

**LANA`I PLANNING COMMISSION  
REGULAR MEETING  
AUGUST 19, 2009**

**APPROVED 09-16-09**

**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, August 19, 2009, in the Lana`i High & Elementary School Cafeteria, Lana`i City, Hawaii.

Ms. Sally Kaye: Okay, good evening everyone. I`m going to call the August 19<sup>th</sup>, 2009 Lana`i Planning Commission meeting to order. Let the record show we have quorum with Commissioners Castillo, de Jetley, Zigmond, Ruidas, Kaye, Gamulo and Rabaino. Well, first on our agenda is approval of the site inspection minutes from last month at the Miki Basin. I sent around corrections and would entertain a motion at this time.

**B. APPROVAL OF JULY 15, 2009 SITE INSPECTION AND JULY 15, 2009 MEETING MINUTES.**

Mr. Gerald Rabaino: So move we accept the agenda on the on-site inspection.

Ms. Kaye: The minutes.

Mr. Rabaino: Minutes.

Ms. Leticia Castillo: I second that motion. Thank you.

Ms. Kaye: Okay. Is there any discussion? Any additions or corrections? Okay, all in favor?

Commission Members: "Aye."

Ms. Kaye: Okay, minutes are approved.

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

**VOTED: to approve the July 15, 2009 Lana`i Planning Commission  
site inspection minutes with the corrections as submitted.**

Ms. Kaye: Now we have to approve the minutes from the regular meeting of July 15<sup>th</sup>. Again, corrections were sent around. I`d entertain a motion.

Ms. Beverly Zigmond: I move that we approve the minutes of the July 15<sup>th</sup>, 2009 meeting

with your corrections and not mine this time. Thank you.

Ms. Kaye: Is there a second?

Ms. Castillo: I second.

Ms. Kaye: Okay, any discussion, additions, corrections to the corrections? Okay, all in favor?

Commission Members: "Aye."

Ms. Kaye: Okay, motion carries. Minutes are adopted.

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

**VOTED: to approve the July 15, 2009 Lana`i Planning Commission meeting minutes with the corrections as submitted.**

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

**1. MR. MILTON ARAKAWA, AICP, Director of the DEPARTMENT OF PUBLIC WORKS requesting review and comments on the proposed Bill for an Ordinance Amending Chapter 18.04 of the Maui County Code, pertaining to Subdivision General Provisions. The proposed Bill addresses the issue of consistency. (RFC 2009/0199) (M. Arakawa)**

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

Ms. Kaye: Next on the agenda is a Bill for an Ordinance amending Chapter 18.04 of Maui County Code pertaining to subdivision general provisions. I believe Mr. Milton Arakawa is going to – from Public Works – is going to make a presentation. Thank you.

Mr. Milton Arakawa: Thank you Madame Chair, and thank you for the opportunity to be here this evening before the Lana`i Planning Commission. My name is Milton Arakawa. I'm with the Department of Public Works and I have a presentation on a proposed Bill relating to subdivision consistency and conformity. And it's fairly rare that you would see me here because generally subdivision regulations are in Title 18 of the County Code, and amendments to Title 18 are not normally reviewed by the Planning Commissions. But the proposal that you have before you this evening does involve Planning and Land Use,

therefore, we've worked closely with the Planning Department and we felt that all three Planning Commissions should have the opportunity for review and comment on the Bill. Basically the proposed Bill pertains to how State Land Use, Community Plan designation and zoning must relate to each other in the case of a proposed subdivision.

What are the current provisions of the Code? We're basically talking about this one provision of the Code, Section 18.04.030 of the Code, which reads in part, "the Director – and this means the Public Works Director – shall not approve any subdivision that does not conform to or is inconsistent with the County General Plan, Community Plans, Land Use Ordinances, the provisions of the Maui County Code and other laws relating to the use of land." This provision has been in effect since 1994, and since that time, there's really been no County Code definition of what conformity or consistency means. Over time what has happened is that conformity has been interpreted to mean that the three designations – the State Land Use classifications, the Community Plan designation and zoning – must all match. Just as an example, if you had a State Land Use classification on a piece of property as agricultural, a community plan designation of agricultural, and County agricultural district zoning on that same property, then this would be considered conforming or matching. But if the three designations do not match, then one or more of the designations would need to be amended if you wanted to get your subdivision of the property approved.

Let's go over some examples of this whole consistency and conformity issue. For example, like if you have a school that's proposed on land which is State Land Use in urban district, and it's public-quasi/public in the community plan, but the zoning for the property is R-1 residential, then you can kind of see that the public-quasi/public and the R-1 residential zoning do not match, so this is not considered conforming. But the school use is actually permissible in the State Urban district. It's permissible under the public-quasi/public district in the community plan. And school use is also allowed within the R-1 residential district. So under the current subdivision code, although school use is allowed within all three of these designations, a conformity requirement would not allow the subdivision to be approved.

Ms. Zigmond: Can I ask a question right there, please? I'm sorry. I'm having a hard time with that. If those uses are allowed in those land designations, then why would it not be conforming? I could see where it's not consistent, but not conforming.

Mr. Arakawa: The interpretation as I was mentioning, the interpretation of conformity means, or has been taken to mean, that all three of those must match. And so, under this example, it does not match, so it would not be considered conforming, and that would not allow the subdivision to be approved. That's under the current interpretation.

Other examples – if you have a single-family residential use that is being proposed – let's

say the State Land Use classification is urban, community plan designation is single-family residential, but the zoning is A-2 apartment – here again, you have the single-family and the A-2 apartment not matching and this is not considered conforming. But if you look at the uses itself, single-family residential is permissible in the State Urban district, for a single-family residential is permissible in the single-family residential district in the community plan, and it's also permissible in the A-2 apartment district. So here again, although single-family residential is allowed within all three of these designation, the conformity requirement would not allow the subdivision to be approved.

Ms. Kaye: If I may – so what's you're attempting to do with this is to avoid a lengthy and costly community plan amendment in order to bring these into consistency with each other?

Mr. Arakawa: That is exactly what we're going to be covering.

Ms. Kaye: Oh, sorry.

Mr. Arakawa: Just another example – this is something that comes up every now and then. If you take a look at that graphic at the upper left hand corner, we have some properties that – if you look at the parcel boundary lines, portions of them – maybe you want to develop a portion of the property in a commercial use, and some properties you have the boundary line extending down to the invert or the bottom of the stream or a dry gulch. But say you just intend to do your commercial development on the portion that's on considered commercial use and you just want to leave the stream portion alone. Let's say the property designation is State Land Use urban, and the community plan designates a portion on business commercial, and the stream portion is open-space. But let's say the zoning for the whole parcel is B-2 community business district. Here again because there is a non-matching portion of open space and B-2 community business district, this conformity requirement would not allow the subdivision to be approved.

The crux of the matter is that in a number of zoning districts, there are a variety of uses which are permissible. If you want to look at it the other way, individual land uses are also permissible in several different zoning districts. And I noticed this chart is a little busy but it kind of illustrates the point. For example, if you have park use – park use is allowed in PK-1, PK-2, PK-3 in the park districts. It's also allowed in the open space-1, open space-2 districts. It's also allowed in R-1, R-2, R-3 residential districts, the duplex districts, rural RU .5 and RU-1 district. Commercial use in general is allowed in the business B-2, B-3; business country town districts; the resort business districts; M-1 and M-2 industrial districts; and it's also allowed in the hotel district as an accessory use. Public parking is allowed in the public-quasi/public district which you would expect. But it's also allowed in the B-2, B-3 business districts; resort business zones; M-1 and M-2 industrial zones. Likewise, apartment uses are allowed in A-1, A-2 apartment districts. It's allowed within the business country town district except on Moloka`i. Apartments are also allowed in the

B-2, B-3 districts; and also in M-1 and M-2 industrial districts. And finally single-family residential is allowed, of course, in R-1, R-2, and R-3 residential districts. It's allowed in the R-0 lot line district; the duplex district, A-1 and A-2 district; and also allowed in the B-1, B-2 and B-3 districts under certain conditions. And the thought here with the business zone was that one structure would be allowed for the business itself and you would be allowed a single-family residential on the same parcel.

What we've kind of found over the years is that in some cases it's really difficult to determine what constitutes conformity or matching. There are some community plan designations, for instance, that are like business multi-family. So if you have a business multi-family community plan designation – let's say you have an apartment zoning, is that conforming? Or let's say you have a B-2 business zoning – is that conforming? But there really isn't any business multi-family zoning per se. So sometimes it's difficult to figure out what's matching. And some of the community plan designations also you have – we don't know what matches with BR – the resort commercial zoning. We're not sure what matches with the duplex zoning. Whether single-family under the community plan matches with duplex zoning or multi-family.

Mr. Rabaino: Under the – can you go back one – where you have business multi-family – are you referring like I'm going to refer to Wailuku? You have Safeway. Right across Safeway, you have those apartments. And then right across you have all that Jack and the Box and Taco. Is that what you're referring to?

Mr. Arakawa: I know several portions in the Wailuku-Kahului Community Plan, this is where they have that mixed community plan designations. And that's one of the community plan areas where you have this type of ambiguity that we have to deal with. I'm not certain how much of it is on Lana`i per se, but I know it happens in Wailuku-Kahului.

Mr. Rabaino: Well, if I'm looking at that phrase right there – the Maui Planning Commission – if they when pass that as is and now you want to change it and apply it to Lana`i and Moloka`i, I mean, to be conforming, I don't know.

Mr. Arakawa: Well the business – the business multi-family, business industrial and the service business residential – of course, it would have to be on the community plan map itself – the adopted map. I'm not certain if there are any of those designations here in Lana`i itself.

Ms. Kathleen Aoki: I don't think there is any of that type of community plan designation on Lana`i. Yeah, so it wouldn't really –. It's basically what he's informing you is that there are these different types of community plan designations, but there's no matching zoning that goes with it, so it gets kind of hard and –

Mr. Rabaino: It applies for them and not for us.

Ms. Aoki: Right, it's not going to apply for you guys.

Mr. Arakawa: So basically what happens is that if the three land use and zoning categories don't match, then if you use the conformity requirement, this would mandate that State Land Use district boundary amendment, community plan amendment and/or change in zoning would need to be applied for by the person who wants to subdivide the property. If a community plan amendment is needed, this would also trigger environmental review requirements under Chapter 343. So that's, you know, the environmental assessment and environmental impact statement requirements. So what the conformity requirement has done is that it affects not only large developers but also small subdividers as well. Conformity basically mandates that many subdividers would need to complete a lengthy and costly permitting process before their subdivision is approved. And it may require State Land Use district boundary amendment, community plan amendment, or change in zoning applications even if a subdivision may otherwise comply with all other requirements. The proposed amendments that you have before you would require consistency. Basically the word conformity is being deleted from the wording, and for the first time consistency is proposed to be defined as land uses that are proposed within the subdivision are permitted by the County General Plan, Community Plan, State Land Use classification and zoning for that portion of the site where each land use is proposed. So, as long as the land uses are consistent, a subdivision may then be approved. And consistency is the same standard that is used by this Commission for SMA approvals. And since the Planning Department is intimately involved with the State Land Use, Community Plan and zoning processes, what the amendments do is that it delegates to the Planning Director as being the appropriate authority to determine consistency. So it's defined and then the Planning Director makes that interpretation.

Currently as part of the subdivision applications, we do not require subdividers to declare a use. But to ensure that subdividers comply with the proposed use requirement, the code amendments would allow the Planning Director to impose conditions to ensure that consistency is carried out. So conditions on use maybe attached to SMA Permits or Project District Approvals which may come before this Commission. The Planning Director alternatively may also require a unilateral agreement to be executed and recorded to ensure that what uses that are being proposed by the subdividers are indeed carried out. So when you receive your final subdivision approval, you can then of course convey or sell the land to subsequent buyers. And those buyers would also be bound by the declarations of the use or by the conditions that are in the SMA Permit or by the unilateral agreement.

So if you go back to our previous examples, under the school use, the school use would be allowed in the State urban district, the public-quasi/public district in the community plan, and the R-1 residential district. All three of those scenarios the use is allowed and this

would meet the test of consistency. Same thing here with single-family residential use. Under these three designation – under the State Urban district, single-family residential in the community plan, and the A-2 apartment district under the zoning – all of these districts allow for single-family residential and this would meet the test of consistency. And where there may be more than one of each State Land Use community plan or zoning designations for a proposed subdivision, the proposed amendments state that consistency can be determined for that portion of the site where each land use is proposed. If you remember, too, that property that was – there were more than one designations on it – we're basically looking at the use for that portion of the site where each of the land uses are proposed. And the subdivider would be bound to the proposed uses through conditions of approval or through a unilateral agreement.

As I've noted, we've worked with the Department of Planning on this proposal and the Planning Department and the Department of Public Works are recommending approval of the proposed Bill. And we believe the amendments would provide much needed clarification as to how State Land Use Community Plan and zoning must relate to each other in the case of a proposed subdivision. And we believe that consistency, rather than conformity, is a fair and reasonable basis on which to approve subdivision of land in the County of Maui. So, with that, I'd be happy to answer any questions.

Ms. Kaye: Commissioners, question before we take public testimony?

Ms. Alberta de Jetley: What kind of time table – if like I had a piece of land and I needed to come in to be conforming, what kind of time table are you looking at to have it processed? Like six months, a year, two years? Because you're working with three different zoning things.

Mr. Arakawa: Under the existing interpretation, if conformity is required and your piece of property is not conforming, you would have to change one of the three designations, the State Land Use, Community Plan or zoning so that it becomes conforming first before you can get your subdivision approved. Now the timing on either one those may be any place from six months to 18 months to two years – in that general time frame – depending on the issues that may come up.

Ms. Kaye: So if I understand this correctly, and I have a couple of questions on process, this will shift to a the Planning Director for a finding of consistency of intended use which would shorten the process potentially.

Mr. Arakawa: It could shorten the process for some applications, and as I've mentioned, under the subdivision process now, there is this additional standard which is required of conformity and it's –. Under the SMA application that you currently consider, you look at consistency right now, so we're trying to make the subdivision process – for a lack of a

better term – consistent with what you do now under the SMA.

Ms. Kaye: It occurs to me that the Planning Director will have an increased amount of power to impose conditions. You in fact referenced, here, that the Planning Director can impose conditions to ensure consistency. Could you give me an example of what you consider a condition?

Mr. Arakawa: The condition is related to the use. If we have a subdivider that comes in and they say they're going to be doing a school use, that would be – well that could be one of the conditions of approval. That school use would be required on, you know, whatever tax map parcel that is being proposed for subdivision.

Ms. Kaye: And what if down the road, a subdivision wants to change the use?

Mr. Arakawa: First of all, there is a condition of approval. If there is a condition of approval that is levied by, say this Commission, like an SMA approval, they would have to come back before the Commission to change the condition. If there is no condition, and say the Planning Director requires a unilateral agreement, they would basically have to change that through the Planning Department.

Ms. Kaye: And would there be any County Council review at all?

Mr. Arakawa: Yeah, Council review is basically with the proposed Bill, but right now, for subdivisions there is no Council review anyway.

Ms. Kaye: Okay. So this –. Can you explain, then, how right now – the one thing that wasn't clear to me is the allocation of labor. Planning Department appeared to be, in the old language of Title 18 everywhere, and that's now been taken out and it looks like it would be that Planning Department would be limited to finding a finding of consistency and the imposition of conditions, and then it goes to Public Works? Is that it?

Mr. Arakawa: No, under the current code, subdivisions are handled by the Department of Public Works. So the applications come in through the Department of Public Works. We circulate it out to a number of agencies for review – one of which is the Planning Department. But the ultimate decision on consistency and conformity is with the Department of Public Works.

Ms. Kaye: That's what you're giving up.

Mr. Arakawa: We are suggesting or proposing that since the Planning Department is more intimately involved with planning and land use that they should make the determination on consistency.



Ms. Zigmond: I'm reading through the language of the resolution. It says, on item (c), "except as where permitted under subsection (b), land zone interim shall not be subdivided." And it's my understand that almost all of Lana`i is interim, so this has really not much effect on us.

Mr. Arakawa: Yes. Lands that are zoned interim right now, if you want to subdivide, you'd have to get the proper zoning. That's correct.

Ms. Kaye: Could you speak to the Fire Department's comments? I didn't really understand. The language doesn't look to me like it had changed much, so I'm not sure what they were trying to get you to do.

Mr. Arakawa: Well, I think the Fire Department was commenting on another section of the code. It wasn't anything that we were proposing to change at this point. There are some existing exemptions under the subdivision code. These are things like if you want to subdivide property and you're ending up with the same or fewer amount of lots, you're exempted from consistency and conformity. Other things that are exempted, I think it's like roadway or access easements or things of that nature. So the Fire Department's comments while there are – I'm sure they're very valid from a public safety standpoint – it really doesn't effect any of the changes that are being proposed today.

Mr. Rabaino: Okay, I have a slight problem with what you're saying. When you make this proposal, this is for future planning. Anything, let's say from 2009 going back is grandfathered. That will not be applied to the past. You're just moving forward, correct?

Mr. Arakawa: That depends on the language of the Bill. As far as when the effective date – if the Council passes the ordinance, it depends on who they want to effect as of the date that they approved the ordinance. They could just approve it. And so any subdivision that is in process at the time would be subject to consistency, or they could –. That's what being proposed now. But there are other Bills, for instance where people may require that the subdivisions that are in process are subject to the old rules. So it kind of depends on what the Council does and I guess what your general feelings are as well, but the Bill as it reads now, just basically says it takes effect upon approval. So everything that's in process would be subject in to the new law.

Mr. Rabaino: Not anything after.

Mr. Arakawa: And of course, after too.

Mr. Rabaino: Let me give you an example. If you get Lahaina, we have all the agriculture land going up, close to that dump place over there, right? You're talking about one or two acres. We're looking at Lana`i with square lots. Are you making that comparison?

Because let's say somebody buys two square lots on Lana`i adjacent to each other, 4,000 and then another 4,000, and then they're going to subdivide that. Let's just say they're buying two lots, okay, and you're going to compare that with what you have on Maui? It's not conforming. You follow where I'm going with this?

Mr. Arakawa: Well, any subdivision, any proposed consolidation, you know, we would apply this test of either consistency or conformity, whether it's on Lana`i, Moloka`i, Maui or whatever. So that's what I was mentioning, it applies currently.

Mr. Rabaino: No, no, I disagree.

Ms. Aoki: If I understand your comment, you're talking about if somebody has two lots – okay that subdivision has already taken place and it wouldn't be subject to this because it's not a subdivision. This is only –

Mr. Rabaino: . . . (inaudible) . . .

Ms. Aoki: If there's an existing –

Mr. Rabaino: Existing subdivision.

Ms. Aoki: Yeah. If it's already done and subdivided, that's not –

Mr. Rabaino: Versus the proposed subdivision that will be on the map.

Ms. Aoki: Versus this, we're looking at new subdivisions that are coming in, coming in to Public Works. Big parcel – they want to subdivide it into 20-lots, say what ever it is. That's what we're looking at, future subdivision. Not existing lots that have already been subdivided.

Mr. Rabaino: I'm a one track mind now. I'm just thinking Lanai because we have square lots. The highest would be, what, 8,000 to 12,000 more or less.

Ms. Aoki: If they cannot be further subdivided, then this is not going to affect them, which I would imagine they can't be. If the subdivision –

Mr. Rabaino: Is that on paper?

Ms. Aoki: I don't. You'd have to tell me which lot you're talking about. I mean I'd have to go back to the office and check. But I don't know if that's clear.

Mr. Rabaino: No it's not.

Ms. Kaye: I think maybe if we could think about it in a visual way. If you took a big chunk of land outside of the project district, but up around Koele – Gerry – and somebody wanted to subdivide it. What this Bill – all this Bill does is look to see what is its State zoning, Community Plan zoning if you will, and the County zoning are all the same. If one was urban and one was ag and one was conservation, then they would then move down to what use does this subdivision want to make of this land? And if it fell within – am I making sense there?

Ms. Aoki: Right.

Ms. Kaye: So I don't know that this particular change –

Mr. Rabaino: . . . (inaudible) . . . I going pick on you.

Ms. Aoki: No, go ahead.

Mr. Rabaino: It's one or the other, right?

Ms. Aoki: One or the other what?

Mr. Rabaino: As she's quoting?

Ms. Kaye: Well I think what they're trying to do is avoid someone having to go through and get all these zoning changes. They're trying to wrap it around the use that the subdivider wants to make of the property.

Ms. Aoki: So if you have a big parcel out there, and it's like Milton was saying, it's State Land Use urban, and public-quasi/public and residential, but you wanted to put a school there. Right now, you wouldn't be able to do that because they don't all match up. But their uses, you're allowed to have a school. So what we're saying is instead of it all being so in line, let's look at the use of the parcel – land use – and that's why they're giving the Planning Department that authority because Public Works doesn't work with the Community Plans or General Plans or zoning. That's under Planning. So you're looking at a new subdivision. What they want to do out there and try to look at the use, and so that they don't have to go through this whole change in zoning and everything else just so they can put a school on there.

Ms. Kaye: But, if, for example, it was zoned conservation and a school was proposed, you'd have to go get a zoning change.

Ms. Aoki: Right. Right because –

Ms. Kaye: Does that help Gerry?

Ms. Aoki: Because, right, the land use, it's not allowed in conservation. It's what the use is. If it's allowed in all the different ones then fine. If it's not, then yeah.

Mr. Rabaino: Okay.

Ms. Aoki: Does that make sense? Okay.

Mr. Rabaino: But negotiable.

Ms. Zigmond: And Kathleen again because we're mostly interim, it's sort of moot, right?

Ms. Aoki: Right. You do have a lot of interim. So they would have to go and do a change in zoning anyway.

Ms. Kaye: Okay, Commissioners, any other questions? I don't know if anyone has approached Leilani, but this would be the time for public testimony. Okay, we have Mr. McOmber has signed up. He's going to pass. Mr. Reilly is on the list.

Mr. Fairfax "Pat" Reilly: Good evening Commissioners. Fairfax Pat Reilly. 468 Ahakea Street. I'm looking at page 3, under, I guess, the amended language, section (d), subdivision. Miki Basin is going to be subdivided. This is what it applies to. 50% has to be sold fee-simple. It requires a subdivision, and there's use. Think about it. Secondly, you need to ask questions about what the role of the Planning Commission is and how this effects the responsibility and authority of the Planning Commissions to pass on certain proposals within the SMA, changing land use, or the community plan. Now I'm trying to listen to that and wrap my brain around consistency and conformity, but to me the fundamental question always comes back to, before a Planning Commission, does this alter in any way your authority or role in the determining what goes on on this island? Thank you very much!

Ms. Kaye: Commissioners, questions for Pat? Thank you Pat. There's no one else on the written list, but would anyone else like to speak to this agenda item? Okay public testimony is closed. At this point, we have had the Department of Public Works speaking for the Planning Department's recommendation for approval of these changes to Title 18. Our choices are to recommend approval, recommend approval with amendments, recommend denial, or defer to gather any specific information. And Commissioners, if we have any further questions for Mr. Arakawa or Ms. Aoki we can do that at this time.

If I could inquire – has this gone before to the Moloka`i or the Maui Planning Commissions?

Mr. Arakawa: Yes it has. Last week, we did a presentation before the Maui Planning Commission. And Maui Commission voted to recommend approval. We also went to the Moloka`i Commission last week Wednesday, and they deferred, so we will be going back on the 26<sup>th</sup> I think.

Ms. Kaye: Okay, so Maui did not recommend any changes? They just approved it as written? No amendment?

Mr. Arakawa: That's correct.

Ms. Kaye: Why did Moloka`i – if you know, why did they defer it?

Mr. Arakawa: Well Moloka`i, they just wanted more time to understand the proposal and so they asked us to basically come back.

Ms. de Jetley: On it, since most of our land is still in interim, does it really affect us? I mean, if we took no action and just sent it back to you because most of our land is in interim zoning, so it doesn't really pertain to us.

Mr. Arakawa: If most of your land is in interim, the proposed amendment will not affect you because you would be required to get a change in zoning in any event. So if there's no changes to the code, you still would be required to do so. If we change it, you still would be required to do so.

Ms. Kaye: Yeah, at this point in time, I think, but going forward, it might. And I frankly don't see – I couldn't come up with anything to amend this. I don't see that it has a major impact. And it does have the capacity, as I understand your presentation, to stream line.

One more question that occurs to me – the Planning Director – we love our Planning Director – but if it was another Planning Director and they're going to have a lot of authority to determine consistency or non-consistency and to come up with conditions. There is no public review for that. And right now, that would not impact, I mean, anything that has to do with subdivision doesn't come before the Planning Commissions anyways. Correct?

Mr. Arakawa: That's correct. And that's why under the current code there's really no definition of conformity or consistency. The definition just kind of evolved over time. But under the proposed amendments, there is that definition. If you have a problem with the Planning Director's discretion under that, you can certainly make amendments to it, but the intent is to basically make it clear that certain types of things have to be done by the Planning Department or the Planning Director in the case of proposed subdivisions. So it was an attempt to actually limit the discretion of the County.

Ms. Kaye: Okay Commissioners. I'll entertain a motion.

Ms. Zigmond: I move that we recommend approval of the proposed Bill to the Maui County Council.

Ms. de Jetley: I second that motion.

Ms. Kaye: Okay. Motion and second on the floor. Any discussion? Okay, I'll call for a vote. All in favor?

Commission Members: "Aye."

Ms. Kaye: Okay, the motion carries. Thank you Mr. Arakawa.

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

**VOTED: to recommend approval, to County Council, of the proposed Bill as presented.**

#### **D. COMMUNICATIONS**

- 1. MS. SALLY KAYE, Chair of the LANAI PLANNING COMMISSION requesting that the Lanai Planning Commission amend its previous recommendation made on July 15, 2009 on the following applications:**

**CASTLE & COOKE RESORTS, LLC requesting a State Land Use District Boundary Amendment from State Agricultural District to State Urban District and a Change in Zoning from County Agricultural District to M-2 Heavy Industrial District for the Miki Basin Heavy Industrial area encompassing about 6 acres off of Miki Road, adjacent to the Maui Electric power site at TMK: 4-9-002: portion of 001, Miki Basin, Island of Lanai. (DBA 2008/0002) (CIZ 2008/0003) (J. Prutch) (Public hearing was conducted on January 21, 2009. Matter was further taken up on March 18, 2009 and July 15, 2009. Action was taken by the Lanai Planning Commission on July 15, 2009 to make a recommendation to the Maui County Council.)**

**The Commission may consider whether to amend its previous recommendation made on July 15, 2009.**

Ms. Kaye: Okay next on our agenda is a bit of housekeeping. As you all know we had begun a discussion last month on conditions to append to a motion on the next agenda items which is State Land Use District Boundary Amendment from State Ag district to State Urban, and County Ag to M-2 Heavy Industrial out at the Miki Basin. We're familiar with this particular agenda item. We did not complete the discussion that we started because of the Planning Department's travel schedule. So what we did accomplish, as you all read in the minutes, was a discussion and the adoption of two specific conditions to recommend for Council's consideration. We were then informed that our meeting had to be adjourned by 9:30 p.m., and when we asked if we could complete our work at a later time, Corporation Counsel said he really couldn't advise us because "he'd never had this happen before." We then amended our motion to include an adoption of all the Planning Department's recommendations with no discussion actually. Under the bizarre circumstances of this forced adjournment, I followed up our verbal request to be allowed to complete our work and wrote to ask the Planning Department to place this item on the agenda this month – you were all cc'd on that – so that we could complete a record for County Council's consideration. Now we need to remember that in this matter we are purely advisory to County Council and if we vote for discussion of additional conditions, Council is free to adopt, modify them, or ignore them. So as this was not my wording, but as it was placed on the agenda for this evening, we "may consider whether to amend the previous recommendation." Now that's purely it on the table and at this point I think we need to take public testimony because it's an agenda item. I don't even know if anyone wants to speak to it. There will be a three minute limit to any such testimony so at this point I'll open it up to public testimony if anyone wants to speak.

Mr. Gary Yokoyama: Madame Chair, members of the Commission, Gary Yokoyama for Castle & Cooke. I'll make this brief. For the record and with all due respect to the Commissioners, we would object to any further consideration of this matter that was voted upon last week, or last month. And the reason is that as you all well know under County law, as well as your own rules and regulations which governs our application, you have 120-days or you had a 120-days to act upon this particular matter. And that 120-day period expired last month, so in our view, the Commission has no authority to proceed with any other action on our application. Thank you.

Ms. Kaye: Any questions for Mr. Yokoyama. Well, he's gone anyways. Mr. McOmber. *(Changed cassette tapes)*

Mr. Ron McOmber: Good evening. My name is Ron McOmber. I was at that meeting. I went home when you started talking about conditions, and I figured that you would complete this. To my amazement, it was called because the plane had to leave. That should not shorten the conditions that you want on this. As a participant in these many, many discussions, I can see why Castle & Cooke does not want this to continue because that same night if we remember they said that the Water Working Group was an ad hoc

committee, which is wrong. So I would really advise you folks to take this up and probably call an executive session and let Corporation Counsel make a decision on it. But it was not your fault that this was cut short. It was the staff that had to get home. And it would be unjust to this community if you don't get the rest of those conditions in this subdivision because there's many, many more questions about that subdivision that we haven't addressed yet. So that's my take on it. Thank you.

Ms. Kaye: Commissioners, questions for Mr. McOmber? Mr. Reilly?

Mr. Reilly: Yes. Good evening again. Pat Reilly. 468 Ahakea Street. One, if there's any issue of legality, I do recommend that you meet with your Corporation Counsel. Second, I found it unusual in my experience that the – although I recognize, I didn't realize the 120<sup>th</sup> day was the same day as your meeting, but it was a little unusual when you have to catch a plane because you were here and the plane had to leave. I mean that was the name of the game. So maybe flexibility is the word. But secondly, I think if you feel and the Counsel feels that it's appropriate, I still think you need to get the sentiment and the conditions that you were contemplating on the record, just for the record, since the Council will read the record. Thank you very much.

Ms. Kaye: Commissioners, questions for Pat? Joe, just a point of clarification – I thought we determined last month that the 120<sup>th</sup> days was actually a week before the March meeting.

Mr. Joseph Prutch: I thought it was about a week before. I can't recall exactly.

Ms. Kaye: Yeah. Yes, so that's a correction there. And it wasn't raised until last month.

Mr. Prutch: Yes. That's true.

Ms. Kaye: Okay. Thank you. Any other public testimony? Okay Commissioners at this point what's on the table is do we want to have further discussion? Did anyone feel that they didn't complete the discussion from last month?

Ms. de Jetley: Madame Chair, when we were receiving testimony about this project, if this project goes through – well from the 120 days – Castle & Cooke has indicated that this project will be about five-years in the making. So we are going to have – we are going to be able to see this project further on down the line again. I think the mood of that meeting when we were nearing towards the end was all of the conditions that were on the table are being forwarded to the Council, so I think we should move on and let this project go forth.

Ms. Kaye: Bev?



Ms. Zigmond: Madame Chair, I actually would like to make a motion that we consider additional conditions, if for no other reason, to get them on the record. We did not –. I have a few – I don't know if anybody else does, and I think it was most unfortunate that the FAA called our meeting for us. So that's my motion that we consider additional conditions.

Ms. Kaye: Okay, so there's a motion on the floor that if any Commissioners had conditions that they didn't get into the record the last time, this should be pursued. Do I have a second?

Mr. Michael Hopper: Procedurally, Madame Chair, there would be a motion to amend your previous recommendation.

Ms. Kaye: I'm sorry. Thank you.

Mr. Hopper: Robert's Rules of Order allows upon notice which was given out in your agenda to other members. There can be a motion made to amend your previous recommendation, and by doing that you can amend your previous recommendation. And if you wanted to add conditions – as you recall your ordinance recommendation was to not take action until you get the information that you were – until the Council get the information that you sought. But in the event the Council does get that information to approve – if they do approve with the conditions. You made recommendations on two conditions specifically and then with the rest of the conditions, recommended the conditions as stated in the Planning Director's report. Now to alter that recommendation, you would want to move to amend to add, or subtract, or do what you want to amend. That's the procedure under Robert's Rules of Order which allows you to amend that previous recommendation.

Ms. Kaye: There's a motion on the floor, do I have a second?

Mr. Dwight Gamulo: I second.

Ms. Kaye: Okay, there's a motion on the floor and it's been seconded that the Commission consider completing its work from last meeting, do we have some discussion? Okay, all in favor? Okay, motion fails for lack a majority.

Mr. Hopper: You would need to take opposing votes because silence is an affirmative vote.

Ms. Kaye: I'm sorry. I forgot about that. Okay, all opposed? Let's see our hands. Commissioner de Jetley, Rabaino, and Castillo. So we have two in favor, three opposed. Correct? Dwight–. Let's do this again. People, we have a motion and a second. All in favor of seeing if there were additional conditions that Commissioners wanted to consider but got cut off last time, which means we would be amending what we did last month. Okay, we have two in favor. All opposed? That would be four. Motion fails. Thank you.

**It was moved by Commissioners Beverly Zigmond, seconded by Commissioner Dwight Gamulo, then MOTION FAILED to amend the previous recommendation to consider additional conditions for County Council's consideration.**

**(Assenting: Commissioners Beverly Zigmond, Dwight Gamulo  
Dissenting: Commissioners Stanley Ruidas, Gerald Rabaino,  
Leticia Castillo, Alberta de Jetley  
Excused: Commissioner Matthew Mano)**

## **E. DIRECTOR'S REPORT**

### **1. Discussion regarding Ex parte Communications and the Sunshine Law**

Ms. Kaye: Okay, next we have a Director's Report, a discussion regarding ex parte communications and the sunshine law. I imagine that would be you Michael. Or would we like to take a five minute break and come back? No, no? Yes, Vice-Chair Ruidas would like a break, so we'll do five minutes, back at seven.

*(The Lana`i Planning Commission recessed at approximately 7:00 p.m., and reconvened at approximately 7:10 p.m.)*

Ms. Kaye: Call to order. Next on the agenda is the discussion regarding ex parte communications. I'm sure this is coming from Mr. Hopper.

Mr. Hopper: I don't have a whole lot specific to say. I was just asked to reiterate the stuff from our orientation about ex parte communications which basically means communications outside of the meeting. If you have a contested case going on which is sort of an application or anything and the sunshine law in general – the sunshine law prevents people from discussing anything that is board business which is on your agenda or you know is coming up on your agenda outside of a meeting, no more than two of you can discuss that outside of a meeting. That includes e-mails, that includes verbal discussions. Two of you can discuss something, but no more than two of you. So no blanket e-mails to all of the Commissioners and things like that. That's generally something that's inadvisable even if there can be an argument that that's not a communication. As soon as somebody e-mails back and even without anybody communicating back, we've had in litigation arguments that sending out that message is a communication, so avoid doing that.

An ex parte communication is for example if someone is before you for an application and you could not go. If someone is before for a change in zoning application or if someone is before you for an SMA Permit, you could not go to that other person. You could not go

outside of that meeting and talk to somebody else about that permit unless everyone was here together, and the applicant for the permit was also together, and if there's any other parties intervening. The rules in the State law says that no person can consult any other person on an issue of fact on a contested case unless all of the parties are present. That's basically treating you like a jury or a judge where you can't go and talk to somebody else, you know, even if it's a community member or whoever else about a permit and gather that information separately outside of the meeting. Again site visits, you can investigative groups and things like that, but the party that's before you for the application has to be informed of that and be allowed to be present at those types of meetings. And that's just the basic reminder I was asked to give you and it goes back to our orientation and we frequently do remind Commissioners of this in other Commissions just to make sure that everyone is following that.

## **2. Notification of Resignation of Commissioner Darlene Endrina**

Ms. Kaye: Thank you Michael. Any questions for Michael, Commissioners? Okay, next in the Director's Report, I don't know, Kathleen, we're just going to acknowledge that Commissioner Endrina has resigned. We will miss her energy. Sorry that occurred and after that is the open project's report.

## **3. Open Lana`i Applications Report.**

Ms. Aoki: I do have a little bit of an update on the Lana`i Senior Center. We got word that Castle & Cooke is going to be working with the County and has agreed to allow us to move forward with our project, so that's really good news.

Ms. Kaye: How long has that process taken?

Ms. Aoki: I can't say off the top of my head. I mean it came in – the application actually only came into us in February – their application to Planning. How long Housing and Human Concerns has been working on their plans, I honestly can't say. It's been a year or two.

Ms. Kaye: Thank you Kathleen.

Ms. Aoki: You're welcome.

Ms. Kaye: Okay, now we can go to open projects.

Ms. Aoki: So I don't have really have any new updates for the fuel storage tank or the Lana`i recording studio.

Ms. Kaye: Commissioners, any questions? I think this is pretty much what we had last month as well. Okay. And now the conference.

**4. 2009 Hawaii Congress of Planning Officials Conference - September 23-25, 2009, Oahu**

Ms. Aoki: Okay, so have you – I'm sorry to ignorant – but you folks have decided who's going? Leilani knows?

Ms. Kaye: My understanding is it's Vice-Chair Ruidas and Matt Mano.

Ms. Aoki: Okay.

Ms. de Jetley: Madame Chair, just for the record, I asked Leilani this evening if either party drops off that I'd like to be the alternate.

Ms. Aoki: I don't really have anything. If you have any questions, you know, feel free to give me or Leilani a call. Get all your information to her and she can get all your reservations done.

Ms. Kaye: Okay, before we move to the last two things under the Director's Report which really are what's coming up next month and then the following month, does anyone have any comments on any of the other communications we received in our packet?

Ms. Zigmond: I wish Archie was here so that I can thank him for his letter. I thought it was just a really, really well thought out letter and I'm glad that's in the record.

Ms. Kaye: Okay, any other questions or comments? I actually had a question for Kathleen on this. Because of the letter's content and to whom it was addressed, this is actually what we were trying to figure out throughout this whole process. This is a request. This letter is dated July 22th since the public doesn't have a copy of it, and it's a request to restore zoning for failure to fulfill conditions on the 13.9 acres that were zoned in the year 2000. What happens with this request now? It's gone to Commissioner – I'm sorry – Councilperson Kahoohalahala and to the Planning Department and to I guess the rest of the County Council. I'm just curious what the process is now.

Mr. Hopper: I just want to say since this letter is not on your agenda, I wouldn't recommend – I know it's in your packet – I recommend putting it on your next agenda for discussion rather than discussing it no.

Ms. Kaye: Terrific. Can we do that please? That would be great. We'll get some information that way. Okay, Kathleen, do you want to talk about the rules for next month

or just acknowledge that's what's on our agenda?

**5. Agenda items for the September 16, 2009 meeting:**

- a. **Public Hearing on proposed amendments to the Special Management Area Rules (J. Giroux)**

**6. Agenda items for the October 21, 2009 meeting:**

- a. **Public Hearing on Council Resolution No. 09-53 relating to Rural Districts (J. Alueta)**
- b. **Council Resolution No. 09-60 relating to Accessory Dwellings (J. Alueta)**

Ms. Aoki: It's completely your discretion. We gave everything to you in your packets, so if you could just review it. As far as number six is concerned, we should have Joe here for the next meeting to go over these resolutions. In simple terms, 6(a), it just creates larger rural lots than are allowed now, so two, five, 10 acres. So it would be adding on rural lots of those size. And for item (b), it's a proposal that lots that are between 6,000 to 7,499 square feet would be able to do an ohana which right now they're not permitted to do an ohana. In addition to that, it would change the sizes of the ohana, the maximum sizes in the categories that follow it. So have a look at it. There's been a lot of interesting comments, pro and con, for this so it should be an interesting discussion.

Ms. Kaye: Thank you. That kind of preview is really helpful. I saw that it was not on till October so I didn't read it, but when I get the minutes that will help understand it when we do have to read it. Michael, do you have anything – there's no additions or changes – no additional comments that you're aware for the amendments to this Special Management Area Rules? We're just going to go with the version you gave us last month?

Mr. Hopper: I don't believe so. September 16<sup>th</sup>. So I'll have to check with Clayton. That means that the Rules should have been posted, at this point, in the newspaper since it's past August 16<sup>th</sup> right now. So that has to be posted 30-days before hand, so the form should have been posted already in the newspaper and out there. So, no, I don't believe we have any – we haven't made any changes since the last time you saw it. I'll double check on that, but they should be in the same form that you last saw it. And if not –. I mean, you'll see them at the meeting and they've been published.

**F. NEXT REGULAR MEETING DATE: September 16, 2009**

**G. ADJOURNMENT**

Ms. Kaye: So that plus what we've just asked to get some information on this letter – yeah – those will be our two agenda items, correct, for next time? Okay, I'll just remind everyone that I'm going to, unless I hear otherwise, memorialize this process for the Planning Department and the Mayor's – I mentioned last month – because of the difficulty we've had in communication. I think that it needs to be put on paper. I was waiting until this was finished to actually go there. I will send it to everyone. Anybody have any other things to discuss tonight? Okay, meeting is adjourned.

There being no further discussion brought forward to the Commission, the meeting was adjourned at approximately 7:20 p.m.

Respectfully transmitted by,

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

### **RECORD OF ATTENDANCE**

#### **PRESENT:**

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

#### **EXCUSED:**

Matthew Mano

#### **OTHERS:**

Kathleen Aoki, Deputy Director, Department of Planning  
Joseph Prutch, Staff Planner  
Michael Hopper, Deputy, Corporation Counsel  
Milton Arakawa, Director, Department of Public Works