

**LANA`I PLANNING COMMISSION
REGULAR MEETING
SEPTEMBER 16, 2009**

APPROVED 10-21-09

A. CALL TO ORDER

The regular meeting of the Lana`i Planning Commission was called to order by Chair Sally Kaye at approximately 6:02 p.m., Wednesday, September 16, 2009, in the Old Lana`i Senior Center, Lana`i City, Hawaii.

B. RESOLUTION THANKING FORMER COMMISSIONER DARLENE ENDRINA

Ms. Sally Kaye: Okay, I'm going to call the September 16th, 2009 Lana`i Planning Commission meeting to order. Let the record show we have quorum with Commissioners Rabaino, Ruidas, Kaye, Gamulo, Zigmond, and de Jetley. I have not heard that Letty is not coming, and Matt has lost his dog, so he's out looking for him and he may be late.

So the first thing on the agenda is the resolution, on behalf of the Planning Commission thanking Darlene Endrina. I'm not going to read it into the record because she's not here, but I am going to pass it around. We need to sign it and then give it back to Leilani so she can get signatures from Mr. Hunt and Ms. Aoki.

C. APPROVAL OF THE AUGUST 19, 2009 MEETING MINUTES

Ms. Kaye: So the next thing is the approval of August 19th meeting minutes. I sent corrections around. I'll entertain a motion at this time.

Ms. Beverly Zigmond: I move that we approve the minutes of the August 19th, 2009 meeting with amendments.

Ms. Kaye: Second?

Mr. Gerald Rabaino: Second.

Ms. Kaye: Thank you Gerry. Any discussion? Any further corrections? Okay, all in favor?

Commissioners: "Aye."

Ms. Kaye: Okay, minutes are approved.

**It was moved by Commissioner Beverly Zigmond, seconded by
Commissioner Gerald Rabaino, then unanimously**

VOTED: to approve the August 19, 2009 Lana`i Planning

Commission meeting minutes with the amendments as noted.

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

- 1. MR. JEFFREY HUNT, AICP, Planning Director transmitting amendments to the Special Management Area Rules of the Lanai Planning Commission regarding Appeals and Enforcement. A copy of the proposed rule amendments was published in the August 16, 2009 issue of the Maui News. (Corporation Counsel)**
 - a. Public Hearing**
 - b. Action**

Ms. Kaye: Next on our agenda is Corporation Counsel, I believe, is going to give us a little overview of the Special Management Area Rules. We've had ample time to look at these and we had opportunities to comment before. They were published in the August 16th, 2009 issue of the Maui News. Michael?

Mr. Michael Hopper: Thank you Madame Chair. These rules are basically the same as the rules that you've seen several times actually before they were published several months ago. James Giroux, in conjunction with Brian Moto, primarily worked on these rules. I did not work on them much, but I am familiar with them and I've read through them. The main purpose of the rules was to give this Commission enforcement authority over the SMA. Basically there are SMA rules, but your rules don't go into the specifics on how enforcement is done against un-permitted, either, structures or uses in the SMA. Both the Moloka'i and Maui Planning Commissions had an enforcement section in their rules. Yours did not, so that was the initial purpose of the rule amendments, to give you an enforcement section, to allow like the other Planning Commissions in Maui County to be able to enforce. In addition, you were given several updates that will be pending in the other Commissions. Probably, most significant is an order to show cause procedure which would allow you to look at a permit or exemption that was already issued to determine compliance with that permit or to determine whether or not either the project was built, if it was given an exemption, as it was represented to you. There's no clear process for that in your rules right now, but both you and the other two Planning Commissions, as far as a general overview of your rules would want to have that procedure in order to review in the event that a permit condition has been violated. You would want a clear procedure for how you would be able to give the permit holder due process, and at the same time, still retain oversight over that permit. It also creates a procedure for how to handle appeals for notices of violations. That's similar to the procedure that the Board of Variances and Appeals currently uses on Maui for violations for zoning violations. It's sort of an expedited

hearing procedure that would allow you to hear appeals for a notice of violation. If a notice of violation for an SMA violation was issued, that would be appealed to you as a commission and you could determine if the facts existed that warranted the issuance of the violation, or you could overturn the Director's decision to issue that violation. There are other changes in rules. Again, this is basically the same set of rules that was circulated to you and it was on, I believe, a couple of meeting agendas. This was a procedure required before publication. The rules had to be published in a newspaper at least 30 days prior to this hearing today. You're required to have a hearing, allow the public to comment on these rules, and then you can move to adopt these rules if they are okay with you. Again, I can answer any questions that you would have. But, again, we believe that these rules really do place you on the cutting edge of the issues in the rules as far as enforcement and as far as an order to show cause. You'll actually be more advanced than the other two islands – the other two Planning Commissions and islands – in those respects. And so we would be planning to update these rules basically in the exact same manner for the other Planning Commissions as well.

Ms. Zigmond: Michael, I have a question please. The intent is to have all three of the Commissions on, in Maui County, the same, correct? So you're saying that they will also be upgraded so to speak for the order to show cause in the next round?

Mr. Hopper: Well if they decide. I mean, each Commission would have to decide. But as far as our plans when we looked at all the rules, as far as – we're the legal advisors for those boards and we want them to have as efficient set of rules as possible, so our plan would be to eventually recommend that something like this be adopted. It might not be exactly the same for the other two Planning Commissions over time. Yours just happened to be first because you did not have an enforcement section, and that was a really a high priority to get that in there.

Ms. Zigmond: Thank you, and I have a couple of other questions if I can. The fines, is that something that's going to be identical also because I know there was some concern before about the \$10,000 versus \$1,000 a day or whatever fines are.

Mr. Hopper: Well the fines are as provided by State law. State law allows those fine amounts. The other Commission's rules just happened to not have been updated since the State law. The State law used to say \$10,000 maximum initial and a \$1,000 per day maximum fine for an SMA violation. Those rules were specifically updated by the State because the intent being they, an authority, can consider higher fines. I believe at the time that those rules were updated, there was not a corresponding update to the other Commissions. It just wasn't something that was done. And so those Commission rules still reflect the old maximums that were in the State law. As the State law changed, this was placed in there and our plans are to have those other Commissions update that because there really would be no reason why we would only have the Commissions be allowed to

issue 10% of the maximum fines allowed by State law. So that was the intent behind these rules.

Ms. Zigmond: And one final one please, at least for now. You say that this all goes into effect and that there is a violation and after all the procedures are gone through, there's a hearing. Are those hearings open to the public?

Mr. Hopper: Contested case hearings do not have to be open to the public. They're not subject to the sunshine law at all so they could be – you could have a hearings officer conduct them which is often times what the Maui Planning Commission does. Basically the party is entitled to notice are the – or whoever is appealing and anyone who might intervene in those procedures. In most cases, in these situations, it would be the applicant – or not necessarily the applicant – but the person accused of doing the violation and then the Planning Department who's doing the violating. You would decide. That wouldn't prohibit you from having those proceedings open to the public. It's just that they're not subject to the sunshine law so you wouldn't be under the same rules that you have as far as an agenda allowing everyone to testify in issues like that. That's State law again.

Ms. Kaye: Commissioners, any other questions, for now? Okay, we will open it up to public testimony at this point then. And I don't know what happened to Leilani. If anyone signed up. Okay, Pat.

Mr. Fairfax "Pat" Reilly: Aloha, good evening. Fairfax Reilly. Pat Reilly. 468 Ahakea Street. I would ask the Chair to clarify and I did read through the rules. They're still not clear to me whether who initiates the complaint. Is this the Planning Commission, an individual or the Planning Director? Or all of the above? So that was not clear to me. And the second item – I – of course these laws and rules all have impact especially on Lana`i. And I do recall this issue coming up when I was on the Planning Commission and it was recommended by former Council member Hokama that, I think, this provision be placed in Lana`i rules, and he noted that they were not there. With respect to traditional uses – for example – on Lana`i you have many structures in the SMA area that have been there for a long time. For example Federation Camp. If you pass these rules, and these rules are implemented, what happens to those structures? Do they become in violation? And lastly, I would ask that – I think I know the answer to this – if we should happen to have a wind turbine project within the SMA area, would the Planning Commission have authority to hear that permit? Thank you very much.

Ms. Kaye: Commissioners, questions for Pat? Pat, my understanding, if you read these, if you look at Section 12-402-28, there is a petition to fine a violation could be brought by the Commission, by the Director or by any party. And I don't believe these rules changed in any way the SMA rules, the SMA review, that this body is obligated to conduct. And what was your second?

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

Ms. Kaye: Yes. Right. I think if you read the rules, there is a provision in there that already existing structure, only if they are added onto, do these rules apply. And I don't believe the changes that are being proposed tonight have anything to do with the former structure of the rules. Is that right Michael?

Mr. Hopper: These rules have only to deal with enforcement, so if there's an existing State law on non-conforming structures or other sections of the rules, this wouldn't effect them. Only that it will allow for enforcement of a violation if one existed. But as far as once a violation or not, this wouldn't really change that. Just methods of enforcement.

Ms. Kaye: Thank you.

Mr. Rabaino: Michael, don't go sit down yet.

Ms. Kaye: Is this all related because we're taking public testimony. Okay.

Mr. Rabaino: Under the shoreline management, right, versus this one, I remember reading a phrase that says anything after 1970 moving forward for new structure is not permitted. Would this be tied in?

Mr. Hopper: Again, we're talking about enforcement of existing laws. The same idea as Mr. Reilly's question, this would not affect those sections of the rules. This would only allow for enforcement of those existing rules. If a structure was permitted to continue to exist under the current rules, this wouldn't change that. It would not be permitted then – I mean right now – it would be illegal. This doesn't amend those sections of the rule. It only deals with enforcement of the existing SMA rules and shoreline rules.

Ms. Kaye: Okay, next on the list then – thank you Michael – is Ron McOmber.

Mr. Ron McOmber: My name is Ron McOmber, resident of Lana`i. I echo what Pat said and his concerns. As far as who can make a claim or file something, any citizen can. If you see a structure that's being built or put in place that you don't believe that they have a permit, SMA area permit, you need to tell the County so they can check the violation. It's really important. That just happened at Manele. It just happened with that building they put up there for an inspection. Some person reported that and it was illegally installed and they had to remove it, so this is a good example. And it's good that the public has that right to do that. I think as far as the old buildings at Keamoku and places like that, leave them alone. Let the existing laws be what they are. Thank you.

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

Gary Yokoyama.

Mr. Gary Yokoyama: Good evening, Gary Yokoyama, Castle & Cooke. I had submitted Company's comments to the proposed rules by letter dated July 6th of this year. That went to the author of the rules, James Giroux, and on around July 8th I received a letter from him saying that my comments or the Company's comments have been forward to the Planning Commission for response and I just haven't heard anything from the Planning Commission. So I rest on the testimony we'd previously provided but let me summarize portions of that.

I think that the Company, in general, is not opposed to having enforcement provisions. We think that they should have enforcement provisions. However, we think the provisions should be fair and the provisions should be constitutional. Unlike the other two islands, the Lana`i penalties are ten time more than they are on Maui or on Moloka`i. The existing rules for Moloka`i and Maui provide for a \$10,000 fine per violation, and \$1,000 fine for daily continuing violations. The rules that are before this Commission provide for \$100,000 fine per violation and a \$10,000 fine per day, so it's over 10 times more than the other islands, and I think that that is unconstitutional. And if the Commission tries to enforcement it, that that enforcement procedure would be subject to Court challenge. Both the Hawaii Constitution and the United States Constitution which you as Commissioners have sworn to uphold have a provision called the equal protection clause. Now the equal protection clause states and mandates that all citizens should not be discriminated against, should be treated fairly in the eyes of the law, and so it shouldn't matter whether you're on Lana`i. What the penalty is, you should be treated the same as if you're on Maui, Moloka`i or Lana`i. So that's one concern I have – is that the fine should be equal to the other islands.

The second concern I have is really a procedural thing. I think the order to show cause procedure, which again, is not in the other rules for the other islands, is going to kind of bog down the busy calendar and agenda that you already have. To have this Commission decide by way of an order to show cause hearing whether there's been a violation is going to take days, weeks, months of this Commission sitting as we would in a trial. Sitting and hearing witnesses and lawyers argue and cross examination, the whole thing, and I think that the Commission should confine its activities to more high level policy making decisions such as land use and should not be involved in day to day enforcement proceedings. The day to day enforcement should be left to the Director of Planning. If you have a problem, if you're aware that there has been a violation, as Ron has pointed out, anybody can go to the County, call the County and say there's this building down there or this person or Castle & Cooke or whoever it maybe, is building something down there. If they don't have a permit, it's the obligation of the County Planning Department to come in and enforce the law that's already there. I don't think you guys should be spending your time, your hours and hours, hearing testimony, deciding something that the Planning Commission, or the Planning Director can already do. Thank you.

Ms. Kaye: Gary, don't run away. Questions Commissioners for Gary?

Ms. Zigmond: I'm just really touched that you're concerned about it, Gary. My question is I heard something different from Michael regarding the fines, and so I'm not sure if –. I guess my question is did you hear the same thing that I did regarding the fines because they are going to be the same.

Mr. Yokoyama: I think you said that they're going to be proposed but it's up to each Planning Commission on each island to determine whether or not they want to raise their fines. Is that correct? Mr. Corporation Counsel? They can –

Mr. Hopper: . . . (Inaudible) . . .

Mr. Yokoyama: Well, I think he testified that. Each island is going to be presented, just like you are, with the question of whether or not they want to amend their fines. But right now, if you were to pass this set of regulations, you would be discriminatory against the citizen's of Lana`i who will be subject to a fine that is ten times more punitive than the other islands, and I think that the Constitution won't allow that. He may feel different – Corporation Counsel may feel differently, you may feel differently, but that's our opinion.

Ms. Zigmond: No, I agree. I'm all for equality. What I heard and I think perhaps maybe we need to have this more clear is that the State imposes those fines and that all the Commissions in Maui County, anyway, are going to be the same rate. So it's not like we're going to be discriminated against. That's my understanding.

Ms. Kaye: I have a question for you Gary. Commissioners, anybody else have a question? Are you aware of the 205A 32, the limits of the fine that are under the State law?

Mr. Yokoyama: Yes I am.

Ms. Kaye: It's \$100,000. Exactly what's being proposed here. How about the –

Mr. Yokoyama: I'm not saying that it's not allowed in the State law. I'm saying it's discriminatory.

Ms. Kaye: Okay, excuse me. How about Kauai? Are you aware of what those limits are?

Mr. Yokoyama: Kauai is not in the County of Maui the last time I checked the map.

Ms. Kaye: Right, and I would just point out for the record that Hawaii Island also has the same set of fines. And the –

Mr. Yokoyama: If it were County wide. If the fines were the same throughout this County, I would say fine. We would not have an argument, but they aren't.

Ms. Kaye: So you're suggesting we wait? And if Maui – then it would be okay for us to do it?

Mr. Yokoyama: If all the islands are treated the same within Maui County, we wouldn't have an argument.

Ms. Kaye: But there is – the SMA's are island specific. We happen to be the only County that has three islands.

Mr. Yokoyama: But the government is the County of Maui. It's not the government of Lana`i.

Ms. Kaye: The SMA is Lana`i specific. If I break the SMA rules here, I'm as liable at the same level as anyone else, so I'm really just not understanding. Do you have any case law that points to your contention that supports it?

Mr. Yokoyama: No. And I know that's not my job to come up with case law. I think if it goes to court, that whoever it may be, it may not be Castle & Cooke, maybe somebody else will bring case laws which will show that it is – it violates the equal protection clause of both the Hawaii Constitution and the United States Constitution. And you as a lawyer, you're probably aware of it just as I am.

Ms. Kaye: And me as a lawyer, I have to disagree with you. I think as long as everyone on Lana`i in our own specific SMA is treated the same, there is no constitutional issue. But we can agree to differ on that. Any other questions for Gary, Commissioners? Thank you. Okay, Archie Nahigian. No? I'm sorry. Okay, Chris Lavern.

Mr. Lavern: . . .(Inaudible) . . .

Ms. Kaye: So I'm taking you off all together for this evening? You're just hanging out because you had nothing to do tonight? That exhausts public testimony, unless there's anyone else in the audience that would like to say something. Okay, public testimony is now closed. Okay, Commissioners, do we have any other questions for Corporation Counsel?

Mr. Rabaino: You said earlier that we're the first island in Maui County that's going to be having this enforcement thing. Correct?

Mr. Hopper: In this specific way, but in both other Commissions have an enforcement

provision. You're actually behind on that. You didn't have one, and now you have one. Yours, since we were, you know, looking at it fresh, is different than the other islands' enforcement procedures, but we believe it provides for a more expedited hearing process similar to the Board of Variances and Appeals. So it's more up to date, I think, with our other laws that we have for other Commissions, but yours would be like just like the others. You would have an enforcement provision because everybody has an enforcement section except for you right now, so you would now have that enforcement ability.

Mr. Rabaino: Okay, with this enforcement ability under the penalty section, yeah, the penalty section we refer to the violation fine, right? That is also attached, right?

Mr. Hopper: It's in the penalties rule – yes – 12-402-27.

Mr. Rabaino: And this exceeding a \$100,000 per violation, the civil fine.

Mr. Hopper: It's up to \$100,000 per initial and \$10,000 per day.

Mr. Rabaino: So this is standard across in the current status law of the Hawaii Revised?

Mr. Hopper: Not right now. Right now in Maui and – Maui and Moloka`i Commissions have \$10,000 and \$1,000 because they pre-dated the change in State law that allowed for the larger fines.

Ms. Kaye: I believe Gerry was asking you about the State law. Right Ger?

Mr. Hopper: No, the State law allows for \$100,000 initial and \$10,000 per day. That's the State law.

Mr. Rabaino: So this is incorporated in this, as we read this?

Mr. Hopper: This mirrors the State law, yes.

Mr. Rabaino: Okay.

Ms. Zigmond: Michael, some where in here I read that there was a reference to the administrative step for the Commission. Am I understanding that that would be like Planning Department, like Corporation and such?

Mr. Hopper: I'm not sure exactly what you're asking about, but the staff for the Commission is the Planning Department, and we're your attorney. So as far as issuing a notice of violation, that would be done by the Planning Department. The order to show cause provision is there for conditions on permits, and things like that that have already been

issued by the Commission. They come to you and ask for an order to show cause. It's not for the initial enforcement though. That's generally going to be done by the Planning Department through their issuance of a notice of violation. And anyone can complain to them or they can notice on their own and then issue the violation. Basically they do an assessment if they believe that there's sufficient evidence to show there's a violation, they'll issue it. And then that person, if they believe they have not violated the law, they can appeal to you. And then there would be a contested case hearing where basically they would say we have not violated the law. The Planning Department would have to prove that they did in fact violate the law and have a hearing in front of you. That's standard across the other Commissions and that's the only way to enforce SMA because of due process rights. Once that violation is issued, before you have the authority to enforce a fine, someone does have the right to a contested case hearing before you because you're, by State law and by County Charter, the ultimate authority over the SMA on this island.

Ms. Kaye: Any questions?

Mr. Rabaino: Okay, you said that the other one, if I heard correctly, is \$1,000 a day and the \$10,000, right?

Mr. Hopper: Right. That's what the State law used to say, so that's what the other Commissions have right now.

Mr. Rabaino: Currently?

Mr. Hopper: Right.

Mr. Rabaino: But with this one in front of us, you're using the \$100,000?

Mr. Hopper: Yes, we're using the State law which is the current up to date fine amount.

Mr. Rabaino: Okay. If by chance we, off the wall, approved this, this could be applied to even residents as individuals or group of individuals depending on the violation of the law.

Mr. Hopper: This could be applied –

Mr. Rabaino: But common people like us don't have that kind of money.

Ms. Kaye: Then don't violate the rules.

Mr. Hopper: And again, this doesn't say – this does not say you issue a \$100,000 fine. This says, that's the absolute limit for the fine, and part of what you would do as a Commission is determine if the violation happened. This says up to \$100,000 initial and

\$10,000 per day. That's the maximum amount of a fine that can be issued. That does not mean that's the only amount. It doesn't mean if somebody has an illegal structure in the SMA and they get cited, it would be for – it would not necessarily be for \$100,000 and \$10,000 per day. Those are the limits.

Ms. Kaye: And Gerry if you read the cures for violations can range up to that, but it can also be just remove the structure or go in for a permit. I mean, this is not, you know, there's a structure there, you're going to get slapped with a fine of that amount.

Mr. Hopper: There's also provisions for settlement agreements, which frankly, on Maui is usually how these cases end. There's a notice of violation issued. There may be an appeal. And in most cases, there's a settlement agreement reached which involves the payment of a fraction of the fine. And basically the most important thing that generally has been for the department, is coming into compliance with the SMA, by either getting an assessment or a permit. And you, as a Commission, get to see all of those proposed settlements and decide if you're going to accept the settlement or not. That's the same as the other islands, so that, in practice, in my experience, has usually been what happens.

Ms. Kaye: I had a question for you Michael, and I'm sorry I'm not finding my notes right now, but there was one provision that permitted a 15-day response, and I think it probably would be more consistent with the other rules that I looked at to have it be 30 days. I'm sorry, I did make a note of it, now I can't find it. So my question is if we would change that from 15 to 30 days, these wouldn't have to be republished, correct?

Mr. Hopper: I do not believe that would be change requiring republishing. I think I know that's under the order to show cause provision. I'm looking for it as well.

Ms. Kaye: It's 12-402-28(d).

Mr. Hopper: That's service of the order to show cause prior to the hearing.

Ms. Kaye: Right.

Mr. Hopper: This says 15 days. I think State law allows for 14 days, but I would not see a problem with you extending that time if you wanted to allow basically require the Department – or maybe, I think it's the Commission in this case – to issue the order to show cause 30-days before a hearing. That would give someone extra time to prepare their case.

Ms. Kaye: I think that would be fair. Any thoughts on that Commissioners? Would that be a change everybody would be comfortable with?

Mr. Rabaino: Yeah. 30-days is fine.

Ms. Kaye: Okay, any other questions?

Ms. Alberta de Jetley: Michael, where does this leave us on Lana`i because on the back side of the island, at Keomoku, there are a lot of squatters that are building illegal structures on the ocean front now. So where does this leave everybody? It wouldn't be the squatter then that would be fined, but the land owner that would be fined.

Mr. Hopper: I believe both could potentially be fined if they're actually violating the SMA law. But again, if what they were doing was illegal under the SMA law now, it's going to still be the same. It would still be an SMA violation. This just gives a method of enforcement for the law. So if somebody is out there building something illegal, then – that's not legal right now – then it's still not going to be legal at this point. If whatever they are doing is legal now, then it would still be legal at this point.

Ms. de Jetley: So squatters – a private citizen could file a complaint against a squatter who was building a building and living on private property that did not belong to them?

Mr. Hopper: I don't have any facts before me, but if that's the situation, then it would seem there would be a trespass issue, you know, way before you would deal with the SMA violation issue. If someone is illegally on that land, then that's a separate issue versus –. I mean, I suppose they could be, you know, responsible for an SMA violation, but getting the police to have those people removed if they're illegally on there would be another remedy in that situation which would have nothing to do with the rules right now.

Ms. Kaye: But my understanding of reading these, Alberta, is that if the land owner discovers that somebody was building something unbeknownst to them, they now have the possibility of coming to this Commission and asking for a violation to be found against the person. So really we'll be aiding land owners in that event.

Ms. de Jetley: Okay, because we have situations like at Kaunolu where over the years, people have built fisherman shacks. So when you really look at that, if somebody built a fisherman's shack at a place like Kaunolu, today, they would be in violation of this draft?

Ms. Kaye: They'd be in violation in any event.

Ms. de Jetley: Right.

Ms. Kaye: It's just this allows the Commission to have a little more enforcement power over it.

Ms. de Jetley: Alright. Thank you.

Mr. Rabaino: Michael, correct me if I'm wrong, for clarity and verification. When I was with the union and I talked to some of the lawyers that we had classes with, my understanding is, (1), anything from high water mark, going down to the ocean is State. Anything from vegetation inwards on a private island or a private property is the landowner. Does that still hold true today?

Mr. Hopper: I believe that's generally the case. As far as the SMA, you have specific State law definition of what the SMA is. That's delineated on a map. The County is supposed to maintain a map which has what's in the SMA and what isn't, and whether or not the land is owned by State or County land, this would apply in the SMA area.

Mr. Rabaino: Okay, with that said, because I'm going for the history, but I'm going to be very forward. With Kaunolu, Federation, Keomoku, and then tied in with the shoreline management thing, that will fall in that category where I said earlier anything that was built after 1970 – because I grabbed the wrong paper when I left my house. I have that thing sitting on my desk – it says anything after 1970 moving forward which is coming 2000 is illegal. Anything that is built before – well going backwards before 1970 – let's say the 1920s – like we're referring, as Alberta is referring to Kaunolu where we have those fishing shacks. Federation where we have those Federation homes down there. They're like beach homes. They were built in the 1920s. They hold some sensitive issues there. That still falls under SMA. That's why I asked you that question. From vegetation inwards is private property. From vegetation going down to the ocean is State, and you said yes. With the SMA coming into play, those affected areas are going to be our number one concern, and I'll be waving the white flag because that sits in an SMA area.

Ms. Kaye: Gerry, this does not change that. The existing –

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

Ms. Kaye: No, it does not. As Michael said, this gives us enforcement powers that we have not had which certainly puts us in a disadvantage, so that's what this does. It doesn't change. If you own a piece of property and you fall within the SMA which is a certain, from the high water mark back – I don't have a map to show us that – you just have to get a permit to do it. There's certain things you can do on that property, but you go get a permit. You could do it without a permit, then you're subject to enforcement which could be anything from go get a permit to a fine to a settlement.

Mr. Rabaino: What I'm referring to is the existing structure moving forward.

Ms. Kaye: Gerry, the SMA rules that are in effect right now will not be changed by this.

Mr. Rabaino: Okay.

Mr. Hopper: If someone has the defense of a non-conforming structure, that they're not subject to the rules, they would continue to have that as a defense. If someone gets cited and under the rules it's not illegal because it was built before then, and then the person can prove it was built before then, then if the rules allow for that as a non-conforming use, it would still be treated as such. Now what I can't do is give an opinion on a specific situation because that's not before us right now. I understand that's a concern, but I don't know all the facts of those situations and I wouldn't want to say anything ahead of time in case those situations happen to come up before you. But, you know, this would not change the law with regard to non-conforming uses in either your shoreline rules or your SMA rules at this time.

Ms. Kaye: Does that answer your question Gerry? Okay. Bev?

Ms. Zigmond: Madame Chair, I just wanted to re-emphasize again because it seems that people are getting stuck on this point that the fine is not necessarily the remedy if there's a violation. As Gary pointed out there was a structure – I think it was Gary. Sorry if it wasn't – down at Manele. It was in violation. Somebody reported it, and it just went away. Okay, that corrected the situation. Had this been enforced that potentially what also would have happened if I said to you, Gerry, you're not allowed to this, and you stop doing this, that's cool. If you don't stop doing it, then I have to maybe do something else. Okay. It does not say that people are going to get slapped on fines.

Mr. Hopper: And to pick up on that point, you in fact can be issued a notice of violation stating a fine, and then if you agree with the Department, I'll come into compliance, you could settle for, you know, 10% of that initial fine or a very small amount of that initial fine if you as the Commission approve that, and that is the – generally what happens on Maui. Someone gets cited, they have their fines, they'll say okay this point the fines have accrued to \$50,000 at this point, including daily fines. But since you've fixed this up, got your SMA permit, we're proposing to settle for \$10,000 or \$5,000. We'll bring that to the Commission, a settlement agreement, the Commission can approve that agreement, and then that fine is considered settled and done with. So that's the procedure that often time happens. I'm sorry to interrupt. I just wanted to get that in.

Ms. Kaye: Okay Commissioners? I want to thank Corporation Counsel for bringing us up to speed with the other Commissions. It appears that we've been way behind the 8 ball in terms of enforcement for a long time, and I give them a lot of credit for having the foresight to see how all the Commission rules can be improved. So if there are anymore questions, I guess at this point, I would entertain a motion to approve the rules with the one exception of changing 15 days to 30, if anyone is so inclined.

Mr. Dwight Gamulo: I make a motion that we approve this measure, the amendment to 402, Special Management Rules. Is that enough? Oh, changing section – what is it? – 402-13.1. I’m sorry. Section 12-402-28 3(d) from 15 days to 30 days.

Ms. Kaye: There’s a motion on the floor to approve these rules, the amendments to our rules. Is there a second?

Mr. Hopper: I just want to be clear on the motion. The motion is to adopt these rules with that one exception. Okay, I just wanted it stated clearly because the only motion that I heard was that specific change. I think the initial motion would be move to adopt the proposed rules with the change from 30 to 15 days as stated earlier.

Ms. Kaye: . . .(inaudible) . . .

Mr. Hopper: From 15 to 30 days – I’m sorry. I just want to be clear because there’s a State law process for doing this and the motion should be very clear.

Mr. Gamulo: Okay, that. You want me to state it?

Mr. Hopper: It could be move to adopt the rules as proposed.

Mr. Gamulo: Move to adopt the rules as proposed – and with the change we just noted.

Mr. Hopper: From 15 to 30 days.

Mr. Gamulo: From 15 to 30 days.

Mr. Hopper: That sounds great.

Mr. Gamulo: Thank you.

Ms. Kaye: Do I have a second?

Mr. Rabaino: Second.

Ms. Kaye: Any further discussion? Okay, all in favor?

Commissioners: “Aye.”

Ms. Kaye: Any opposed? Okay, I see that as a unanimous vote then. Thank you.

It was moved by Commissioner Dwight Gamulo, seconded by

Commissioner Gerald Rabaino, then unanimously

VOTED: to adopt the proposed rules as presented with the one amendment as noted.

E. COMMUNICATIONS

- 1. MR. GERALD PARK, Planning Consultant for the STATE DEPARTMENT OF EDUCATION requesting comments on the Draft Environmental Assessment (EA) prepared for the Lanai High and Elementary School Master Plan. (J. Prutch)**

The Commission may provide its comments on the Draft EA.

Ms. Kaye: (*Changed cassette tapes.*) Next on the agenda is Communications – this is stated as Gerald Park, Planning Consultant, for State Department of Education requesting comments on the Draft EA, Environmental Assessment, prepared for the Lana`i High and Elementary School Master Plan. I see Mr. Prutch is here, our planner. I don't know what kind of presentation you have to make, but I have some preliminary comments.

Mr. Joseph Prutch: No, I don't have a presentation. The applicants couldn't be here tonight. Gerald couldn't make it. It was short notice. They're coming from Oahu. State budget. They weren't able to make it out tonight. This project just came to me probably about two weeks ago, so we rushed it to you guys to try to get comments because the comments period ends October 8th. You guys don't have another meeting until October 21st, so we rushed it to you to try to get comments. I spoke to Gerald. He's the consultant for the Department of Education. He's the one who's working on this project. He did inform me that they are going to have a Master Plan – they're going to bring the Master Plan here, to the public, on Wednesday, September 30th, from 5:30 to 6:30 in classroom D1. They will be here at that time to present to the public for comments. You guys of course have the choice of going there as individuals and making comments at that time. It wouldn't be as a body. You can go as individuals. So for tonight, I don't have a presentation to make other than to maybe summarize some of the highlights of the master plan, and I can't answer questions. I can take the comments down, and then I can forward those on to them, as a body, your comments on the EA, and then they have to respond in the Final EA to your comments. So there's a few choices I see. If you guys have had some time to go through it and study and if you have some comments, I can take those down. I can forward those to the applicant as your body's questions, concerns, comments, and they'll respond to that in the final. Or, if you wanted to as individuals go to the meeting on the 30th. You could, of course, comment then as individuals not as a Commission. The other alternative is Gerald – I talked to Gerald, he said if you want to postpone this,

schedule it for the October 21st meeting, even though it's after their deadline date, he said they would be willing to wait to receive comments from you. And he didn't guarantee that they could all be here, but he said that will give us more time to try to put something together and get somebody there to make a presentation and answer questions. So however the Commission feels to do it.

Ms. Kaye: Let me ask you a few questions. 60-some odd pages with four days to review, and many people on this volunteer board work. Why did we get this? Why did we get this four days before you want comment and the deadline is October 8th? How did that happen?

Mr. Prutch: We just got this maybe a couple of weeks ago?

Ms. Kaye: Then why is the deadline set so soon?

Mr. Prutch: It's 30 days out, I believe, for the comments, or 45. It looks like it was 30 days. So they give everybody 30-days to comment.

Ms. Kaye: We're not getting 30-days to comment.

Mr. Prutch: Well, when they send it out, there's 30-days to comment. So we as the Department got it. We have to forward it on you so you guys can comment, but meeting once a month makes it a little more difficult. So yeah.

Ms. Kaye: Why wouldn't you have mailed it to us, and just said please take extra time, this will be on this agenda, and give us two weeks to look at it.

Mr. Prutch: Because I just got this project two weeks ago, and it wasn't something I jumped to right away to work on. So by the time I got a hold of it and start looking at it, I realized, gee, this needs to go to Commission now and not later. And it kind of got rushed forward. Clayton made the copies and sent it on to you so you had it. I know Gerald said too he sent a copy to you and he sent a copy to the library but that doesn't help the rest of the Commission.

Ms. Kaye: No. I didn't get it.

Mr. Prutch: Oh, it didn't come?

Ms. Kaye: No. I didn't get a copy. I got the same copy that everyone else got in the packet on Thursday, or Friday.

Mr. Prutch: I'll let him know because he said he mailed it to you.

Ms. Kaye: No he did not.

Mr. Prutch: Okay. I'll let him know.

Ms. Kaye: And I would have objected to my being the only . . . (Inaudible. Mechanical difficulties with the portable microphone) . . . Excuse me. I would want to share for the record that Pierce Meyers, the Principal of Lana`i High and Elementary, sent me an email today strongly asking that this agenda item be deferred because nobody was here from the school, nobody was able to attend, nobody has read through this, and he mentioned as you did that there will be a community meeting on September 30th. So I guess at this point, we can individually as members just see if you have, if you had time to read it, or what you did read, if you have comments you'd like to submit to Joe tonight. Otherwise, we will take you up on your offer and have it scheduled for next month.

Mr. Prutch: Yeah, you know, Gerald e-mailed me that saying he's willing to wait so if that's fine with you guys. If you want to wait, it will give you a lot more time to actually go through this.

Ms. Kaye: What's your pleasure Commissioners?

Ms. Zigmond: Absolutely defer.

Mr. Rabaino: Postpone.

Ms. Kaye: Do we need to take public testimony regardless? Yes?

Mr. Prutch: Yes you should.

Ms. Kaye: Then we won't entertain a motion at this point, but we will offer it up if anyone wants to speak to this EA that was submitted on the Lana`i High and Elementary School Master Plan. Pat Reilly.

Mr. Reilly: Good evening. Pat Reilly. I'm a retiree. I've spend 30-years at Lana`i High and Elementary School. I know Commissioner Castillo has spent more time than that in trying to move forward this plan. This is a very serious issue and I would hope that you would place some comments on the record. We have spent my whole career trying to move the educational system for Lana`i children forward, and this Master Plan is the master concept that drives all of our staff and all of our community to advance the education of Lana`i children. This is a wonderful plan. In that it integrates Maui Community College, the high school, the middle school, the elementary school and the preschool all in one campus. Now the reason that the time is so tight is that the Department of Education and I respect Pierce Meyer's position is probably trying to get this in the budget. The first step in this

Master Plan is a six classroom building to be built on the baseball field. The existing baseball field. And if this plan should go through then – as you haven't had time to read it – I've spent many hours on this plan – there's a whole sport's complex that extends down through Fifth Street on the south side of Hawaiian Homes. I think you can understand – and I hope Commissioner Castillo will speak to this – no one can imagine the amount of frustration over 30 years to try to improve the quality of education on Lana`i. Quality facilities stand as a shining star in the community for the parents and the children and the leaders of this community and the State and the County that we on this island will not gip and deprive our children of a quality education – to permit them to compete with everybody throughout the State for jobs and from going on to college, technical school or whatever they should choose. So I beg you guys, support this plan. Thank you.

Ms. Kaye: Commissioners, any questions for Pat?

Ms. Zigmond: Pat, I think we share your passion for this. It's just we need some time if we're going to submit comments.

Ms. Kaye: Okay, Ron, you're next.

Mr. McOmber: Speaking in Pat's vein on this, but, remember this wouldn't happen if the 50 acres wasn't donated through a land deal with Castle & Cooke. There was 115 acres for affordable housing. We gave the school 50 acres so they could move forward. Do not hold this meeting without asking those participants that sat for weeks, and months and years developing that Master Plan. There were several people in this community that worked very hard on that. So it behoove this party to ask those people to come before you and talk about this because that is the ones that really put their heart, blood and soul in this thing. Some of us never sat at a table with them, but they did. And so again, it's something that it's going to come into fruition and we don't know what that EA says. But let the people that did the work come and see if this is what they were looking at as their finish product. Thank you.

Ms. Kaye: Thank you Ron. Letty, do you have a question for Ron?

Ms. Leticia Castillo: Not really a question, but in addition to what Pat had mentioned. When I was in the Planning Commission also with the School Advisory Council, we had started acquiring some funds to develop a Master Plan for this, and with a Company that is able to give the land as soon we are asking for it, and the State, not providing us with the funding for the Master Plan because it has to go through the budget and everything else. And I know Pierce is trying very hard to go through this because with the crisis and with all these crisis that we're getting through, I believe that he's doing his very best to get some more funding for this. So I will leave it up with the rest of the Commissioners.

Ms. Kaye: Thank you Letty. Michael, can I ask you a quick question? Assuming that we will get a motion and a second and a pass to defer this until next month, intervening is going to be the meeting that the State DOE is going to hold on September 30th. So, can we as Commissioners go as individuals and speak our minds, do whatever, and then come back and have it on our agenda? Any guidance there?

Mr. Hopper: I would advise if more than two of you go that can be construed as a Commission meeting. Again, that's –

Ms. Kaye: But according to James, though, as long as we don't speak.

Mr. Hopper: The State, the OIP, has told us that they're iffy on this to say – for lack of a better word – because they don't like the concept of board members being together in general. I would say that if you do not speak, I would not see that as a sunshine law violation – to just attend the meetings – but I would not recommend that you go and testify at those meetings. You as a Commission is always free to submit comments. Any member of the public on a EA or EIS is free to submit comments directly to the person seeking them. I'd recommend through that you as a Commission submit the comments, vote on what the comments would be and submit them as a Commission rather than going and doing it as individuals. I'm not saying that there's going to be a sunshine law issue or someone will object to it, but that's what I've advised in the past on things like the General Plan Advisory Committee and things like that.

Ms. Kaye: Thank you Michael. At this point, I'd entertain a motion to – public testimony – anyone else want to speak? Okay, that's closed. I'd entertain a motion to defer till next month. Sure. Sure.

Ms. Alberta de Jetley: One of the things that has always really been a concern to me is the deplorable conditions of the teachers' houses. It seems as if the State has just neglected the housing on our campus for our teachers. Teachers are a very important part of our educational complex. And I think that the way that adult teachers are forced to share quarters on our campus is really awful and it may be better to have teacher's houses integrated into the community instead of set apart onto the school campus.

Ms. Kaye: This is why I think it's a really good idea we put this off for a month because I didn't have time to go through and find out where this is addressed and I agree with you 100%. It's been a situation – it's languished for way too many years.

Ms. Zigmond: I'll just make a comment Alberta. They already are dispersed throughout the community. There are many teacher's houses within the community, not just down here.

Ms. de Jetley: But we still have teacher's houses on campus that haven't been maintained

or painted, and they're terrible. Maybe Letty, Commissioner Castillo, can shed some light on this subject.

Ms. Castillo: Well being a school advisor counselor in the past, every meeting that I go, I present our needs of the community to the Department. And somewhere along the line, one of the superintendent of the school wants us to speak what they want us to speak to the public. But we said no because we are appointed to represent the community. And one time when the Board of Education Chair came to the island and visited the facilities of the teachers, when he saw those buildings that they are not in conformance and they are so out of, you know, and then he asked me, he said, Letty is this the kind of housing you provide for your teachers? Excuse me, Sir, are you listening when I come to the meetings? That's what I answered the Chair at that time. And then they dissolved the school advisor and being replaced by another part of that. And I disappeared because I get fed up because whatever we asked, because we're too small numbers, they're always looking for numbers to support what they needed.

Ms. Kaye: Well, now we'll have a chance. We'll have a month to look over this and bring our comments and have them considered Letty, so thank you for sharing that. Anything more?

Ms. de Jetley: Yes, I think we should emphasize that these buildings should be green.

Ms. Kaye: Good comment. Joe's writing that down.

Ms. de Jetley: Energy efficient.

Ms. Kaye: Okay.

Mr. Prutch: Just one thing. I would want – when we meet next month for this, I want you to make that comment then, and those would be the official one that will be adopted by all you guys, and that's what would go forward to them. So just remember to bring that up next month and I'll write all that down and that's what will go forward to the DOE as your comments as a group.

Ms. Kaye: Thank you.

Mr. Prutch: I'm sorry, one quick note. I just remember what Clayton told me. I think you guys have two public hearing items scheduled for next month. I don't exactly recall what they are. So just to let you know that if we're adding this on to that, it could end up being a long evening.

Ms. Kaye: This is not our problem. I am fed up with four years of having Clayton send

agenda out and then at the last minute something has been added without any prior notice to us, so please, you just tell what is coming up to be brief.

Mr. Prutch: Okay.

Ms. Kaye: The two resolutions are there. I understand that. But nobody anticipated this would be here, and nobody anticipated it would be almost 70 pages long and we had three days to look at it.

Mr. Prutch: And what I'll do too is I have to comment as the Planning Department. I make comments as well as you guys make comments. When I comment, I have the October 8th deadline. They won't extend that for me, but you guys can. I'll make sure in my comments that I include some statement that your guys comments will be forthcoming by the end of October, so that they know to wait for them in writing.

Ms. Castillo: Sally, in lieu of what Alberta was talking about the housing for the teachers, I had recommended at that time to have an individual – an apartment type of housing for the teachers so that they have their own privacy, their own kitchen – they can have their own. And different housing for teachers that have families. But nobody from the Board of Education had listen to me at that time, so maybe as part of it that, you know, we can put into our recommendation.

Ms. Kaye: Okay. Anyone want to make a motion that we defer this so we get it on the record till the October meeting?

Ms. Zigmond: Madame Chair, I move that we defer until the October meeting giving our comments on the Draft Environmental Assessment Plan prepared for the Lana`i High & Elementary School Master Plan.

Ms. Kaye: Second?

Mr. Rabaino: Second.

Ms. de Jetley: Madame Chair –

Ms. Kaye: Okay. Any further discussion? Okay, all in favor of deferring the EA discussion until the October meeting?

Commissioners: "Aye."

Ms. Kaye: Any opposed? Okay, motion carries.

It was moved by Commissioner Beverly Zigmond, seconded by Commissioner Gerald Rabaino, then unanimously

VOTED: to defer the discussion on the DEA on the Lana`i High & Elementary School Master Plan.

- 2. Lanai Planning Commission requesting discussion on the letter from Archie Nahigian to Councilmember Sol Kahooalahala regarding failure to comply with the zoning conditions of the rezoning for the 2000 Miki Basin Heavy Industrial zoning. (The matter was requested to be placed on the September agenda at the Commission's August 19 meeting.)**

The Commission may discuss the letter.

Ms. Kaye: Thank you Joe. Okay, next on the agenda is a request we made last month to get more information on the procedure that happens when a letter, which was submitted in our packet last month from Lana`i resident Archie Nahigian to County Councilperson Sol Kahooalahala. We all had it in our packets, and I'm assuming that one of you gentlemen will be able to address that?

Mr. Joseph Alueta: I'll be in the hot seat tonight. What is the – as far as procedure or scheduling on your agenda, it was scheduled for you to discuss or is there specifics?

Ms. Kaye: It was in our minutes, very specifically to Kathleen Aoki, that she could not answer a question we had. Okay, so this is in our packet. It went to County Council. What happens? She said, oh, we'll come back and tell you next month. And I made that request very clear to Clayton.

Mr. Alueta: Yeah, it is on the agenda for you to discuss, and the only thing from my reading of the letter, where as far as there is a violation. I've talked with the administrator, Aaron Shinmoto, and his comments are, from what he was briefed on from the meeting from Mr. – Kathleen Aoki, our Deputy Director, was that he feels there is no violation at this time. And that the way the condition was written and added on, and I'm not sure who wrote the condition or added it in, at the time of the permit, it was not clearly written. And we've had this issue before with affordable housing or if housing is for a specific group. And we have gone back through our permits, and we'll try to be more careful in crafting the language to make sure that there is some type of teeth or enforcement behind the condition. That seems to be an issue that we've had.

On Maui, we had an issue where we turned it over – say for affordable housing, there was a specific in our community plan where the housing was suppose to have been for the

elderly. It was put in through the Change in Zoning, and a condition was added that they had to put – had to offer the homes or sell the homes or offer the homes for – to the elderly housing based on the agreement that they had with the Department of Housing and Human Concerns. Come to find out later, they offered the homes for six months. That's all they had to do. After the six month period, if they didn't get any offers – they had to reserve it for elderly housing – if they didn't get any of those people in that group, it went out to the general public and sold even though in the community plan which is a heartburn for many people was that during the community plan process, the reason that they were granted a multi-family designation or a single family designation during the community plan designation process was because it was sold as being housing for the elderly. And the same thing I think is an issue here where you have a project that –. And I feel that the conditions were very – you could offer it, it doesn't mean that it doesn't excludes you from doing a lease. It doesn't mean you have to sell it. There's no real specifics in that condition for the administrator from the Zoning Administration to enforce.

Ms. Kaye: Okay. We could probably have nine different opinions on whether you're correct. That wasn't the question. The question was what is the procedure? This letter was submitted. Does it just fall into a black hole? Does somebody just off the cuff have an opinion? Is there no process in place to investigate these allegations?

Mr. Alueta: Yeah, if it's sent down to –. And that's what happened, they investigated and the Administrator is saying no, they disagree.

Ms. Kaye: Well, then why isn't he here tonight to talk to us about that?

Mr. Alueta: I don't know. He was probably going to some where else. I was the one. I guess, I won't say I drew the short straw, but I was the one that was sent here for the administration, so I'm going to answer it as best as I can, but in his email to me, was that there doesn't seem to be something that he can enforce a violation.

Ms. Kaye: Oh, really?

Ms. Alueta: One, you can sell property until you have legal subdivision. So they haven't subdivided the property, so it's difficult for them to offer the 50% lots for sale. So until the subdivision is done, how can he offer it for sale? So he hasn't violated anything because he hasn't offered any lots for sale yet. He hasn't even created the lots. So once he creates the lots, you know, and I guess the violations would occur if he sells more than the allocated amount to non-residents or whoever – or in fee, I'm sorry – if he does not sell the majority of the lots in fee, and he chooses just to lease it. And I guess even he feels that even that would be very sketchy on the enforcement side because all it says is offer, and I guess that's where we have a debate on whether or not the condition is enforceable.

Ms. Kaye: Because if no offer has been made –

Mr. Alueta: Just because he offers it doesn't mean that he has to accept an offer.

Ms. Kaye: . . . (Inaudible. Mechanical difficulties with the portable microphone.) . . .

Mr. Alueta: Yeah, they never made the offer because there's no lots to offer.

Ms. Kaye: Okay, this is getting into a technicality that I'm not sure we were requesting tonight. We weren't asking for your opinion or anyone's opinion on whether these provisions were violated. We were asking for process on what happens. It sounds very ad hoc to me. It sounds very – nothing is in writing. Does a report go to Council? I mean, what?

Mr. Alueta: We have not, as far as I can, there has never been a request by Council. Right?

Ms. Kaye: Okay. So, our question really should be to Councilperson Kahooalahala?

Mr. Alueta: Correct, or Council Services. But if you're asking us what do we do when we get a complaint, we would go ahead and investigate, pull the files, find out whether or not there's been a violation, review the conditions. If able, go back to the original staff planner, pull the minutes to see what were the conditions, and the purpose and intent of the conditions, and to see whether or not there's been a violation.

Ms. Kaye: . . . (Inaudible. Mechanical difficulties with the portable microphone.) . . .

Mr. Alueta: I'm saying in the preliminary discussions in talking with the administrator, he said he cannot find a violation. And he has not put everything in writing. He just talked to me before I left to come here.

Ms. Kaye: Okay.

Mr. Alueta: But as far as this letter, from my understanding just reading the letter, we're only cc'd. So the letter is really not to us. It's not asking. And again, and so we would – normally if the Council member had a legitimate complaint, they would then formally send it down to the Planning Department.

Ms. Kaye: That's what we wanted to know.

Mr. Alueta: To the Planning Department to address the complaint. That's all it does. That's all they do. But they have to send it through the Mayor's Office and then it comes down,

and it takes about a week. And I have those. I had a complaint about a transient vacation rental in Maui Meadow. They wanted to know, I got a constituent that says this is a violation, please follow up. And then from that point, we then write the letter, not to this Commission, but we respond back to the Council member who requested the information.

Ms. Kaye: Thank you. Is there questions for Joe at this point?

Ms. Zigmond: Joe, I have a question please. When this gentleman gets around to writing the report, then who gets to see the report? Do we?

Mr. Alueta: Well, you mean, responding back to if a response or request comes down from Sol?

Ms. Zigmond: No, you said that the person who talked to you before you got in the plane and gave you that information had not yet written his report.

Mr. Alueta: Not report. His response back to the Kathleen because he was asked by Kathleen to respond or to help her with a response. But if all you wanted to know was a process, then I've given you an answer. I don't think there's any written response needed. I think that's where he was confused on. But if you're asking for a written interpretation as to whether there is a violation, then that's a different matter, then he will put that in writing, but we haven't received any requests.

Ms. Kaye: Okay. That's what we wanted to know. Since this is on the agenda, any public comments? Okay, Pat.

Mr. Reilly: Thank you Fairfax Reilly. 468 Ahakea Street. I would say this is a classic example why the Planning Commission must request that the County Council and its subcommittees hold all hearings about this issue on Lana`i. I think it's very important that the Planning Commission write a letter to the Chair of the Council for this particular item and insure that all public hearings regarding this issue be held on Lana`i. Thank you very much.

Ms. Kaye: Thank you Pat. Any questions for Pat? Okay, Ron?

Mr. McOmbler: Ron McOmbler. Lana`i resident. This goes back to last month's meeting. I watched something that happened last month that at this Commission meeting that I didn't think I would ever see. Trying to put the conditions on this piece of property is like trying to pull teeth. I watched last month the biggest fiasco I've every seen in my life from a Planning Commission on this island. There is such a gap. I'm so upset with this because this man has hit the right note. This is the right letter. Castle & Cooke failed in 2000 and down the road to 2005 – failed – to keep their promise to keep their permit.

Now last month, if you all recall, there was a motion to have the rest of the conditions brought back forth so that when it went in front of the Council that all of those conditions would be understood. They came from the Lana`i Planning Commission. At that meeting, there was only one condition, and the reason there was only one condition is if you remember the month before, this body, this Planning Department had to leave early before our business was done here. And that was at least six more conditions that never got put on because the pilot had to fly home. This is not the fault of this Planning Commission folks, and Corporation Counsel needs to understand that. You didn't finish your business because they went home, and that was the end of it because that was the 120 days or whatever it was. Now it sits in limbo that we're going to have to rely on the Council to take up this issue. I saw a person on this Commission, which has a conflict of interest, make a motion to move it forward. Somebody second it, and that killed it. I think that somebody that has a commercial interest with Castle & Cooke should not be making a motion on anything at this table because it's a violation that I have to go through and everyone of you have to go through if you sit on boards and commissions. And I'm really upset about this because it set the whole thing in the lap of the County Council, and Lana`i residents should be the ones that are making this decision. This is a violation no matter what he says or what his boss says. It was a guarantee from the Land Use Commission, clear back there when they got their development, that they had 20 acres here, 15 acres there, 100 acres there, another 10 acres here that went to this community in fee simple. Some of it, half of it in fee simple. We haven't seen a drop of that yet and I'm getting tired of this community getting pushed in the corner. That last six acres down there is the worst piece of the whole 20 acres. If you went to that on-site visit, that's the worst piece of the whole junk down there. And for them to say that they only had 2.4 acres fenced in – how big was that fence that we saw that day down there folks? It went around the whole thing almost except for the six acres. This is "shibai."

This man, I've got to give this man credit for writing this letter. And this should be answered by the Council, and we'll make the Council answer it. But it also should be answered by Corporation Counsel because I think the vote last week or last month should have never been held because the person made a motion that has a conflict of interest that owns – doesn't own, but leases property from Castle & Cooke, and that sticks in my craw. And I think that's illegal, and that nullifies the whole thing. So my interpretation – I love this letter. I was going to say something earlier until I read this letter, then this just adds to it. I thank the man for writing it. We've got to put pressure on Sol to make sure Sol addresses it. And you folks, should be the one. It should come back to you folks and you should go ahead and put those conditions on there then send it forward to the Council. Thank you very much.

Ms. Kaye: Ron, thank you. Questions for Ron?

Ms. de Jetley: Madame Chair. No, I don't have a question for him. I'd like to make a

statement. I was the person. I was the Commissioner that made that motion. If Mr. McOmber believes that I was in violation of the ethics code, I'd ask Planning Commission to take it before the Ethics Board to see if I was in violation. But if I were in violation, I am a tenant of Castle & Cooke. Every other business owner on Lana`i is also a tenant of Castle & Cooke. You making us totally voiceless if we cannot express an opinion. I was not speaking as a tenant. I was speaking for the business owners of Lana`i who have been waiting for a commercial space on Lana`i – storage space on Lana`i – for many, many years, so that was why I made that motion to push this project out of our Commission and to the County Council.

Ms. Kaye: Hold it. First of all, this is not going to get resolved tonight because I don't know which motion you talked about last month, and I'm going through my minutes now, and I didn't recall you made a motion. If you have a complaint, I would you suggest you make it at the time. That you find something out of order or speak to it at that time. I think that now is not the time.

Mr. McOmber: Madame Chair, I beg your pardon. I wasn't upset at the motion as much of what happened afterwards. And anybody that sits in this room knows what happened. That woman got up and walked past us and went over and shook hands with Castle & Cooke employees. That was after the whole thing was over. Nothing you could do about it.

Ms. Kaye: Ron? Ron?

Ms. de Jetley: Madame Chair, I object because my conversation with Castle & Cooke did not – nothing that I said pertained to the meeting that had taken place.

Ms. Kaye: Yeah, okay, Michael.

Mr. Hopper: I just want to comment. At this point, we're talking about only this letter on the agenda, not previous Commission actions.

Ms. Kaye: Very far afield.

Mr. Hopper: I understand there's public testimony and you should give leeway to public testimony if it any way relates. But we're going to get into board discussions and things like that, I'd recommend that you don't get into that unless it is specifically with respect to this letter and not previous Commission action.

Ms. Kaye: Thank you Michael. Okay, we have Archie Nahigian, the author of the letter, in the audience. He's signed up.

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

Ms. Kaye: Nothing to add. Okay. There is no one else on the list. Is there anyone else who would like to speak to this agenda item? Okay, public hearing is closed on that. Now, we have not too many items left on the agenda. Would the Commission like to just continue? Okay.

F. DIRECTOR'S REPORT

1. Open Lana`i Applications Report.

Ms. Kaye: We now have Director's Report. I guess that's you Joe? Open Lana`i applications report.?

Mr. Alueta: Joe, I'm going to rely on you for your – most of these are yours. But the ones that are not Mr. Prutch's items – the Lana`i Senior Center for the County of Maui – it's been scheduled for the October UDRB meetings, for October 6th. And, he's got a status with the Board of Variance and he's still trying to schedule the Board of Variance.

Ms. Kaye: Wait, what are you talking about? We're on open – Director's – open projects.

Mr. Alueta: Lana`i Senior Center.

Ms. Kaye: I'm sorry. I'm sorry. It's #4 on our open projects.

Mr. Alueta: Yes because I'm going to skip Mr. Prutch's because Joe is here today, so I'm just going to cover the ones that are the other Planners. So I did talk with Erin Wade who is the planner, and so she has it scheduled for October 6th for Urban Design Review Board, and he's still getting scheduled for the Board of Variances and Appeals for his items. I believe he's still trying to push forward for some funding. That he's going to get funding, hopefully.

Ms. Kaye: He who?

Mr. Alueta: Mr. – the applicant, which is Robin Tanaka.

Ms. Kaye: Are we talking about the Senior Center still?

Mr. Alueta: Yeah.

Ms. Kaye: Who's Mr. Tanaka?

Mr. Alueta: That's the one that Erin has been working with. It's either a consultant or the – Robin Tanaka – she's been exchanging e-mails with.

Ms. Kaye: Do you know if the process is far enough long that the monies that have been allocated for the Senior Center will be encumbered by the end of the year?

Mr. Alueta: That is what he's working toward.

Ms. Kaye: Okay.

Mr. Alueta: That's why I said that he's trying – he's hopeful that the money will be still there for him to go forward with it. And if it does not get encumbered, that he'll get it put back into at the State Leg for the money. Okay? That's why they're trying to move forward as fast as they can.

Ms. Kaye: Okay.

Mr. Alueta: With regards to Mr. Dias' one, the Lana`i recording studio. They have sent the applicant three letters to address some issues, and the person has not responded. So the last letter they sent back was if you're not interested in pursuing this or we don't hear from you, we will be closing the file. So that maybe is a dead project as we speak. With regards to the request for comments. They did have a meeting already and that will be taken off the agenda – I mean, taken off the open project list. RFC is just we're a commenting agency. We don't have much authority on it until they come in with another permit.

Ms. Kaye: *(Changed cassette tapes)* Okay, any questions on these Commissioners on any of these projects that are on our open list?

Mr. Alueta: Planner Prutch might have some updates on his projects.

Mr. Prutch: Let's see, what do I have here? Okay, well, the expand Miki Basin, as you know, I drafted the Council transmittal. It took me a long time to put all the exhibits together, all the minutes, all the staff reports, everything. I got all that ready. I've forwarded it on to Clayton to forward to Council so it's in the process of going from Clayton to clerical, to Jeff, and on up to Council. So it's on it's way to Council.

Ms. Kaye: Do we know when that will happen?

Mr. Prutch: When it will go to Council? The letter?

Ms. Kaye: When will it reach County Council?

Mr. Prutch: The transmittal itself, probably within a week or two at the most. Now once they get it, and how long it is before it gets onto Council, that's anybody's guess.

Ms. Kaye: I was just curious when it reaches them.

Mr. Prutch: It should be there within a couple of weeks. I would be (inaudible). Within a couple of weeks, for sure. It's on its way.

Ms. Kaye: Okay.

Mr. Prutch: The other projects of mines just looks like all this DOE, Department of Education, so you know what's happening with that. We're bring it back in a month.

2. 2009 Hawaii Congress of Planning Officials Conference - September 23-25, 2009, Oahu

Ms. Kaye: Thank you. Any questions Commissioner? Okay, now the Hawaii Congress of Planning Conference. September 23rd to 25th. The two Commissioners who are attending are Vice-Chair Ruidas and Commissioner Matt Mano as far as I know.

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

Ms. Kaye: You're going? What happened to Matt? He changed his mind?

Ms. Leilani Ramoran: He cannot attend.

Ms. Kaye: He can't attend. Okay. So we now have Commissioners de Jetley and Ruidas attending that. Joe, do you want to speak to the two agenda items for the 21st?

3. Agenda items for the October 21, 2009 meeting:

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

Mr. Alueta: Just that they're, again, two resolutions out of the County Council. The rural district one is to create larger rural district lot standards of five acres and 10 acres. We'll discuss that more when we get it. But it's just to add – just to add it into the County Code that you can do a ½ acre, a one acre and – I'm sorry – they'll also five two-acres, five-acres, and 10 acres. We are not zoning any lands. So no rural lands are being touched.

It's just standards in the code. But there's always this request for maps. If you need maps then I will get you maps.

Ms. Kaye: Yes. We would love all the maps you can possibly bring us. You at one point offered to bring us the ag lands. You now are offering to bring us rural. We'd love it.

Mr. Alueta: Okay. These are going to be State.

Ms. Kaye: Right, because there aren't any County maps, correct?

Mr. Alueta: Correct.

Ms. Kaye: Now, but there are maps of the SMA? And is that on the maps that I'm always carrying around or do we not have that either?

Mr. Alueta: Before you leave tonight, we can go over the maps that you have been carrying around, and maybe you already have the rural maps so I don't have to re-do it.

Ms. Kaye: We'll check them all before you get into your car.

Mr. Alueta: Yes. And then the reso for accessory dwellings deals with 19.35 and that is as you know you're allowed what is commonly called the ohana provision. You know if you have a lot that's 7,500 square feet or greater, you can do an ohana, an accessory dwelling. And a lot that size is based upon how big your lot is. The proposal is to drop the minimum lot size that you can do an ohana unit on down to 6,000 square feet. And so lots that fall between 6,000 and 7,500 or 7,499 would be able to do a 500 square foot ohana and there's a provision to ear mark anyone who does construct that, that it would be for a certain income group. And that's it.

Ms. Kaye: . . . (Inaudible. Mechanical difficulties with the portable microphone.) . . .

Mr. Alueta: Huh?

Ms. Kaye: There's no constitutional issues there?

Mr. Alueta: I don't know. I mean, the whole intent of ohana units was to be for affordable housing, but you know, my spill on how about 400 of those are probably going to be converted to transient vacation rentals. Now they're affordable vacation rentals – is that your tag line? – I'm sorry Ron. But that's seems to be the provision now is to try, since we've lost so many of these accessory dwellings that they are now moving down to a smaller lot size.

Ms. Kaye: That will be a fun discussion. I look forward to it.

Mr. Alueta: Yes it will be.

Ms. Kaye: Okay, any questions on these two items? I would just like to say that there is a bag of avocados on the back table that I brought from my house. Please, anybody, who wants an avocado, take one. I don't want to take them back home again. And if there is no other business from the Commission. Excuse me, Gerry?

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

Ms. Kaye: That's not on our agenda, so that's just a piece of information. If you had a question about it. You do? And to whom would you like to address it?

Mr. Rabaino: Joe or Michael.

Ms. Kaye: He's asking about the Ethic's letter – posting of something – that came in our packet.

Mr. Rabaino: Regarding campaign activities.

Ms. Kaye: I'm referring to the Maui County Board of Ethic's advisory relating to campaign restrictions. Is there some reason why this showed up today, or does it bear discussion or Gerry, do you have a question?

Mr. Rabaino: I do, for them, because I've been approached by candidates that's going to be running for 2010, and then when I read this, would I be in violation? Because the section that I'm looking at is campaign activities, yeah, regarding distributing campaign, fund-raising or literatures and materials, or soliciting campaign support. Because usually Lana`i, under the union activities, we get involved, yeah, and I've been involved in the past.

Ms. Kaye: Gerry, it says you can't use County time to do that.

Mr. Rabaino: I'm not going to be on County time any way.

Ms. Kaye: Right, so what's your question? No, no, no. I mean, is that what you were concerned about? Whether it applied to all of us?

Mr. Rabaino: Yeah. Well, basically for me.

Ms. Kaye: But, you're not a County employee.

Mr. Hopper: First, this is not on your agenda – I know it's in your packet – it's not. Second, campaign contributions and financing is not the purview of the Planning Commission. You can have your own advisor to advise you on campaign financing and things like that, but the Commission doesn't – that's not the Commission's purview from my understanding. Now as far as whether or not you are considered – you are considered for the Board of Ethics to be County officers, to be Planning Commissioners. That's why the Board of Ethics applies to you. That's why you have your Ethics orientation and things like that.

Ms. Kaye: Okay, well, we understand that because we've all sat through the orientation, but why did we get this tonight?

Mr. Hopper: I can't tell you why. I have no idea. I'm not sure why it was sent to you. It was not me who sent it to you. And I can tell you, just because something is in your packet, doesn't mean it's on your agenda that you can discuss this necessarily. You can put it on a future agenda.

Ms. Kaye: Would you like to do that Gerry?

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

Mr. Hopper: Again, you're talking about campaign financing issues. Again, I'm not sure why this is even in your Commission packet because that is not really the purview of the Commission.

Mr. Rabaino: Okay, let me ask you one simple question Mike. Any of the Commissioners – because I need to know clarity – any of the Commissioners are approached by possible candidates that's running for County or State office, are we in jeopardy as Planning Commissioners to support or even to go wave signs? I just need clarification.

Mr. Hopper: Okay, again, (a), this is not on your agenda right now; (b), I can't answer that question right now. I'm not a campaign finance expert. I could look at this for you and try to make that determination and see if that would have an effect. But right now, I'm not prepared to answer that, and it's not on your agenda, so even if I could, I probably wouldn't.

Ms. Kaye: Okay. For both of those reasons, Michael's right. We can't go much further with it tonight. But Gerry, if this is a concern of yours, then Michael has offered to clarify a position relative to what kind of campaign activities we can engage as Commissioners. If he would be willing to follow up, would that satisfy you? We certainly don't want it next month.

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

Ms. Kaye: No, no. I think we could probably discuss it in November. Michael? Or would you rather not?

Mr. Hopper: Again, I'm still not sure why this is Board business. It's nothing to do with the SMA.

Ms. Kaye: It's why I asked.

Mr. Hopper: Maybe Planning can tell me, aside, why it was put in your packet because I, as your legal advisor, would want to know why it's something that you're discussing if you have no purview over it. But that's between me and the Department at that point. But I don't know why it was in your packet.

Ms. Zigmond: And if we had questions, could we not ask the Ethics Department themselves? I think there's a phone number.

Mr. Hopper: The Board of Ethics probably has an opinion on this, and if not, then you can seek an opinion on it.

G. NEXT REGULAR MEETING DATE: October 21, 2009

H. ADJOURNMENT

Ms. Kaye: Okay, so if there's no other business, thank you very much everybody. And anybody know if they're not going to be here next month? Okay, we'll see you all then. Thank you.

There being no further discussion brought forward to the Commission, the meeting was adjourned at approximately 7:40 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 Zigmund
Alberta de Jetley
Leticia Castillo
Gerald Rabaino

EXCUSED:

Matthew Mano

OTHERS:

Joseph Alueta, Administrative Planning Officer
Joseph Prutch, Staff Planner
Michael Hopper, Deputy, Corporation Counsel