's more questions.

Mr. Prutch: Okay, Chair, thank you. The recommendations – I'll read the part I have to read – in consideration of the foregoing, the Planning Department recommends that the Lana`i Planning Commission find the proposed use to be similar in character of rendering sales of commodities or performance of services to the community and not be detrimental to the welfare of the surrounding area and in conformance with the intent of Title 19.24.020, Maui County Code. Further, the Planning Commission adopts the Planning Department's Report and Recommendation prepared for this April 15th meeting subject to the following 13 conditions – and if you want, I'll go through those – of approval, as its Findings of Fact, Conclusion of Law and Decision and Order and authorize the Planning Director to transmit said Findings of Fact, Conclusion of Law and Decision and Order on behalf of the Planning Commission. As far as the standard, there's, I believe there's six or seven – six standard conditions. We gave them a time period until April 30th, 2012 for their three years, subject to extension by the Lana`i Planning Commission. So at that time, they would come back in to request an extension. And at that time, we will know, they would know, if they're staying here or they're moving else where. The remaining conditions were conditions that were sent to us from Public Works Department, Department of Health and then the standard conditions from State Historic Preservation in the event of any finds when they're out there doing some grading work on the property. And if you want me to go through any conditions, I will.

Ms. Kaye: I think we've all reviewed them. I know I had two suggestions for conditions #14 and #15, and they're pretty benign. The first one would be that preference be given – we just always try to add this as a condition to every project – preference be given to local hires on Lana`i. As long as it's in writing, it just makes it a whole lot better. And I would want to ask that the applicant reports metered water usage to the Planning Commission every six months, just so we can track whether the is – as you say it's going to be or whether it grows or larger or smaller. If those are acceptable, those would be the only two I would want to add. Commissioners? Okay then, I think, we're ready for a motion.

Mr. Prutch: Excuse me. Hold on. Hold on. I just want to make sure I have this correct and to make sure Cheryl and her clan over there are agreeable to the conditions that condition #14 would be adding saying that preference be given to local hires (*Changed cassette tapes*) from the Island of Lana`i. And condition #15 would be that the applicant shall report

on water usage to the Lana`i Planning Commission very six months.

Ms. Kaye: Actually, it's probably more proper they report to you, right? And then you just put it in our packet as a communication. That's probably more appropriate. You ready Joe? Okay.

Ms. de Jetley: I move that we –. I move to accept this project subject to the recommendations made by the Planning Department's staff and with the additions, the two additional items, #14 and #15, presented by our Chair.

Mr. Rabaino: I second the motion.

Ms. Kaye: Okay, all in favor?

Lana`i Planning Commissioners: "Aye."

Ms. Kaye: Any opposed? Okay.

It was moved by Commissioner Alberta de Jetley, seconded by Commissioner Gerald Rabaino, then unanimously

VOTED: To approve the Department's report and recommendations with the two additional recommendations as provided by the Commission.

Ms. Zigmond: Can I just tell you a funny – a little story? There is somebody here, some children, who collect cans and such, right now. And they actually take glass that is not accepted because they want to keep people in that mode for when it is accepted.

E. ORIENTATION WORKSHOP NO. 1

- 1. Roles and Responsibilities**
- 2. Discussion of Boards and Commissions Booklet Distributed by the Office of the Corporation Counsel**
- 3. The Sunshine Law**
- 4. Ethics**
- 5. Ex Parte Communications**
- 6. Rules of Practice and Procedures**
- 7. Land Use Regulatory Framework in Maui County**
- 8. Hawaii State Plan**
- 9. State Land Use Law**
- 10. Zoning**

11. **Special Management Area Rules**
12. **Shoreline Area Rules**
13. **Environmental Assessments and Environmental Impact Statements**
14. **Other Related Boards and Commissions**
15. **Lanai City Design Guidelines**
16. **Meeting Agenda**
17. **2009 Meeting Schedule**
18. **Recent U.S. Supreme Court Decisions on Takings Issues**
19. **Public Access Shoreline Hawaii (PASH) v. Hawaii County Planning Commission**
20. **Topliss v. Hawaii County Planning Commission SMA Case**

Ms. Kaye: Okay, next on our agenda is our annual orientation workshop. I believe Clayton is going to take it from here.

Mr. Clayton Yoshida: Thank you Madame Chair and Members of the Lana`i Planning Commission. Clayton Yoshida, Administrator of the Current Planning Division. We're here to do our annual workshop. We realize that all of the members are returning, so this is kind of an annual refresher course. And we do this for each of the Commissions annually.

The Planning Department consists of about 65 members, and we're divided into essentially three divisions. We have the Long Range Division that deals with the General Plan and Community Plan updates, and houses our GIS Section. We have the Current Planning Division – that's the larger division. We have about 16 planners in the division and we handle most of the major land use applications that come before the Planning Commission. It may go to the Council, or it may go to the State Land Use Commission. And we have our Zoning Administration and Enforcement Division which passes out zoning confirmations, handles the Boards and Variance Appeals, does subdivision review. And I guess there is a smaller Administrative Division that sort of supports the three major divisions.

For tonight, we'd like to start with the overview of the Planning framework, talk a little bit about Zoning –

Ms. Kaye: Excuse me, Clayton. We're having trouble hearing.

Mr. Yoshida: I guess talk a little bit about Title 19, the Zoning Section of the County Code. Thorne Abbott, our Coastal Resources Planner, will talk about Coastal Zone Management, or CZM. And at the next meeting, in May, we'll have a presentation on the Flood Hazard Districts. And also at that meeting, we'll talk about the County's policy against sexual harassment.

We have various resources for the Lana`i Planning Commission. We have the Maui County Urban Design Review Board. It's our professional board that reviews for project

design and makes recommendations to the Planning Commission largely for Special Management Area projects. Kay Okamoto is the Lana`i member on that Maui County Urban Design Review Board. We have the Arborist Committee which deals with trees within the proposed subdivision. It nominates exceptional trees for protection. And can provide recommendations to the Planning Commission. We have the Maui County Cultural Resources Commission, which governs the three historic zoning districts – two in Lahaina, one in Wailuku – and approves uses and architectural design within these historic district, and provides recommendations on Special Management Area or other permit applications to the Lana`i Planning Commission. Kepa Maly is the Lana`i representative on the Maui County Cultural Resources Commission. And we have other Federal, State and County agencies that also provide recommendations to this Commission on various applications.

We have the State Constitution. From that, we have the Hawaii State Plan which is Chapter 226 of the Hawaii Revised Statutes. And from that, comes the authority to do the General Plan and Community Plans. And from that, one of which, the County is divided into nine planning regions, and each planning region has a community plan. And the Lana`i Community Plan which was most recently adopted in 1998 is part of that. And we will be having the Long Range Division come to the next meeting in May to talk about the General Plan and the Community Plan update processes.

We have the State Land Use Commission. All lands within the State, under Chapter 205, the State Land Use law, are divided into one of four districts – Urban, Ag, Rural, Conservation – and Chapter 205 defines the permissible uses. This is the map, the land use map, for the Island of Lana`i. Those lands which are in the Urban District are indicated in yellow. Those lands that are in the Conservation District are in dark green. And those lands in the State Agricultural District are in light-green.

From that, people can petition to change the boundary designation from say Ag to Urban. What we call a District Boundary Amendment. And also there are special use permits for uses which are not necessarily permitted in the Ag or Rural Districts but are deemed to be unusual and reasonable uses, and these are the criteria for issuance of a Special Use Permit. If the project area is more than 15 acres, the State Land Use Commission is the authority for the District Boundary Amendment, as well as the final authority for approving a State Special Permit. If the permit is denied by the Planning Commission, then it is deemed to be denied. The Lana`i Planning Commission would review, or would review, District Boundary Amendment applications that have an area of less than 15 acres. As well as hold public hearings on Special Use Permits greater than 15 acres or less than 15 acres, but they would be the final authority when the project is less than 15 acres.

We have Zoning which is quantified in Chapter 46 of the Hawaii Revised Statutes, and in Title 19 of the Maui County Code which allows the County to establish zoning. And Title 19 is divided into two sections – Interim Zoning which is referred to as Chapter 19.02 of the Maui County Code. We've had Interim Zoning since 1958 here in Maui County – as well

as Comprehensive Zoning and the various types of review that emanate from that Article 2, the Comprehensive Zoning section of Title 19 of the Maui County Code.

Ms. Kaye: Clayton, can I ask you a question?

Mr. Yoshida: Yes?

Ms. Kaye: I've never understood why Interim Zoning has languished for so long.

Mr. Yoshida: I think it was suppose to be a temporary way of zoning lands, especially for the rural, more rural towns, like Paia, Makawao, Lana`i City, Kaunakakai, Hana. And at one point the County would come in and zone it say residential or business or public/quasi-public. I think in the last iteration of the Community Plan, staff has happened for, some of the areas, like we've zoned areas in Makawao Town out of Interim into residential or business. We've zoned Kaunakakai Town, the business section, to business. We've zoned the, say, commercial area of Lana`i City to business.

Ms. Kaye: But that's in the Community Plan. That's not in –

Mr. Yoshida: No, this is the zoning – zoning is an implementation of the Community Plan. So when the Community Plan, say for Lana`i, was passed in 1998, then the County went in 2000 and zoned the areas around –. Dole Park is PK3, Community Regional Park, and the areas around Dole Park, BCT, that are designated business in the 1998 version of the Lana`i Community Plan. We have our Coastal Management Act, Chapter 205A, Hawaii Revised Statutes, which some people in the Legislature is trying to repeal this section. Anyways, we have the SMA, Special Management Area Rules of the Lana`i Planning Commission, Chapter 12-402, and Thorne will be talking more in detail about your Special Management Area Rules as well as your Shoreline Setback Rules, which is Chapter 12-403. And the Lana`i Planning Commission is the final authority on SMA Major Permits and Shoreline Setback Variances.

We have Environmental Impact Statements, Chapter 343, Hawaii Revised Statutes and Thorne will talk more in detail about that. There are various triggers which Thorne will go into. One of them is a Community Plan Amendment, which the Lana`i Planning Commission would review. Another trigger is Shoreline Setback Variance, which the Lana`i Planning Commission would review.

So we're moving to Title 19 of the Maui County Code, which is the Zoning section. And there are various types on approvals, permits which come before the Commission, emanating from Title 19. There's a Change in Zoning. I think most people are familiar with that which you change from one zoning designation to another – say from R3/Residential to B2/Business. The Lana`i Planning Commission would hold a public hearing and provide its recommendation to the Council. The County Council is the final authority on a zoning

change.

We have the Conditional Permit, Chapter 19.40, which establishes uses not specifically permitted within a zoning district which are similar, related or compatible to existing permitted uses. The Planning Commission would hold a public hearing, make a recommendation to the Council, and the Council is the final authority. This is the picture of the West Maui Community Federal Credit Union building which is in a residential district, and obtained a Conditional Permit. Say for Lana`i, I don't know who was on the Commission when they reviewed the Manele Small Boat Harbor Ferry System Improvements. And in that case, for the parking addition, for the boat trailers, that required a Conditional Permit.

We have County Special Use Permits, which are specifically identified as special uses within a zoning district. There are specific criteria established. The Planning Commission would hold a public hearing and they are the final authority such as for a church in a residential zoned district.

We have Planned Development. This is to encourage desirable design and land use patterns. Overall unit density is maintained while there is provision for a common open space, recreation and community facilities. This is planned development Puamana in Lahaina. It is a three-step process and the Planning Commission would review and approve each step, and there is no public hearing that's required. The Napilihau in, I guess, Napili, is also a Planned Development.

We have Project Districts which provide a flexible and creative planning approach. They are established in the Community Plans. There is a three-phase process. Phase I, public hearing is held in the Lana`i planning region, and the Planning Commission makes a recommendation to the Council. This is to establish the, say, the development standards for the various sub-districts. And Lana`i has two Project Districts as you are all aware of – one at Manele, and one at Koele – and they are quantified in the County Code as Chapter 19.70 and Chapter 19.71. There is the Phase 2 Project District Approval where the Planning Commission conducts a public hearing and approves the preliminary site plan. And the Commission has reviewed a number of these in recent years – for the Island Clubhouse at Manele, the Koele Wellbeing Center, the Luxury Suites at Koele – and so the Commission is the final authority on the Phase 2 Project District Approval. And then there's the Phase 3 Project District Approval which is approval of the final site plan which is done administratively.

Okay, we have Bed & Breakfast Permits. The County Council, the Commission in 2007 reviewed the Department's legislation regarding amendments to the Bed & Breakfast home ordinance known as Chapter 19.64 of the Code. And this Bill which the Commissions reviewed was worked on by the Council Planning Committee for the large part of last year, and it was approved and signed into ordinance by the Mayor on January 7th of this year.

It extended Bed & Breakfast homes to the rural and agricultural districts. Before, it was primarily in the residential district. It could have up to a permit of up to six bedrooms and two dwellings. The Department approves the permit in most cases except for Lana`i and Moloka`i where the Planning Commission is the approving authority. And if you're in the Ag district, the property needs to meet either a 35,000 annual agricultural income TATS, beyond a historical register or if it is five acres or less created before – the lot was created – before November 2008, have a fully implemented farm plan. For the Island of Maui, the Council established caps on the number of permit that can be issued in any Community Plan region. But for the Island of Lana`i and Moloka`i – Island of Lana`i and Moloka`i – because the Planning Commissions are the authority, they are kind of the regulators as to how many of these permits are issued.

We have the Country Town Business district established through Chapter 19.15 of the Code which establishes development standards for businesses in rural communities such as Lana`i City. The Planning Commission approved the designed guidelines. The Department administers the design guidelines. There has been a controversy in the past because the design guidelines were approved in – Lana`i City Community Design were approved in 1997, I believe, and the Lana`i Community Plan was approved in 1998, and there is a discrepancy between the number of stories, the maximum number of stories, you could have for commercial structures. So the Department is attempting to work with a consultant to amend the Lana`i City Community Design Guidelines. And the consultant is Chris Hart & Partners, and they are currently in the stage of producing a draft work product which is expected to be received by the Department at the end of April. And the Department will review and comment on the draft. The consultant will incorporate the comments into the final document, and we expect the final work product say by June 1st. After that, we'll have to take the proposed amended design guidelines out for public review, say have it reviewed by the Maui County Urban Review Board, and the Planning Commission will have to have a public hearing to adopt or amend this updated design guidelines.

We have Off-Site Parking Approval for parking, where parking is met on another lot within 400 feet. The Planning Commission is the final authority. No public hearing is held.

We have Accessory Use Permits, which you dealt with tonight for this recycling center. You are the final authority. There's no public hearing required.

Are there any questions before I turn it over to Thorne to talk about Special Management Area, Shoreline Setback Rules and Environmental Assessments?

Ms. de Jetley: I have a question. What's going to happen with our Country Town Business Zoning and design guidelines if we're designated as a historical site in the State of Hawaii? What's going to happen with this? Are we doing away with our home rules then?

Mr. Yoshida: Well, I guess there may be some options. The County may choose to designate the area as a Historic District, a County Historic District, like we do for say in Lahaina Town around the Banyan Tree, the Old Lahaina Courthouse, and some of the historical buildings – the Baldwin House, et cetera – and some of the businesses – the Wharf Cinema Center along Front Street. And they would have to have architectural design guidelines adopted – developed and adopted. And also, let's see, if they come in for a building permit, if it's designated as a County Historic District, that may require an approval from the Maui County Cultural Resources Commission as we do for properties that are in, say, historic district number one or historic district number two in Lahaina. So say if somebody wants to change the windows or change the doors, and that requires a building permit, they have to come in for a Historic District Approval. But I guess the nomination is before the Historic Sites Review Board on the 25th of this month, and they would make a decision whether the property goes on or it doesn't go on the State Register. I believe the Company has filed a petition to intervene in those proceedings. Did I answer your question?

Ms. de Jetley: When the Cultural Resources Commission were here and appeared before this community, they were trying to assure us – the planner was trying assure us that there wouldn't be – it wouldn't be adding layers of permits on top of what we already had. And obviously from what you're saying if every time a business here wanted to make a change, they would have to go before the Cultural Resources Commission. That would be another layer.

Mr. Yoshida: Well if it is established as a County Historic District like we have with the two historic districts in Lahaina and the one in Wailuku – say Kaahumanu Church, Old Wailuku Courthouse, I guess our Planning Department, the Kalana Pakui Building – they're all in the Wailuku Historic District No. 3. But I don't know if Mr. Giroux has a – the legal counsel who also advises the Maui County Cultural Resources Commission – has a different or further information as to what designation would mean.

Mr. Thorne Abbott: I'll cover that when we get to the EA section. But to say briefly, it would be a trigger if the town is listed in the Hawaii Register, the State Register or the National Register. It would trigger compliance of Chapter 343 which is your Environmental Assessment law. I'll let James speak to that further. My name is Thorne Abbott, Maui County.

Mr. James Giroux: Outside of creating a new ordinance, there's actually, with the County, I don't believe that there would be another, you know, layer because the age of the building itself could trigger a review of the CRC. The designation itself wouldn't change that. If the County went and then created a County ordinance in order to establish more regulation, then you could possibly see another layer. They could say that the permit would have to either come before the Commission or the CRC. While making that ordinance that's the type of policy decisions which would have to be made by the Council in establishing an

ordinance. The only reason for establishing an ordinance would be to actually increase enforcement. In Lahaina, right now, the ordinances are used specifically to monitor signage and possibly demolition. But even those don't have much of an effect on what a land owner can or cannot do with the property. An ordinance would have to actually give an agency a final authority task. Just the designation in or itself doesn't do that.

Ms. Kaye: Gerry, you had a question?

Mr. Rabaino: My question to you is you've got the State nurse's quarter that is historical outside Lana`i City, but it is within the business district area. As you stated earlier that the Lana`i Dole Park is under historical as surrounded by the business district. We also have another one – that Social Hall comes under historical. My definition for historical since you had mentioned three layers – State, County and Historical Preservation – the Feds. So out those three areas, okay, which one is County? Nurse's quarters, Social Hall or the Town, business district area? Okay, we need to know the clarification for each of those layers.

Mr. Yoshida: Well the County has zoned the areas on the lots around the town County Town Business, if the 1998 Community Plan identified it for business. County has zoned it because before that it was zoned interim. And the problem with interim is the change in the use. Because if you change the use, then you have to get a use variance. People would have to get a use variance which is temporary and you still have to go before the Council for that. So we zoned those properties around the square that are identified as business in the Community Plan to BCT, Country-Town Business.

Mr. Rabaino: What about the Nurse's quarter across Straub Clinic? That's considered historical.

Ms. de Jetley: Gerry, I have a question for you before he answers that. When you say the Nurse's quarter, are you meaning the house above Tamo's house?

Mr. Rabaino: Yeah. That's the original Nurse's quarter during the plantation days, as well as the Social Hall.

Ms. Kaye: They don't fall in the BCT, so they are not in the area.

Mr. Rabaino: I understand, but I want his clarification if that comes under County, State or Feds.

Ms. Kaye: Why? I don't understand your question.

Mr. Rabaino: Because when they had the Commissioners here last year, I attended one of them, and you weren't there, and they were giving the specifics. So being that he is from the County level, I want to find out which building.

Ms. Kaye: Who are you talking about that was here Gerry?

Mr. Rabaino: You wasn't there at that meeting when they had that Cultural Commissioner's meeting at the bowling alley, the time I went twice. You remember that one? And they were giving some definition of what building in Lana`i City came under historical. So they weren't very clear whether they were State or Feds because we had mainlanders came in saying they represented the Fed side.

Mr. Yoshida: I understand it. The nomination made by the County was for the BCT Country Town Historic District nomination to the State Register.

Mr. Rabaino: Okay, I understand that part. But I just want to know now, where does the Nurse's quarters stand? I mean, what status does it has, as well as the Social Hall?

Mr. Yoshida: I'm not sure. The Cultural Resources Commission could nominate certain structures to the Hawaii Register, but it would be the State Historic Places Review Board which would make a decision whether or not to put it on the register. They would only be recommending.

Ms. Kaye: Does that answer your question Gerry? Okay. Thank you Clayton.

Mr. Yoshida: Any other questions before turning it over to Thorne to talk about the Special Management Area and Shoreline Setback? If not, I'll turn it over to our Cultural Resources Planner – I mean, Coastal Resources – Thorne Abbott.

Mr. Abbott: Thank you Clayton. I appreciate that promotion. My name is Thorne Abbott. I'm the Coastal Resource Planner from Maui County. Can you hear me all right? Okay. Have all of you seen this presentation before? Okay. So I'll go through it very quickly in the context of kind of public education. There are some revisions we've made this year, so we did print out extra copies. Thank you for thinking about saving trees and not wanting new copies. And we'll focus on some of your more – saving your questions.

So under the State Constitution is HRS, Hawaii Revised Statutes, Chapter 205A – not Chapter 205 – 205A, and that's the Coastal Zone Management Act. Under that, we have your Special Management Area Rules and Shoreline Setback Rules which you review major permits. You also review exemptions and you review shoreline setback variances. There are 10 goals and objectives you need to consider in every SMA Permit or Exemption. And we are charged with providing coastal recreational opportunities to the public. We're to protect, preserve and restore Hawaiian and American cultural and historic resources. We're to conserve aquatic natural resources for sustainable development. We're to reduce risk to new structures and enhance public safety. We're to protect and preserve and restore coastal views, open scenery, open space and scenery, enhance public beach access and minimize beach loss due to site hardening and erosion. We're to minimize

adverse impacts and protect coastal eco-systems. We're to provide and co-locate coastal dependent facilities while minimizing negative impacts. Now what that relates to is you just improved Manele Harbor. It would be very inappropriate, under the Coastal Zone Management Act, to develop a new harbor. You want to keep everything kind of consolidated. You know, keep all of your resources together. We're also suppose to stream line the permitting process and enhance public awareness. Stream line – that's one of those goals government always will be seeking to achieve – you never really get to. But we are suppose to stream line things, get things going faster. And also stimulate public awareness, education and participation through things like this, the public meetings.

The whole island is in the coastal zone. We talk about ahupuaa concepts quite a bit. How that was the traditional means of managing resources. The coastal zone includes everything from the mountain top, down to the ocean, and three miles out. Within that area, any action done by a government agency is regulated based on those 10 objectives I just showed you. And the office that is in charge of that is the State Office of Planning. And they review the project and make a determination if it's consistent with the law. So the law regulates all development within the coastal zone, including all lands and waters of the State. However, the Special Management Area is a subset of the coastal zone. And any proposed action within the SMA requires an assessment by the authority. Now the Commission is the authority for SMA Major Use Permits as well as the SMA Exemptions which we refer to as SM5's. The Director is the authority for SMA Emergency Permits, and currently for SMA Minor Permits as well, here in Lana`i. And any Director decision is reported to you at your next meeting.

So what's the difference between something with a permit and an exemption? What's the difference between a Major, a Minor, an Emergency and an Exemption? Well, first thing we do, we have to check if something is called a development. And there's a definition of development in the law. There's five categories. Anything over \$125,000 is a Major and that comes to this body for decision making. Anything less than \$125,000 is a Minor and that's decided by the Director. The second step, even if you're considered a development, is to check whether you're considered not a development based on the definition in the law. And there's 15 exempted categories. The third step is you look at if this thing is not a development, ie: it's exempted, then we assess whether the activity may have a cumulative impact or a significant environmental or ecological effect on a coastal resource. If the action has the potential to impact the coastal resource, then we assess if there are sufficient mitigation measures to avoid, minimize and mitigate any negative impacts. If those impacts have been mitigated, then the project is exempted and there's no conditions and you don't need a permit, but you do need an approval. If there's an impact that exists, then we can require, or this body can require, a condition. And that condition might be to avoid, mitigate or minimize some impact. I believe the item you just passed, you had some conditions on them, so those are enforceable. The Department's recommendation, as I mentioned, is reported to the Commission at its next regular meeting. If the applicant doesn't agree with the Director's decision, they can challenge that by filing an appeal.

So an exemption can't have conditions because basically you're saying it's exempted from the rules. It does need an approval, and it does need that SMA evaluation or assessment. Any proposed action can be exempted if there's a measure to avoid, mitigate or minimize the impact. A good example is if you're going to be doing ground altering or grading in a sand dune, it's likely there could be, you know, Hawaiian artifacts or burials there. If you come in and say as part of my project, I'm going to have an archaeologist on site, well, that avoids and mitigates the potential for an adverse impact there. That archaeologist will stop you, if they run into something – contact SHPD. So you could be found to be exempted, not subject to the rules. In contrast, the permit is a condition that requires that archaeologist to be on site. So they're slightly different.

Your SMA boundaries were adopted in 1979. The State and Federal governments subsequently approved those boundaries and the program. As I mentioned, all development within the SMA requires a permit. As you can see, barely, there's a little red line around the island. That's your Special Management Area. Most of land mass is not within the Special Management Area. There has been discussion, like Molokai, about putting the whole island in the SMA. I caution you on doing something like that because the SMA is not a land use tool. It's a coastal resource management tool. Those are two very different things – Land Use is Zoning, Country Town Business, and that kind of thing.

Finally, you have a Major Permit, that's over \$125,000. It requires a public hearing. All the land owners within 500 feet are notified by certified mail. Again, you can have conditions on that permit. A Minor is approved by the Director. There is no public hearing. He can put, or she can, put conditions on that permit. An Emergency Permit. We get calls all the time. My roof is leaking. It's an emergency. No, it isn't. That's your emergency. That's a maintenance issue. An emergency is a public emergency – a waste water treatment line is going to break – something happens at the harbor that jeopardizes public health and safety. That's an emergency. The Director can approve it over the phone, by email. However, you can do it right, but that project has to come back to this Commission for final review and approval. The permit is also only good for 180 days. After that it expires. And finally, I mentioned, something can also be exempted. We also can deny it if it's inconsistent with the State Land Use, General Plan, Community and/or Zoning designation, or if it's going to have a negative impact on coastal resources.

Ms. Zigmond: Thorne?

Mr. Abbott: Yes?

Ms. Zigmond: If you go back please on the Exemption – is the correct, the Planning Director?

Mr. Abbott: No, in this particular slide, I do apologize, I was not apprized that you are currently reviewing Exemptions, so I do apologize that this slide isn't up to date. Thank you

for pointing that out. It is an interesting “puka” that Minors are still approved by the Director, so you might want to consider that in your discussions. There is –

Ms. Kaye: Actually, I’m going to follow up on that because when you said that, we had discussion about that. The newer members were not here at the time, but that really sort of fell through the cracks. And we did have discussion on changing, and I’m not sure what happened with that. I’m not sure whether Joe was suppose to come back with some sort of process or what. But, if we wanted to pursue that, what would be the process?

Mr. Abbott: I would imagine that you would want to have proposed language. Then I would imagine you’d want to take a vote on it, put it on your hearing docket, and publish in the newspaper because it is a significant change, and you’d probably want input from Corporation Counsel.

Ms. Kaye: Okay. Thanks.

Mr. Abbott: There is decision making criteria in your rules. You can’t have any adverse environmental or ecological effect based on 12 criteria that’s in the rules. The effects have to be minimized in light of some compelling public interest. For example, when you did Manele Bay you put a lot of concrete down there. Created a lot of impervious surface. That’s going to cause stuff to run into the ocean. But that’s better than just having a big muddy parking lot. So the effect of that paving, while negative, was beneficial in the context of a larger public context and public benefit, so that’s allowed. Also, obviously, it has to be consistent with its land use designations and it has to be consistent with the SMA guidelines. What are those guidelines? Well, you have to have adequate access to publically owned beaches, recreational areas, wildlife and natural reserves. You have to adequately and properly locate public recreation areas. You have to control, manage and minimize impacts of pollution, minimize adverse effects to water resources, and scenic and recreational amenities.

I want to comment a little bit on minimize adverse effects to water resources. The last time I was here, I was down at the Four Seasons and they were irrigating some newly planted area, and someone commented they also seemed to be irrigating the road on the way down. So that may not have been an appropriate use of your limited water resources. However, that’s way up on the hill. It’s well outside of the SMA. You really need to make a connection, a nexus, between what’s happening up-country and what’s happening down country, within the SMA, before you could regulate that using this law. Everything is in the coastal zone, but you’re not the authority for up-country. The Office of Planning is and that’s only for agency actions. So, is that distinction clear? (*Changed Cassette Tapes*) Okay. Also, you want to minimize risks of coastal hazards to proposed structures, and you primarily do this through your flood hazard requirements when you’re building a flood hazard zone. Those are FEMA regulations – Federal Emergency Management Agency – and also your Shoreline Setback.

You can put reasonable terms and conditions on any project. If I'm building a house, down at Manele Bay, you can't require me to put in a new highway. There's no nexus there. I'm going to add two or three cars. You can't require me, as a condition of approval, to put in a great big highway somewhere. That's way beyond reasonable. Reasonable might be that I can't use fresh potable water resources for my irrigation. I have to use reclaimed water or I have to use salt water, something like that. You do have to seek to minimize where reasonable dredging; drilling; altering of any coastal areas; reductions in beach sizes, impediments to public beach access and coastal recreations; any loss of coastal view plains; adverse effects of water quality; fisheries, wildlife and habitat; and any loss of existing or potential agricultural uses. So with that, that concludes the SMA portion. I can go into your Shoreline Rules if you'd like, or I'd welcome any questions you may have. Thank you very much for your time.

Ms. Kaye: Commissioners, any questions before we move on to Shoreline Setback? Okay.

Mr. Abbott: Okay, Shoreline Setbacks. Your rules were adopted back in November 16, 1995. I don't think you've had any updates since then. They regulate the use and activities of lands within the shoreline area to protect health, safety and welfare.

Ms. Kaye: Is there a routine updating of this, other places? I mean, you said it's not been updated since 1995 – begging the question of whether updates should've occurred.

Mr. Abbott: I won't speak authoritatively to whether it's been updated or not because I haven't reviewed your rules that far, but I have a recommendation for you that I'll give here as we go through if you'd like.

Ms. Kaye: Thank you.

Mr. Abbott: Basically, the sea is rising, the island is sinking, get out of the way. That's one option. The other option is if you already have a house there, like this nice house that got destroyed, or the one that's sitting on top there that's, you know, obviously I wouldn't want to be a party on his lanai and drop my keys. Do we really want people to reinvest in these things? You know, there's a great American thing called planned obsolescence – it breaks right after the warranty expires. We probably don't want to keep reinvesting money in properties that are in harms way. Get out of the way. It's not the government taking your land. It's mother nature. And the best way to avoid coastal hazards and loss of life is to move inland. So if you look at your rules, what they say is my name is Thorne Abbott, and I hate the word abut. Lands abut the shorelines. Well what abuts the shoreline? The shoreline moves. It comes back and forth. If you have a fish pond – you don't have any here that I know of – but if you had a fish pond like they do on Moloka`i, the fish pond abuts the ocean. Right? So if you built next to a fish pond, no setback. If there's a conservation easement there. If there's a DLNR buffer. If there's an old coastal trail. If there's a utility line. Those abut the shoreline. The land next to that abutting property or easement or

entitlement technically wouldn't be subject to these rules. I'd recommend you change that. I'd also recommend that you use an average lot depth. The purpose of using – I'll get to the lot depth in a second.

Let me show you a few pictures why this is important. On the right side, you have coastal erosion. Coastal erosion, natural process, the shoreline retreats over a long period of time, from sea level rise, wind and water and wave action. While the shoreline is retreating, the beach width is maintained from sand which is naturally released from sand dunes and other sand reservoirs. And those reservoirs might be behind the beach. They might be on the far end of the literal cell. A lot of times sand is blowing back and forth. You know, you go over to the northeast side or past Garden of the Gods, there's a lot of sand that goes back and forth there from the wind action. So that sand is always moving around.

On the left side, we have beach erosion. That's the loss of sandy beach width because reservoirs were depleted, sand transport is hindered, or sand reservoirs are impounded by man made structures such as sea walls. The same thing can happen if you do slab on grade construction. You're sitting on top of that sand, and it's not allowed to shift – to move around. So on the left side, you save the land, but you lose the beach. The right side, you save the beach, you lose the land. That's your choices. Very simple. My job is very simple. I say yes or no. You want to protect the land, you lose the beach. You want to protect the beach, you lose the land.

Classic example – the lighting is not so good so you can't see this – you see the arrow. There's a little house there. The beach is obviously retreated inland. This just fell down last week. It's in Kauai. If you look to the right, you can see that nice wall. Now, just speaking from a non-scientific standpoint, do you think that wall had any impact? Yeah. And do they have a beach? No. What did you buy the property for? You bought it to be next to the beach. So why put up a wall and lose your beach? It doesn't make sense.

Okay, so your average lot set back. The way you do this, you add up the left side of the parcel, the right side of the parcel, the center line of the parcel, and you measure that from the State Certified Shoreline Survey. You don't measure that from your parcel boundary unless your parcel is entirely mauka of the shoreline. You add those three up, you divide by three, that's your average lot depth. The lots created before 1989, has a 25-foot setback for a lot less than 100-foot back. 40-foot setback for lot 100 to 160 feet. And 25% of the lot if it's over 160-feet. And it's a 40-foot setback for all the other lots. But I don't know about you, but that's just confusing. Was I created before 1989 or not, you know? I don't know. Wouldn't it be easier to just have one setback? How many shoreline properties do you have here? What about on the northeast side? You only have two? I'm sure you probably have some remnant parcels or something. But what I'd recommend – not that the Department is supporting me in suggesting in this. I'm just saying this as a common Thorne Abbott citizen – why don't you find out how many parcels are on the shoreline. See how big they are. In Lahaina, I can see why you need a little tiny setback

of 25-feet. If all your parcels along the shoreline are, you know, 300 - 400 beach, why don't you just set one setback – 150 foot – for the whole island, or 100 foot or just figure out a number and it's even for everybody. That's just a recommendation. It's up to you folks.

There are a couple different permits. You can have a Shoreline Setback Determination. It just determines the location of the shoreline based on a State Certified Shoreline Survey. It is not a survey stamped by a licensed surveyor. That's a survey by a licensed surveyor. A State Certified Shoreline is something that's sent to the Board of Land and Natural Resources. They review it. They put a big red line on it and say this is where the shoreline is, and they stamp it and the Chair signs it. It's good for one year. It does three things. One, it serves as a base line to measure your setback from for the County. Two, it decides whether you need a DLNR permit if you're makai of the shoreline; or if you're mauka, you need a County permit. And three, if you build something along the shoreline and the shoreline is retreating, there's a good chance that now that structure is in the State's jurisdiction, which is also the public domain. Because we have the right in Hawaii to walk anywhere on the island makai of the shoreline. So if somebody's structure is there, what do they have to do? They have to buy an easement or they have to remove that portion of the structure. So Shoreline Setback Determination just determines where your shoreline is and where your setback is. It's valid for one year.

Shoreline Setback Approval is for things that are explicitly listed in your rules. It's allowed in the setback area. Things like minor structures, gazebos, and barbeques and that kind of stuffs. And a Shoreline Setback Approval with conditions says okay you can build a barbeque, but you can't make it out of CMU block and pour a 60-foot concrete pad and, you know, have propane torches there. All right? Okay.

Finally, you have Shoreline Setback Variances, which are approved through a public hearing process. All landowners within 500 feet are notified, and you're the decision making authority for that.

What's permissible on your setback area? Anything less than \$125,000 which does not adversely affect beach process, doesn't artificially fix the shoreline, doesn't interfere with public views, and doesn't block public access. If you build something in the setback area, it has to be elevated on pilings or columns above base flood elevation. The County has to be held harmless, and you can't harden the shoreline to protect that structure later. The reason we want to use post and pier is that means the flood waters can go underneath your house. Just like plantation homes. Also it means that as the shoreline retreats – like the picture I showed you of the house that fell in the ocean – they could've gone out there and just picked the house up and moved it back and set it back down again. Most coastal States – North Carolina, east coast, Texas – this is a requirement. You cannot build slab on grade. You have to do post and piers. They do four story houses – big ones – 8,000 square foot. Well, okay, I don't know about 8,000 square foot, but they build very big houses. And they come in, and they pick them up, and they relocate every 10-15 years.

Get out of the way.

There are some other things that are permissible. A structure activity that was there since 1989 – that's before the law really became effective – agriculture, aquaculture activities, public boating, water sports, recreational facilities, beach nourishments, restoration projects, existing non-conforming structures, minor structures which were defined in your rules very explicitly, and any repairs to a legal structure up to 50%. But you can't enlarge, expand or intensify its use. That means, if you're a one-story structure – old plantation home down next to a shoreline – you can't add a second story. So the wave comes in, knocks out the first story. If you're living up stairs, it really doesn't matter. You're going to be in the water too. Repairs to a non-conforming structure – you can repair it, as long it wasn't damaged by coastal hazards. If it was damage by coastal hazards, it's pretty obvious you're in the wrong place, so move out of the way. Yes?

Ms. de Jetley: Do you have a beach area with sea walls – lava rock walls – and the walls are – it was built without a permit, and the walls are damaged by wave action. They can't be repaired now can they?

Mr. Abbott: No. Well, first off, you'd want to establish whether it was non-conforming, which means was it built before there were any regulations prohibiting it. You said it was built without a permit. Well, Hawaii has built fish pond walls without a permit too – well permission – so those are non-conforming. And you can repair those so long as they weren't damaged by coastal hazards. Now if you want to repair it, you can come to this Commission and ask for a variance and you can repair it that way. But you can't go out and get a permit to repair it.

I won't go through all the conditions here except the last one – the last two. The Commission can approve sea walls to protect the legally habitable structure or public infrastructure. If it's an illegal structure, then technically you can't really approve it – a sea wall or some kind of shoreline hardening. You also couldn't approve it for private infrastructure which is kind of interesting – like a private porch unless there was some out weighing public interest. And then finally private facilities or improvements as long as they don't adversely affect beach process, don't fix the shoreline and result in a hardship – so it wasn't allowed.

There are some mandatory conditions. You have to maintain safe lateral access to and along the shoreline for public view, or you have to compensate for its loss. So for that unlawful seawall, if they want to bring that into compliance, legitimize it, and the Commission says yeah, you can leave it there, well, they better compensate for blocking access along that shoreline. And they can do that by buying an easement from DLNR. You have to also minimize the risk of adverse impacts on beach processes, minimize the risk of the structure failing, minimize adverse impacts on public views except for one-story building. You might want to correct that in your Rules as well. So I could come in here,

request a variance for a big pink and purple striped house on the shoreline, and you couldn't deny it because it would have an adverse impact on view plains based on your rules. And also, complies with the flood hazard erosion sedimentation rules. And I think that's about wraps it up.

Ms. Kaye: Wait, wait, wait. Can you back up and just provide a little more detail on which ones you said should be changed?

Mr. Abbott: The one, two, three, fourth dot point.

Ms. Kaye: Right.

Mr. Abbott: The second one to the bottom.

Ms. Kaye: So you're saying that one-story building shouldn't be exempted.

Mr. Abbott: No, no. This doesn't relate to -. This relates to a variance to build something in the shoreline setback. So if I wanted to build something right next to the ocean and I met all the other criteria except for impacting views, that the only reason you could turn it down was it hurts the view - technically, you can't turn it down for that reason. So you could turn it down if it didn't meet flood hazard or if it was like maybe subject to coastal erosion. Let me give you an example - you have some beautiful sea cliffs. I could build right up next to the sea cliff - I mean in the setback area - and I can come to this Commission and say I want a variance. And I can argue, well, I meet all the codes and it's an allowable use, but would you really want that right next to one of your beautiful sea cliff? I don't think so.

Ms. Kaye: What kind of language would you use?

Mr. Abbott: I'd delete the except for one-story buildings.

Ms. Kaye: That's what -

Mr. Abbott: Just approve it. Lastly, I do want to mention two things. This is not a land use management tool. The primary objective is to keep people out of harms way, keep structures out of harms way so they don't incur damage, and keep our beaches and our shorelines open for fisherman, fisher folks, and tourists as well as local use. So, in that context, we actually manage the coast line. And there's a couple of things we've done in the last couple of years. We've implemented some Federal performance standards. We've created a website. We have a lot of brochures. When people say I didn't know I needed an SMA. I don't know what an SMA is. You know, go to our website. We have lots of nice brochures and handouts that we can give you that explains the process. We've developed a cross agency team to assist any ocean front owners. You can get six to eight technical experts for free. We've got studies to streamline and improve the effectiveness of the SMA

process. And we have a view plain analysis that we've developed. We update the beach management plan. We've substantially increased the after the fact permit processing fees. And we've obtained about \$140,000 in Federal funds for beach protection and coastal conservation.

And with that, I'll take any questions and we'll go into the EA process unless you'd like to take a short break.

Ms. Kaye: So you have this left and then we have Corporation Counsel, and that's it for our orientation?

Mr. Abbott: Yes.

Ms. Kaye: Okay, then why don't we take a five minute break.

Mr. Abbott: Okay. Thank you for the time.

Ms. Kaye: Thank you.

(The Lana`i Planning Commission recessed at approximately 8:00 p.m., and reconvened at approximately 8:10 p.m.)

Mr. Abbott: All right, are we back in session?

Ms. Kaye: Yes, we're back in order now.

Mr. Abbott: Okay.

Ms. Kaye: Thank you Thorne.

Mr. Abbott: Thorne Abbott. Coastal Resource Planner. I'm going to go over Environmental Assessments and Environmental Impact Statements. The first thing I'm going to say about EA's and EIS' is they are an information disclosure document. They do not say you're not going to have a negative impact. DOT could've done an EA or EIS for the Super Ferry and said we're going to run over whales, and that would be perfectly acceptable. You cannot sue them and say you didn't do a good EIS because you said you're going to run over whales. They're going to say, we're going to run over whales. But we have a compelling public interest or we're going to mitigate that by having some guy, some friend, who when he sees the whale, he's going to hit the tail button to the engines.

The Environmental Assessment Laws is Chapter 343, Hawaii Revised Statutes, under the State Constitution. This organization reviews EA documents and EIS. Chapter 343 was adopted in 1974. It looks at environmental, social and economic consequences. It assures

public participation. The EA is noticed. It's published in the Office of Environmental Quality Control Environmental Notice which is on-line. It comes out every two weeks. How does it apply to projects? Well, all projects are subject to the law, but there are nine triggers that includes some exemptions which is the second subset there. And some of those projects will require an EA and some will require an EIS, and I'll explain the difference there. There's two kinds of actions – an agency action and an applicant action. An agency is when a government agency does something. They trigger environmental compliance. And they are usually their own accepting authority. Yes, that's like putting the fox in the hen house. But the agency's proposing it and they're going to write about what they're proposing, what alternatives there are, how they're going to avoid, minimize and mitigate any adverse impacts. Any private action is also subject to this, and that would be like Castle & Cooke or any commercial enterprise. There are however 10 exemption classes, so we'll get into those.

What are the nine triggers? Use of State and County lands for funds; use of the shoreline area; use within historic sites as designated in natural or historic register – I think one of your question, Gerald, was if the town of Lana`i was nominated as a State Hawaii Register, then it could trigger environmental compliance to have an EA or an EIS which this body would review. If was a private action. If the government, for example, the recycling center of Public Works, if they had an action, they would be their own accepting authority of that EA, and you would be a commenting agency. You would not be the accepting agency. You would comment on that. If you want to have a General Plan or Community Plan amendment, which you're proposing waste water facility, waste to energy facility, landfills, or oil refineries, or power generating facilities such as the new solar array. Also any use of conservation district lands or reclassification of conservation district lands, any helicopter facilities, and if you happen to be in Waikiki, that's also a trigger.

Ms. Kaye: Can you go back for just one second? Yeah, right where you are. Use of conservation district lands triggers an EIS?

Mr. Abbott: No. Compliance with this law, Chapter 343.

Ms. Kaye: But, if someone wants to use conservation district land, they go to DLNR for a conservation district use permit.

Mr. Abbott: That's correct because County zoning doesn't apply on conservation. Community Plan does, an SMA does.

Ms. Kaye: So if the Community Plan had conservation district open spaced zoning?

Mr. Abbott: Then you would have a land use inconsistency that would have to be resolved probably through a Community Plan Amendment, unless the proposed action is going to be something that's allowed in open space such as a picnic table or a camp ground.

Ms. Kaye: Okay. Thank you.

Mr. Abbott: Okay. If you have to do an EA because you're building, say a house, in conservation land that your Community Plan says that's an appropriate use, then the accepting authority, I believe, is the DLNR, not this body. But this body would comment on that EA, or have the opportunity to. Okay, so this is a chart of how the process works. It usually start out with pre-consultation activities. The applicant, whether an agency or private individual, will go out and talk to members of the public and affected parties. They determine whether or not there might be significant impacts. If there's no significant impact, they'll prepare an Environmental Assessment, a Draft EA, or DEA. That DEA explains what a potential impact there are, what the action is, what the potential impacts are, what alternatives are being considered, and what resources would be loss from that action. If there are no impacts, then there's a 30-day comment period on that Draft Environmental Assessment, and that's published with the OEQC website, and it's also usually available at the public library to review. At the end of the 30-day public comment period, the applicant prepares a Final EA. And that Final EA includes all the comments, and a response to all those comments. And maybe the comment is, "Super Ferry is going to hit whales," and they respond , well, it might, but we're going to put somebody on the front of the Super Ferry to have kill switch to the engines, and we think that will mitigate that negative impact. Now what happens if you miss the 30-day comment period. It doesn't mean you can't comment on it. It just means that the agency or whoever is proposing the action doesn't technically have to respond to your concerns. Now when they go to the public hearing, which is held with this body, because you're the accepting authority – if a bunch of people had comments and the applicant never addressed those even if they're after the 30-day comment period, that's probably going to create some consternation and a long public hearing. So it behooves the applicant to respond to all comments, whether they're within the 30-day period or not. You do that and the Final EA. You review that Final EA. If you determine there are no impacts, you issue a Finding of No Significant Impact (FONSI). If there are impacts that are not avoided, mitigated or minimized, or outweighed by some compelling public interest, then you can basically state that should be an Environmental Impact Statement.

If you get a FONSI, they publish that in the OEQC Bulletin. There's a 30-day challenge created for that. If no one challenges it in 30-days, you can begin processing your other permits, such as an SMA, Community Plan Amendments, something like that. On the right side, we have the Environmental Impact Statement. Again, it's not saying there won't be an impact. What it's saying is under the Environmental Assessment process on the left, you found there were going to be impacts that weren't explained sufficiently. For example, maybe somebody is going to put a big development in, a big housing development, and you think there will be traffic impacts. But within the EA, they never discuss traffic. Well you have the right to say well that's an impact. We think there's going to be impacts, so we need more information and we're going to bump this to an EIS. Technically if you did that at the Draft EA point, said we need traffic impact study, then they come back and have that

impact study within their final EA. So you can always bump it up to an EIS. In EIS, they're going to do an EIS prep notice. There's a 30-day public comment. They prepare a Draft EIS. There's a 40-day public comment period after that. And then comes the Final EIS. If it's acceptable, there's a 60-day challenge period. If it's not, then they can appeal that over the 60-day period.

The Department has not processed very many EIS'. Typically an EA is sufficient. As I mentioned, it's to explain the impacts. It's not to say you're not having it. It's also to say what mitigating measures you're going to have. You see on the right hand side, you have that big red area, the exposed soil – this is a development that they said, okay, we're going to grade all this area, and not use silt fences. Well, then that's an impact. It's not being mitigated. And you can say, well, you need an EIS. However, if they said we're going to put silt fences, we're only going to do this during the dry season, then that would mitigate that potential negative impact of the sediments going out into the ocean. And they also have to look at alternatives.

You want to look at all phases of an action. You have four discs here. You have a primary and secondary action; you have regional compared to site specific; you have short term and you have long term impacts; and then you cumulative impacts and you have to overlap of all those. So you want to look at all the different types of impacts based on the significant criteria that's provided in the law, and then you want to consider unresolved issues.

So what's a primary impact? Okay, well, on the left side, you can see there's this big puka in the forest filled with these white things called houses. That's a pretty primary impact. You just wiped out a lot of wildlife habitat. The deers can't roam through there anymore. A secondary impact is that because they have roads there and parking, people's oil – in a rain storm – people's oil will leak out of their transmission, or car, and it will land on the street and it will run into the storm gutters, and that oil will eventually go to the ocean. That's a secondary impact.

You have regional as opposed to site specific impact. A regional is something – it's an effect caused by a proposed action. It's going to have a larger scale regional basis like somebody is putting in a 400-unit subdivision. You can pretty much predict that's going to have a traffic impact. So you can ask under the EA to explain what that impact may be, conduct studies what that impact may be, and describe any avoidance, mitigation measures that might be used. Site specific impact, well, if somebody is building a house, you can't really say well what's your impact going to be on traffic? It's a house, and you'll have to be at a really big house to have any real impact on traffic. So you want to look at smaller effects that are caused by that house. Is it going to use an individual waste water system, like a septic tank? If it's going to use septic tank, is it right next to a fish pond or an essential wildlife area or a fishing site because that septic could have an impact on it.

You have short term - long term. Short term is obviously something caused right away. Here you have a golf course. One of the immediate impacts is you have this body of water and a lot of birds are going to come there, use the water in the open space. A long term impact is that water is probably going leech through and go down into the ocean. And if you used a lot of fertilizer to keep that grass nice and green and that went into the pond, and eventually, it reaches to the ocean, that's a long term impact. So you would want to look at those two.

And finally, cumulative impact. The impacts on the environment resulting from incremental impacts of the action when added to other past, present and reasonably foreseeable future actions regardless of what agency or person undertakes such actions. So here you have traffic. On the left, you know, there's not a lot of traffic some from an extra house, and another extra house, and another extra house. But at what point do you have so many extra houses that you have a traffic jam on the right hand side. So you want to keep cumulative impacts in mind as well.

Finally, there is significance criteria and you'll see the underline. It involves an irrevocable commitment or through loss or destruction of any natural or cultural resource. It curtails the range of beneficial uses of the environment. It conflicts with State long term environmental policies or goals and guidelines. It substantially effects the economic and social welfare of the community or State. Substantially effects public health. Involves substantial secondary impacts such as population changes or effects on public facilities. Involves substantial degradation of environmental quality. So you can hear – you know these are pretty strong words – irrevocable, destructions, curtails, conflicts, substantially, substantially, substantially – it has to be something pretty big – that's the criteria. As long as they can mitigate or modify those impacts, that's what the EA is going to explain. I won't go through the rest of these.

There's also quantified – qualitative and a quantitative. Quantified is something that you can measure such like parts per million of air pollution, or levels of service of traffic. Qualitative is more subjective – things like scenic view and aesthetics.

And lastly, mitigation measures – you know, if they're using best management practices, or turn lanes to improve level of service in traffic, or they're putting in an archaeological monitoring when they're doing site altering or grading. These are all things that are in the EA and you can't say, well, you need an EIS because your mitigation measures aren't sufficient. You can ask for them to improve their mitigation measures or to put mitigation measures in. Again, it's an information disclosure document. It's not a decision making document as to whether you approve the project or not.

The alternative analysis, you have to look at potential impacts and mitigation measures. You have to seek community input. You have to discuss any beneficial uses. You have to look at the preferred alternative in the least detrimental effect on the environment. And

you have to have a list of alternative methods, for example, a different site, a different location, a different density. Instead of a 400-house subdivision, it would be 200, or do 200 that are three-stories, instead of one-story; redesign the project; or you also have to look at the now alternatives as if you had no project at all.

And finally, this is about how applications can come to you. Ann Cua came up with this slide. And some of the Commissioners are concerned that it seem like everything that comes to them, the Department recommends approval. And I want to explain a little why that is. The public doesn't fully understand that all the time. First off we get an application. It's assigned by Clayton to a planner. The planner reviews it according to the criteria of the Maui County Code. We look at it and we say is this acceptable? Well if it is, well, we'll transmit to different government agencies to get their comments. If it isn't, then we write the applicant a letter and say, hey, you're proposing a 400 house subdivision here, and you don't have anything about traffic. I'm not going to go up to the Commission and give this to them without anything about traffic. I need a traffic study. So then we write them a letter, explain that – usually meet with them – and we come up with a plan on how they're going to address these issues. Once all those are addressed, then we transmit it to different government agencies we think would have a kuleana. For example, if you're going to do excavations, we're probably going to send it to State Historic Preservation Division. They're the authority. They're the technical experts to tell us, do you need an archaeological monitor on site? Do you need a monitoring plan? Has an inventory survey ever been done here? If they say, no, we don't need a survey. This is land that's been messed up for 100 of years. We don't have any history here of use. We accept that. They're the authority of that area, so we accept that. We add that into the application as an exhibit.

We usually give the agency 30-days. Some of them aren't really good about responding in 30-days, so we send them a little reminder notice. The planner tries to get the agency comments in as exhibits to your applications. However, let's say, the SHPD and the applicant have a disagreement. Then we suggest to the applicant to go to SHPD and resolve that disagreement, and they come up with some solution. Maybe that solution is the applicant comes up with a monitoring plan, or performs their own inventory survey and that becomes part of your application. Okay. Once we've resolve all these issues, then we'll actually deem it complete and we'll schedule it for public hearing. So as you can see, before it even gets to you, there's a good chance it's either going to get delayed or held up or maybe even not get to you at all. Once we do that, we send a letter to the applicant, all government agencies, and tell them 45-days prior to the public hearing. Because you're going to have the public hearing, the Department publishes a notice 30-days prior to the hearing. The applicant has to mail out a notice of the hearing 30-days prior to it. We actually spend, I believe Clayton said, \$800 on publishing these hearing notices. We only charge the applicant \$550, so government is helping the applicant there – or government service.

The government also publishes a notice in the paper for three weeks, and then the planner prepares a report and a recommendation. We come to hearing. The Commission can recommend approval. If that's the case, for example, Community Plan Amendment or a Change in Zoning, then we prepare Land Use maps. Those Land Use maps go to Corporation Counsel, who prepares the actual ordinance. And that ordinance and the application and the Department's report and the minutes of the meeting are all transmitted to County Council through the Mayor's Office for them to review, and approve or deny.

Alternatively, the Commission can recommend denial or disagree with the Department's Recommendations. And that also, same thing, it's transmitted to the County for their decision if it's a Change in Zoning or Community Plan Amendment or District Boundary Amendment. With that, I'll conclude and I welcome any questions. I thank you for all your time. I know this is a lot of material and it's kind of lengthy.

Ms. Kaye: Thank you Thorne. Any questions Commissioners? James.

Mr. Giroux: Thank you Sally. I guess the topics that I'm suppose to cover are discussion of Boards and Commissions booklet distributed by the Corporation Counsel. That's this one.

Ms. Kaye: James, remember now, we've all been through this.

Mr. Giroux: Okay.

Ms. Kaye: And some of us, several times.

Mr. Giroux: And this is the updated open meetings pamphlet, so this is the newest one we have from the Office of Information Practices. So that's the two handouts. Since everybody has gone through it, I'm just going to do a refresher thing of some of the new things that have come through or just a quick highlight of what's in the new pamphlet. Basically, it talks about ethics and it also talks about the sunshine laws. And the new handout has a very intensive discussion of the sunshine law. And it also includes a lot of commonly asked questions regarding the sunshine law, as well as, the actual law itself, straight out of HRS 91. So, I'm also suppose to be talking about recent Supreme Court Cases, the public shoreline PASH, and the Topliss Case.

And the only update I have is that as far as the recent U.S. Supreme Court decision – this is still regarding the Noland and Doland Cases. And those are the cases which – if you're going to do any type of exactions at this level, that you have to look at the rational nexus, and you have to do a proportionality test. So the rational nexus is what is the permit that you're doing, what's the impacts that's causing, or what's development that's causing an impact, and what is the condition doing to reduce that impact? Then you have to say is the developer carrying a burden that's proportional to the impact that he is causing? I think

Thorne mentioned you can't make somebody build a whole road just because they're going to build a few houses. That's the proportion part because they're going to add a few more cars to the road.

The PASH case, what I want to bring to light is that there is also – what goes along with that case is the Kaupaakai versus Land Use Commission. And that was decided by the Supreme Court in 2000. Basically PASH is about preserving native Hawaiian and cultural rights when you're looking at Land Use Permits. And what Kaupaakai did is it set out a very clear methodology of which to go by making sure that you do follow that. This is a case itself – I don't know how many pages long – but it's a pretty big case. But I'm just going to read into the record the text in order for this Commission to be in accordance with Article 7. It says in order to fulfill its duties to preserve and protect customary and traditional native Hawaiian rights to the extent feasible, the agency and its review of the petition or permit must at a minimum make a specific findings and conclusions as to the following: the identity and the scope of the valued cultural historic or natural resource in the permitted area including the extent in which traditional and customary native Hawaiian rights are exercised in the petitioned area. And two, the extent to which those resources including the traditional and customary native Hawaiian rights will be affected or impaired by the proposed action. And three, the feasible action, if any, shall be taken by the agency to reasonably protect native Hawaiian rights if they are found to exist. So it's just important that when you have a permit that has a final authority that this type of analysis goes into your findings and your conclusions.

The last case is the Topliss case and that case is significant as far as having to meet a criteria in order to deny an SMA permit. And basically you have to first – you have to first find that there's an ecological impact that's occurring. Just because there's an impact, doesn't mean you can automatically deny the permit. What you then have to do is you have to look at some type of mitigation and that mitigation has to basically do something to bring that permit or that impact – I'm trying to find the exact language here. So what you have to do – the final thing is that when the – to determine whether that effect should be practically minimized, that mitigation, and when minimized, whether that effect is clearly outweighed by the public's health, safety or compelling public interest. So you have to make an attempt to get mitigation before you can reach the level of actually denying an SMA Permit.

The last case that I'd like to bring to attention, and this has to do with how the Board conducts itself as far being that this Board has a lot of review responsibilities, but it also has what we call adjudicatory responsibility. And mostly, these adjudicatory responsibilities are when you're the final authority. And a lot of times, it's your SMA, and I believe, the Special Use Permit, where you're the final authority. And with this new case, E & J Lounge, it was taken up by the Supreme Court, and the significance of that case is that it gives guidance. When this case was reviewed and the analysis was given, it gives guidance to the agencies that it's not what you call the case. If you don't call the case a contested case, it doesn't

mean it's not a contested case. What the Supreme Court looks at is the nature of the rights that are being asserted. And if you're the final authority and somebody is asking for – in your case a Land Use Permit – and you're the final authority, it's more likely than not that that's going to be seen as a contested case even though not all the formalities of a judicial proceedings are taking place. Like, you know, witnesses testifying and lawyers cross examining witnesses and such. These are all the rights that somebody has in a contested case. But just because those rights aren't asserted does not mean that that person is not in a contested case and shouldn't be given all of those rights. What's really important in this is that, an agency in a contested case is only supposed to look at the evidence that is in the record. And that means that there's very strict rules about doing independent investigations, receiving ex-parte communications, getting information that the Board that's not available to all of the Board members, and that information should be given in the hearing because the person who's asking for the permit does have a burden of proof. But if people have information that are outside of the record and they're making decisions based on that, it's not going to be fair to the applicant. So the Supreme Court would not look kindly to that. If it's found out that there is outside investigation going on that's not being presented in the hearing, then it could affect the outcome of the permit. (*Changed cassette tapes*) So it's very important in that light.

As far as the Ethics goes, the only two things I want to really quickly highlight is gifts, receiving of gifts, and recusing yourself for if there's a conflict of interest. If somebody offers you a gift, it should – you should in your mind think what is this gift for? If it can be reasonably construed that that gift is to influence your job, your ability to do your job as a Commissioner, then it should be brought to the attention of either the Ethics Commission or you can call me, your attorney, to discuss it of whether or not you should receive that gift or not. The other issue – well, and if I can't help you to clarify that ethical issue, then you can get a formal request from the Ethics Board. The other issue is disclosing any financial interest you may have in any project that comes before you. If you're not sure, you know, if your cousin's uncle's brother, you know, works for the Company or something like that where it might be kind of tenuous, you can talk to me about it, and I can try to, you know, help you through the analysis. If I can't, then you can also get a formal opinion from the Ethics Board of whether or not you should recuse yourself from voting.

If anything, you can, your Rules allow you to disclose a potential conflict and that you can participate in the discussion of the project, but you can't vote if you feel that you have a vested interest or something in that project. It's important that you bring it out early because your Rules allow – well, your Rules state that if you don't vote, if you abstain, and it's not for the reason of being a conflict, then your vote we'll look at as an affirmative vote. So it's very important that you look at these projects when they get on the agenda or you get the packet, and if you know that you use to work as a consultant for this project or something like that, to bring it up early in the proceedings.

The ramification, other than being an ethics violation, is that if you're the – if you vote and

you shouldn't have voted, and only five people vote for it and you're one of those five, the Courts could, if challenged, could over turn the decision of the Board and remand it back for further proceedings because of that tainted vote. It's what they call a determinative vote – the vote that actually made it an action – because you need five votes, five affirmative votes. So if there's any questions, you probably should use your time more wisely to field questions.

Ms. Kaye: Commissioners, any question? Gerry needs a nap. Any questions? I know James has always made himself so available, and I know we all feel comfortable contacting him if we can't think of anything tonight.

Mr. Rabaino: Being that this is a Company town, and 80% is employees for Castle & Cooke one way or the other. And like for me, example, and there's a project coming up, if I – what's that word I'm looking for – abstain, refuse, recuse and I don't vote just to be on the safe side, for one as employee, and two for other reasons.

Mr. Giroux: Well OIP has written – not OIP – the Ethics Commission has written several opinions on that but they always come back and say well we need to look at the specific project and look at the specific situation. You know, it might be a case where your position in the Company really doesn't affect, you know, much. But it also could be a situation where your position in the Company does affect your interest. And I think your question is if you're just an employee somehow and you're comfortable voting and you abstain, I think if you disclose the possible conflict and you abstain it would be under your Rules for the purposes of a conflict. So it won't be looked at as an affirmative vote. But you have to say that. I mean, you have to bring it out and say, you know, I'm not going to be voting on this because I'm the pool maintenance guy and this permit is for the renewing of the expanding the pool permit or something. It may or may not be an actual conflict, but if you're raising it, if you raise it, and you abstain then it's not an affirmative vote.

Mr. Rabaino: What if you're getting financial - like a paycheck - would that make a difference? I mean, your income is your paycheck.

Mr. Giroux: Yeah. Like I said, it depends. I know if that comes up, you can raise it with Corporation Counsel or you could get an ethics' opinion, but historically, they've always really looked at the specifics of the case. I mean, not just that you're an employee, but what is the benefit you're going to get from getting that permit.

Ms. Kaye: James, let's try to ask the question a little differently. Because there is one single large employer, there might potentially, hypothetically be a time when a Company employee, someone who has serious ties to the Company chooses not to vote, and do they need to give a reason for that?

Mr. Giroux: No, I mean, they could just state that, you know, they have significant ties.

Ms. Kaye: They want to abstain.

Mr. Giroux: This is a Company permit, and I have significant ties. What happens in jurisdictions, although, like you said it's a Company town, this is not unusual on the mainland. There's a lot of towns which are company towns, and so, you know, it may occur that five out of nine commissioners work for the company. Now if you can't get a vote because everybody recuses themselves, then the law looks at the law's necessity. Is it necessary to have government actions and have people who may have potential conflicts vote just so you could have due process. So it becomes very tricky in that sense. But the burden falls on you as a Commissioner to say this is my comfort level with this. And if it really is a problem, then we got to get an opinion from, an official opinion from the Board, I mean, from the Board of Ethics.

Ms. Zigmond: What about a negative gift, like a threat?

Mr. Giroux: Well, I guess that raises different issues. In ethics, if you're going to give somebody a benefit out of fear of losing a benefit, that may be seen in the same light. Because the idea is that the Board should be making its determinations based on the merits of a project, in of itself, and that the Board should be impartial in that sense. The Board has to – you know, they have to look at the rights of the applicant, they also have to look at the rights of the public that are depending on the public process. So that is an issue that you, as a Commissioner, have to grapple with. Again, you can ask the Board of Ethics for an opinion.

Ms. de Jetley: You know I think I have a situation especially now because of the newspapers that I have, that I started in December. I not only do business with Castle & Cooke because they are my landlord, but I'm also a vendor to them. And Castle & Cooke along with 50 other businesses on Lana`i are buying advertising from me. So I feel that I can remain impartial and listen to what's presented to us in these meetings rather than you know someone who buys \$45 worth of advertising isn't going to influence the way I vote. And I don't feel that for the amount of money that Castle & Cooke pays me for advertising in my paper, they can't buy my vote. But I am very pro-business and 3/4 of the applicants who are coming before us are people that I know and do business with. Also, a lot of the people who were here to do the recycling center. I do business with Tri-Isle Resource Development. So for me to disclose every single time someone comes in and appears before us, it would be almost impossible for me. I've been doing business in this County for more than 30 years, so I do know a lot of people. So what should I do?

Mr. Giroux: I think you're going to have to use your discretion of whether or not you feel somebody could actually challenge that. Like you said, you know, I buy groceries at the store, you know, is that going to influence me? You know, and that's, you know, ethics is – that's something you've got to grapple with. You've got to balance, you know, is this something is a reasonable that somebody would say that this would create an impartiality.

Those are the types of things. And that's why we have a Board of Ethics because it's a panel, and they would weigh it.

Ms. Kaye: I would just like to say that I think there was a really uncomfortable moment at the last meeting when one of the Commissioner expressed some fear of retaliatory action if a permit wasn't granted. And I know that I've been approached as Chair questioning several members on the Commission and their loyalty. And I've encouraged those people to come and do it publically if they have an issue with that. I don't know what individuals can do, but I just wanted to remind everyone that when we do these permits, we should, and I said this last time, decide them on the evidence on the record and not use information that's not provided. And I think as long as we do that, we should all be fine.

Ms. de Jetley: Another thing that we have to consider living here on Lana`i and being in such a tight community – I do business with Beverly. I do business with Sally. I communicate regularly with Letty. Gerry and I are personal friends. And there are many occasions when three or four or more of us are at the same function. So I think, speaking as a Board Member for myself, I am always very, very careful not to discuss any Commission business.

Ms. Kaye: Okay, any more questions for James? James, do you have anything?

Mr. Giroux: Nope. That about covers it. And like I said, feel free contact me at work and I can take e-mails, phone calls.

F. DIRECTOR'S REPORT

- 1. Open Lana`i Applications Report.**
- 2. Agenda items for the May 20, 2009 meeting.**
 - a. Water Workshop No. 6 - Keba Maly**
 - b. Orientation Workshop No. II**
 - 1) Long Range Planning**
 - 2) Flood Hazard District Ordinance**
 - 3) County Policy against Sexual Harassment**

Ms. Kaye: Thank you so much. Okay, next we have open Lana`i applications report and I actually found something in the minutes that just went right past me last time. And I e-mailed Joe and asked – told him I would ask Clayton for details on one particular thing that Joe said. These are pretty much the ones that were on last month, so I don't think we need to have Clayton go down them one by one.

Mr. Yoshida: Thank you Madame Chair, Members of the Commission. There was an

inquiry about LPAS 2008/0021 from the last meeting. And in checking with the planner, this is a landscape planting approval for the Palms at Manele Bay. This is not an underground parking project.

Ms. Kaye: We thought that was probably a mistake, but I wanted to clarify it.

Mr. Yoshida: Yeah, it is a townhouse project with two car garages. It's a request for an approval of a landscaping plan for that project.

Ms. Kaye: Okay. Thank you. Does anybody have any questions on the open projects report? Okay, then the next thing we have is the agenda items which we can all read for ourselves. And I think based on our discussion tonight that we're going to ask Clayton that we agenda a discussion on some rule changes for Chapter 12.43 for our Commission Rules. First would be to allow – and several of us recall that we've had this discussion and we just don't know what happened to it – allowing the Planning Commission to be the authority for SMA Minor Permits.

And the mandatory variance conditions that Thorne referenced. I'm just going to quote what he said, "minimize adverse impacts on public views, except for one story buildings." We'd like to agenda a discussion of deleting that language, "except for one-story buildings."

And the third item to put into that discussion for rule change is to reduce the average lot depth to one figure rather than going through that convoluted by date, by whatever. What I'm not really clear on is – and that would be island wide – it would be a uniform rule island wide. I'm sure I'm comfortable on picking a number, but there's a typical lot size number, like 100 feet.

Mr. Abbott: Thorne Abbott, Coastal Resource Planner. What you might want to investigate is what parcel sizes exist already and how any proposed shoreline setback area might impact those parcels. That might give you greater guidance. If they're all large parcels, then you don't have worry so much about small setbacks. You want to allow reasonable use of someone's property in any aspect.

Mr. Rabaino: We have one down there at Kaumalapau. Does that fall under shoreline management? SMA?

Mr. Abbott: I can't speak to that property because I wish I knew your island much better, but I can't speak.

Mr. Rabaino: Because there's an old plantation house camp.

Mr. Abbott: Well that probably be a non-conforming use because it was built pre-1978, I would think.

Mr. Rabaino: Okay, and down the windward side of Lana`i, you have whales tail and the old Keomoku Town. You have some 39 properties listed on that side. Out of the 39, you would have five that is close to the shore.

Mr. Abbott: Well, what is close to the shore?

Mr. Rabaino: 200 to 300 feet from the existing dirt road.

Mr. Abbott: Okay. So this is makai of the dirt road?

Mr. Rabaino: Yes.

Mr. Abbott: So that's what I'm suggesting is maybe you'd want the Planning Department to look at what parcels are makai of the road that would be, you know, maybe subject to shoreline setback. Because you don't want to make it so big that people can't use their property.

Ms. Kaye: So Clayton, how can we do that? You know, for us to get us online and look on the Maui tax map and see what the – is not the way to go. So is there an efficient way to figure out how many parcels there are down there? I don't believe there are that many around the shoreline area that would be impacted by this.

Mr. Rabaino: The existing one is the one is the house that they built, the (Inaudible) Lewis place, yeah.

Ms. Kaye: Well, but it's not just the houses that are there. That's not the point. The point is this is for somebody coming in and saying on my property I want to build, then there would be a setback that would apply to them.

Mr. Abbott: This would relate to new construction.

Ms. Kaye: Right.

Mr. Abbott: Not existing. May I ask, how many parcels you think are makai of the road? And do you think they all have TMK's that are relatively accurately reflected?

Ms. Kaye: Some of them are pretty old. I mean they're old kuelana. Some of them have buildings on them, and some of them don't.

Mr. Abbott: Okay. But as far as the TMK, the actual parcel boundary, that should be fairly accurate.

Ms. Kaye: Yeah. The spot checking I've done for other things, yeah, they were pretty

accurate.

Mr. Abbott: So maybe just requesting the Department to do a survey of properties within 300 foot of the ocean over on the north-east side.

Ms. Kaye: Lot. Parcels. Not necessarily when you say – you don't mean buildings, you mean parcels.

Mr. Abbott: Parcels.

Ms. Kaye: How about that Clayton? Can we live with that?

Mr. Yoshida: We can try to provide you with that information.

Ms. Kaye: Thank you Clayton. Okay, so we have that. I don't imagine that will show up in the next month or two because I think we have pretty full agendas. But Clayton will let us know when we can have that agenda – this discussion on these three rule changes.

Mr. Yoshida: Yes. Perhaps – I know we're kind of limited, well financially. Well we're still trying to produce this cost savings. But maybe when Joe comes over in May to discuss the Council Resolutions.

Ms. Kaye: All right, that wraps it up for us tonight. Does anybody have anything else they want to discuss?

Mr. Yoshida: I'm sorry. I guess Joe will be here in June, not in May.

Ms. Kaye: Thank you Clayton. Thank you everybody. Meeting is adjourned.

G. NEXT REGULAR MEETING DATE: MAY 20, 2009

H. ADJOURNMENT

There being no further discussion brought forward to the Commission, the meeting was adjourned at approximately 9:00 p.m.

Respectfully transmitted by,

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

RECORD OF ATTENDANCE

PRESENT:

Sally Kaye, Chair
Dwight Gamulo
Beverly Zigmond
Alberta de Jetley (from 6:35 p.m.)
Gerry Rabaino
Leticia Castillo

EXCUSED:

Stanley Ruidas, Vice-Chair
Matthew Mano
Darlene Endrina

OTHERS:

Clayton I. Yoshida, AICP, Planning Program Administrator
Thorne Abbott, Staff Planner
Joseph Prutch, Staff Planner
Cheryl Okuma, Director, Department of Environmental Management
Irene Cordell, Department of Environmental Management, Solid Waste Division
Patience Gaia, Department of Environmental Management, Solid Waste Division
James Giroux, Deputy, Corporation Counsel