

**LANA`I PLANNING COMMISSION
REGULAR MEETING
FEBRUARY 17, 2010**

(Due to technical difficulty in the recording, portions of this meeting are deemed inaudible as noted throughout these minutes.)

APPROVED 04-21-2010

A. CALL TO ORDER

The regular meeting of the Lana`i Planning Commission was called to order by Chair Sally Kaye at approximately 6:00 p.m., Wednesday, February 17, 2010, in the Old Lana`i Senior Center, Lana`i City, Hawaii.

B. APPROVAL OF THE DECEMBER 16, 2009 AND JANUARY 20, 2010 MEETING MINUTES

Ms. Sally Kaye: Okay, good evening everyone I`m going to call the February 17th Lana`i Planning Commission meeting to order. Let the record show we have quorum with Commissioners Rabaino, Castillo, Ruidas, Zigmond, Kaye, Gamulo, Green and de Jetley.

First order of business is approval of the December 16th minutes. Corrections were sent around. So if someone would like to make a motion at this time.

Ms. Beverly Zigmond: Madame Chair, I move that we approve the minutes of – do we do them separately?

Ms. Kaye: Yes.

Ms. Zigmond: December 16, 2009 as corrected.

Ms. Kaye: Second?

Ms. Leticia Castillo: Letty Castillo seconds the motion.

Ms. Kaye: Okay, any discussion? Any additional corrections or suggestions for the minutes? Okay, all in favor?

Planning Commissioners: “Aye.”

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

VOTED: to approve the December 16, 2009 Lana`i Planning Commission meeting minutes with the amendments as provided.

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Ms. Kaye: Okay, motion carries. Next we do approval of the January 20, 2010 meeting minutes. I want to make sure – I know the corrections I sent around, Bev wasn't sure that she could see all the strike outs that I sent around – the corrections. Did anybody else have that problem? No. Good. So corrections were sent around, and I'll entertain a motion at this time.

Ms. Zigmond: Madame Chair, I move that we approve minutes of January 20, 2010 meeting with corrections.

Ms. Kaye: Second?

Mr. David Green: I second the motion.

Ms. Kaye: Okay, discussion? Any additions? Okay, I have one question before we vote on this and that was in the corrections I sent around, I asked everyone if they had any questions or suggestions regarding –. No, I'm sorry, I'm going to withdraw that. Any additional corrections? Discussion? Okay, all in favor?

Planning Commissioners: "Aye."

Ms. Kaye: Okay motion carries.

It was moved by Commissioner Beverly Zigmond, seconded by Commissioner David Green, then unanimously

VOTED: to approve the January 20, 2010 Lana`i Planning Commission meeting minutes with the amendments as provided.

C. UNFINISHED BUSINESS

- 1. MR. JEFFREY HUNT, AICP, PLANNING DIRECTOR transmitting proposed amendments to Chapter 19.40 Conditional Permits and Chapter 19.45 Project Districts of the Maui County Code that would delegate approval and/or renewal of permits to the Planning Director and other miscellaneous revisions. (J. Alueta) (Public hearing conducted on January 20, 2010.)**

_____The Commission may take action on these requests._____

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Ms. Kaye: Next we have unfinished business. First, we're going to have Joe Alueta speak to us about proposed amendments to Chapter 19.40, Conditional Permits.

Mr. Joseph Alueta: Good evening Commissioners. Let me, first, let me pass out a couple of things for you that hopefully will help you and not confuse you more. So again, we'll deal with 19.40 which is your conditional permit processing. I think some of the confusion, I guess, at the last meeting, along with some of the other Commissions had the same problems was that the amendments and the reports, or the proposed amendments were only sections that are being amended. And so you couldn't really see what was happening with the overall. So when I went back and did, I went back and tried to incorporate the amendments that were being proposed by the, I guess, the Committee on Streamlining the County permit process.

Ms. Kaye: Can I just ask you a question? What you just handed out is in our book, correct?

Mr. Alueta: In your book?

Ms. Kaye: Yeah, the big black book, where we have Title 19 in its entirety.

Mr. Alueta: Yes it is. Correct, except this one tried to incorporate the Ramseyer's changes that were being proposed that are on Exhibit 1.

Ms. Kaye: And the second question is you did read our minutes, you do know what our problems were with both of these provisions last time?

Mr. Alueta: Yes and no. I'll try to get to that, and I'll try to explain how it was explained to me from the Director's standpoint of what we he was trying to accomplish, and then how the other Commissions tried to react to it also, if that helps, and then I'll try it from there. Again, I apologize for the late pass out on the Department of Water Supply. I was just given this right before I left to catch the plane, so I was able to make copies. So that was pretty much the extent of my ability. Water Department has an unusual way of commenting on projects. They – I send it out to them or it was sent to them quite a while ago, and then they sometimes bunch them together with other transmittals that I sent to them prior, and they incorporate some of those comments we get are missed mashed from other projects that have already gone through.

Ms. Zigmond: Joe, just looking at this real quick though, this is the same thing. It's still saying the Planning Director, blah, blah, so it's the same thing, just in a little bit of a different format, but there are no changes to what we reviewed last month, correct?

Mr. Alueta: No, definitely not.

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Ms. Zigmond: Okay.

Mr. Alueta: So again the conditional permit process, the intent of the proposed amendments is trying to stream line the process in which conditional permits are reviewed. The methodology in which, or what – the concerns from the other Commissions I gathered from you is like what are considered substantial changes. You know, what are considered – do not result in a significant impact. The way it worked with Maui and Moloka`i, they all had the same issue is what is significant, what's substantial? On Moloka`i, what they ended up doing was they made it so that the conditional permit for renewal came back to the, at least to the Commission, rather than going to the Council. So that at least steps it down one level. On Maui, if there was any changes, it would have to come back to them, on Maui also. But if it was just a time extension with no changes in the permit or anything else, then the Director could approve the time extension. But prior to the Director approving that time extension, the Commission would be given a list of all the applications that have requested a time extension, so they would get to see a list of all of them. And if they did not have a problem with any of them, the Director would then go ahead and grant the time extension. Only if they requested that permit be brought before, would it be brought before them in process as a time extension with the Commission doing the final approval. So it's kind of like – well, that's how they requested that the language be drafted for them.

On Moloka`i, their concerns with the conditional permit was that even if there is no changes to a conditional permit, a lot of times, neighbors don't realize that the person is operating with a permit and there may be conditions. They may say, oh the guy got a conditional permit to do his business, and there's nothing I can do about it. But if they know when a person comes in for a time extension, if they see it again on a public hearing that there needs to be another meeting that's on an agenda, then that's the first time that they come out, and can at least voice their concerns about either, depending on the situation whether it be a transient vacation rental or B&B or a business that's, you know, pickled eggplants, commercial kitchen in a residential district. They may have an opportunity to have concerns or the conditions modified at that point. And so that's pretty much it.

Ms. Kaye: Okay, you didn't read our minutes then. We had – we had requested that this come back to you so you could actually re-write it because we found inconsistent language between (A) and (B.) You are proposing that the Planning Director may approve changes if they're not substantial. Moloka`i recommended that it be the Moloka`i Planning Commission. They did not want that language. We had that discussion as well. We talked about what was substantial and what wasn't. And then you moved down to (B) where you left it with the Commission to review a request to amend or delete which, as a matter of statutory construction, is a change.

Mr. Alueta: You're talking for 080 – any person who has been issued a conditional permit

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may request the commission to review the request to amend or delete? That?

Ms. Kaye: Is a change.

Mr. Alueta: Okay. I think what the purpose of leaving it –. Well, I'm –. Again, I got this from my Director. I didn't have much drafting into it, so the reason it probably was there or left in there is it's existing language. I don't think it is.

Ms. Kaye: Well, the point is that if we would follow Moloka`i, and I think this board was willing to go there, and leave it with the Planning Commission, then it makes (B) redundant.

Mr. Alueta: No in the sense that the first part only deals with non-substantial changes.

Ms. Kaye: And we were unhappy with –

Mr. Alueta: Yeah.

Ms. Kaye: – the definition of “non-substantial.”

Mr. Alueta: Whereas (B) deals with a change that doesn't meet that criteria of (A.) The way it's intended to be is that if someone doesn't meet the criteria of (A), they would come in for (B.) Or if they wanted to request an extension, I mean, an expansion or whatever that was obviously different from what the initial intent, they would have to go to the Commission.

Ms. Kaye: Right, and as we stated, we love our Planning Director, but he might not always be there.

Mr. Alueta: Right.

Ms. Kaye: And that puts the ball in one court because it's very possible nothing would ever come here because it would always be found to be insubstantial.

Mr. Alueta: Okay.

Ms. Kaye: That's a possibility. So, if, we followed Moloka`i.

Mr. Alueta: Then you would scratch out the amendments.

Ms. Kaye: Yes.

Mr. Alueta: And leave (B) as it is.

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Ms. Kaye: And leave (B) as it is.

Mr. Alueta: Right. Okay, so that's your –. Well, I'll wait for –.

Ms. Kaye: That's where we were last month, and that's why we asked Kathleen to go back and alert you to this, so that you could address it. But there are no changes, so –

Mr. Alueta: Yeah, we're not going to –. I mean, our Director did not – was not inclined to make any amendments at this time.

Ms. Kaye: Okay.

Mr. Alueta: He has his proposal, and that's the proposal.

Ms. Kaye: Okay. Then we're back to where we were before which was, as Kathleen actually recommended, that we make a recommendation to County Council that the inserted language be not approved. But if it was approved, then Planning Director, should County Council decide to do it, then we would recommend that Planning Director be the Lana`i Planning Commission.

Mr. Alueta: Okay.

Ms. Kaye: Now that's just where we were last month. Commissioners, we need to –. We're going to do these one at a time. I think it would be much easier to take 080, and then deal with 090. So, do we want to ask Joe anymore questions on just this measure?

Okay, then, to make it less confusing, why don't we take public testimony on just this measure right now. Is there anyone that would wish to speak to the changes recommended to 19.40.080? Seeing none, okay, Commissioners, what's your pleasure?

Ms. Zigmond: Madame Chair, I have not had a change of heart since last month. I believe that we need to have home ruled on conditional permits. And consequently, okay, you want to start with 19.40.080, I make a motion that we change the Planning Director to the Lana`i Planning Commission.

Ms. Kaye: Okay, but, that still makes it inconsistent. To make them work together, the provisions (A) and (B), the logical choice would be to just not recommend the inserted language. But then if we were overridden, then that would be the second part.

Ms. Zigmond: That's right. That was the conversation that we just had a few seconds ago. Sorry. Okay, I'm going to take back what I said, and I'm going to make a motion that we recommend deleting the new language in section (A.)

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Mr. Alueta: And then you had –. Well, and the discussion was that –

Ms. Zigmond: And if that was not approved by Council, then –

Mr. Alueta: – that the amendments be determined by the Planning Commission.

Ms. Zigmond: The Planning Commission. Yes Sir.

Ms. Kaye: Okay, do I have a second?

Mr. Dwight Gamulo: I second.

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

Planning Commission: “Aye.”

Ms. Kaye: Okay, motion carries.

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

**VOTED: to recommend amendments to Section (1A) of 19.40.080 as
discussed.**

Ms. Kaye: Okay, now we’re going to move on to the extension. I don’t know you had anything else to add to that. Our understanding again from last month was that Moloka`i changed the first reference to Planning Director back to the Moloka`i Planning Commission. And I recall from reading the minutes that we had our question about agencies explained, and I would like to run that by you Joe. We questioned how they would even know that an extension was being asked for, and Kathleen assured us that request for comments goes out to all agencies with an extension request. Is that true?

Mr. Alueta: That is correct. But primarily, it’s narrowed down to agencies that had previously commented on the original permit. So like if we had Water Department or if DLNR had a comment and it was a condition that was involved with them or they just had general concerns, we’d send him back to them. But if we got Police Department said no comment and there wasn’t any changes to the permit, then we probably wouldn’t have sent it. If it was an expansion, then yes. But if it’s just a time extension, we would narrow down who would get to comment on it. It’s still a long list of agencies that get to review it.

Ms. Kaye: And may I ask on the – under (C) – I don’t think we asked this last time. If I

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didn't, I apologize. The use does not, and I'm quoting here, "the use does not qualify for an administrative review." What specifically is administrative review in that context?

Mr. Alueta: Going back to (A), the Planning Director may approve changes.

Ms. Kaye: That's new language, "the Planning Director," so that's my question. That's original language. So administrative review in this context means what?

Mr. Alueta: "The use does not qualify administrative review and approval. Time extension shall process the same manner as the original permit." That's new language also. That's why it was put in there. It's underlined.

Ms. Kaye: I'm sorry. I'm sorry, you're absolutely right. Okay, so, then if we would consider changing if – and I'm quoting again – "if the Lana`i Planning Commission determines that the use does not qualify for an administrative review and approval, the time extension shall be processed in the same manner as the original application." That to me makes no sense.

Mr. Alueta: Yeah, but this section that you're talking about deals with no public hearing being held. So if no public hearing –. So if it does not qualify, that means they have to go back through and do a new public hearing for the project. And then normally what happens is –. My reading of this is that there's certain factors that go around, that determines that we can waive the public hearing. If it doesn't qualify, then you have to go back and redo, have a whole public hearing again, so it doesn't qualify. We do the same thing with, actually, SMA Major time extensions also. We waive them. Whenever anybody applies for an amendment, if there's not a significant amendment, the Director and the applicant will waive the public hearing.

Ms. Kaye: Okay, and I'm seeing that the Department of Water Supply, all be it late, addressed this by saying, "changes and time extensions to conditional permits should not be approved unless it is made certain that concerned agencies had the opportunity to comment on the original application that their recommended conditions for approval were honored, and that agencies are given the opportunity to identify any new concerns prior to Planning Director's determination."

Mr. Alueta: Right. So that's what it is.

Ms. Kaye: So that's not a concern based on what Kathleen told us last month, and what you're telling us now.

Mr. Alueta: Correct. Because they send it out. The concern – an issue that we have with Water Department primarily is that they – sometimes people are granted a certain permit

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or a waiver from doing certain improvements because they're, say, a single family where they do two single families. They then come in for a conditional permit and they're viewed as a commercial establishment. And therefore new improvements or water system improvements are required. And the either kills the project, or the Planning Commission sees that it's not reasonable for the person to meet the commercial standards. So therefore, that condition never gets put on, and then goes back out. And the Water Department sees it that we never got that condition and they send another letter saying we want to do commercial standards. And so that's an issue that will always come up with the Water Department. And I understand Water Department's concern because it's very frustrating because what happens is somebody comes in and says I'm doing a single-family home and I'm doing an ohana. It's for me and my family. The next thing you know, he's doing the transient vacation rental, or some kind of commercial shop, you know, who knows. But they never met residential fire standards. Now, all of sudden, they want to do a commercial, so they're not even getting anything. And so Water Department feels they're being left out high and dry, sort of speak, because they somehow have a legal requirement to provide, to have fire protection for this place, yet they're not able to get their improvements to do the fire protection.

Ms. Kaye: Okay, I don't recall that we had too much. Once Kathleen explained to us that letting the Planning Director consider unusual circumstances. I thought that I don't remember hearing too much complaint about that because she clarified that it would still if they don't get the extension request in by the time the date it was set to expire, it would expire. It would not be extended out, correct? In other words, if you don't meet the 90-days –

Mr. Alueta: Right.

Ms. Kaye: But you don't get it in on the expiration date, it expires.

Mr. Alueta: Yeah, if you missed the expiration date, it's over. It's too late. By if you missed the 90-days, we'll still process it.

Ms. Kaye: Okay, like if it was 60-days, 30-days, or five days.

Mr. Alueta: Right.

Ms. Kaye: If they are unusual circumstances.

Mr. Alueta: Correct.

Ms. Kaye: Okay. And I just brought my notes from last month because I wrote all over this that Moloka'i Planning Commission inserted themselves in lieu of the Planning Director?

Mr. Alueta: Yeah.

Ms. Kaye: Okay. And –

Mr. Alueta: And is that the desire of the commission too?

Ms. Kaye: I'm just reviewing.

Mr. Alueta: Okay.

Ms. Kaye: I'm just reviewing.

Ms. Zigmond: If I can just interject in there. As you've said before, we love Mr. Hunt, but he might not always be there, and I'm not comfortable with saying that somebody's husband was sickened so they couldn't –. I mean, it could get, I think, it could be taken advantage of, and I'd personally like to see us have control over that also.

Ms. Kaye: Well, I have more concern with the Planning Director determining whether a permit holder is in compliance with the conditions of approval when he's not on the island, on which the conditional permit was issued. Commissioners, any other questions for Joe at this point? I'll make the offer of public testimony if anyone wants to speak to this.

Mr. Fairfax "Pat" Reilly: Pat Reilly, 468 Ahakea. I do recall that the issues that we spoke about the last time are the conditions, and that the Planning Commission themselves put the conditions on these permits. So to me, the Planning Commission should be the final arbitrator to determine if the conditions have been met. So I would suggest you follow Moloka`i. Leave it to the Lana`i Planning Commission. Thank you.

Ms. Kaye: Pat thank you. Any questions for Pat? Any other public testimony? Okay, just as a point of clarification, I believe that conditional permits come to a Planning Commission first which then makes recommendations to the Council for approval. So only in the case of an SMA permitting process would it just come to the Planning Commission. So there have been occasions, I think recently, Miki Basin was one where conditions were put on change in zoning, and they were not upheld. They weren't followed. And it sort of slipped through the cracks for nine years, so I think this is an example of, as we talked about last month, maintaining as much home rules as we can. So would anyone like to make a motion with respect to the first paragraph. I'll quote this sentence, "In any case, extensions must be applied for no later ninety days prior to the expiration and shall be made and approved by the Planning Director or the Lana`i Planning Commission, provided the following criteria were met." That's our choice on this one, unless someone has a third.

Ms. Zigmond: Madame Chair, I make a motion that we insert the Lana`i Planning

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Commission, in lieu of the Planning Director for the sentence that you just read.

Ms. Kaye: Second?

Mr. Gamulo: I second the motion.

Ms. Kaye: Okay, discussion? Okay then, all in favor?

Planning Commissioners: "Aye."

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

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

**VOTED: to recommend amendments to line #40, of Section
19.40.090 Extensions, as discussed.**

Mr. Alueta: So Madame Chair, so that's for –

Ms. Kaye: That's for the first paragraph. Now we're going to –

Mr. Alueta: Yeah, Exhibit 1, page 1, line 40, correct?

Ms. Kaye: Yes.

Mr. Alueta: Okay.

Ms. Kaye: And now we're going to deal with page 2, line 4. Who's responsibility it might be to consider unusual circumstances that prevented an applicant from filing a timely extension. Commissioners, your pleasure?

Ms. Zigmond: I'm on a role. I make a motion that we insert the Lana`i Planning Commission and take out the Planning Director for the consideration of unusual circumstances.

Ms. Kaye: Second?

Mr. Green: I second the motion.

Ms. Kaye: Okay, further discussion?

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Ms. de Jetley: Madame Chair, given the time frame, I would like see that stay with the Planning Director because it has to be – the extension has to be applied for 90-days out, so in the first part of that period, if someone were ill, I don't see why they need to wait another, for our meeting. They need to get this extension going as quickly as possible. So if someone who is ill within the first 15-day period of the extension being filed, and we're unable to do it because of an accident or illness, for them to wait another 15 to 20 days for it be heard by our Planning Commission on Lana`i would be a hardship. So I would rather see it stay with the Planning Director because he can decide immediately whether or not the extension is justified, the unusual circumstance is justified.

Ms. Kaye: Any other comments? Okay, there's a motion on the floor, and a second. If there's no other comments, then all in favor?

Planning Commissioners: "Aye."

Ms. Kaye: Opposed?

Ms. de Jetley: Nay.

Ms. Kaye: Okay, motion carries.

Mr. Alueta: Thank you.

It was moved by Commissioner Beverly Zigmond, seconded by Commissioner David Green, then

VOTED: to recommend amendments to Exhibit 1, page 2, line #5, as discussed.

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

Dissenting: Commissioner A. de Jetley)

Mr. Alueta: You want to do one motion for the whole thing? All amendments? Mike? Normally – because you basically just had motions to do individual amendments to the proposed bill. I was hoping for one master proposal or recommendation for approval with amendments as voted on. Is that – or are we fine? I'm just trying to make sure I cover my basis.

Mr. Michael Hopper: I suppose you could just read that as those were the only comments that you received. Do you want a motion for approval –? I mean, those were only the

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changes that you made.

Ms. Kaye: We can't. I don't think we can because we had a vote, a no vote, so we can't lump them all together. We did them individually to be very clear about what our comments would be. So having a full motion now would require one or more commissioners to vote against what they vote for already.

Mr. Hopper: Okay, so you wouldn't have a general motion of approval or not. You would have basically several different recommended changes to your proposal that you could forward on to the Council as the comments of the Commission. Okay. I think that's sufficient. There is a requirement of the Charter that after the proposal –. Actually, no, that's only on a Council Bill. There's no two-third majority requirement if it's not a Council Bill, so I don't think that would have a substantive effect at this point if you had piece meal without a general recommendation.

Ms. Kaye: You have very different provisions that you're proposing changes to. To make it simple for ourselves and you, we took them one at a time. I'm not sure how you would want a motion that would cover them all to be structured.

Mr. Alueta: I'm fine.

Ms. Kaye: Commissioners, we're okay with that? Okay. Next we have –

Mr. Alueta: 19.45.

Ms. Kaye: Next, we have Joe speaking to us about recommended changes to 19.45 Project District.

Mr. Alueta: This provision basically would update the Project District code to allow for –. Well as you know, there's Project District. Some people get confused with Project Districts and Planned Developments. Okay, Project Districts basically create their own zoning provision, their own Title 19. They create their own residential standards or commercial standards or their mixed use district standards. In a Project District that you saw earlier that you recommend, that you passed, you're dealing with the existing zonings of Title 19. One of the things that has in Title 19 that's not in the Project District is a special uses and other development standards. So in Title 19, like say in a residential district that you saw recently in the business districts, during our update, we're trying to organize each chapter and have there's your allowed uses, your accessory uses, uses that are considered special uses, and your development standards. And that's kind of what they're doing here is that you have your permitted uses within the project district, and they want to add special uses so they'll be able to have in their subdistricts of a project district, they'll be able to list out special uses that may be permitted. And then also other development standards that deals

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with – a lot of times that will deal with design guidelines or urban form codes that they're requiring.

Ms. Kaye: Yeah, I don't think we had too many questions on that. I think our questions – well first of all, we didn't end up dealing with it, so I think we should probably reiterate that we recommended that in (2) "agreements with the mayor or his designated representative," needed to be changed to his or her.

Mr. Alueta: Right.

Ms. Kaye: Okay. And we wanted to know the bracketed, "The unexecuted agreements shall be submitted to the Council," that phrase, why was that taken out, and Kathleen did not know.

Mr. Alueta: My understanding right now is that the way it's happening is that there's unilateral agreements done sometimes with these project districts. And you have a unilateral agreements that you're going to either approve some kind of water system or have some kind of affordable housing or whatever it is. The only person that can enter into that unilateral agreement is the administration, not the County Council. What's cumbersome right now is that unilateral agreement gets basically hashed out with the mayor and their department heads who are going to enforce it, like, you know, when is the road going to be dedicated? When are you building this road and dedicating it? When are you going to do this water line? When are you going to do the sewer pump station for us and what has to happen and how far along in the project do you go before you're going to do this? And that gets hashed out very technically, on a very technocrat basis because you have engineers who are deciding when the capacity is. It then has to go back to the County Council, they get to review it, but they can't really – they can sort of take action and they can take a vote, but there's not much more they can do. They can't approve it because realistically you're down to a technocrat decision. An engineer has to make that call. So the streamlining board recommended that, you know, there's representations made during the – when you get your approval for a project district, there's representations made to the County Council. And as long as that's in there, then it should be handled, that final unilateral agreement shall only be handled by the administration side.

Ms. Kaye: Okay, but I'm not sure that addresses the question. Let's back up for a second. I recall that Gerry, you had a question on the difference between a bilateral and a unilateral agreement. Would you want Joe to speak to that?

Mr. Rabaino: Bilateral you have two different agreements. Unilateral is everybody coming to a consensus. But for Lana`i, it's a little different because there's a lot of back door meetings that the general public or even the Planning Commission is not aware of.

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Mr. Alueta: I can't really speak to the –. I can't really speak to either which way, either the back door agreements or the differences between the unilateral or bilateral. I mean, I'm not an attorney on this one. I don't know the exact details of that. All I know this was the recommendation that came out of our streamlining committee. The Director and the administration supported it.

Ms. Kaye: Okay, well then let's go back to the original question. From what you just said, and from what I read of this language, agreements go to the Council and the Council can approval unilateral agreements. My question was about unexecuted agreements. Why did that go to the Council and why are they recommending now that they don't. It's not unilateral or bilateral, but unexecuted.

Mr. Alueta: I guess from –. It is. Right now they do. The unexecuted shall be submitted, so that's being bracketed and taken out. So it is being sent there now.

Ms. Kaye: Why are they recommending to take it out?

Mr. Alueta: Because the final – because the approved unilateral agreement which is the one between the administration and the developer, right, goes to the Council already and they get to vote on it. So why do you need to go before them twice? You're adding another – so you're adding another step.

Ms. Kaye: I don't have a problem with it, I just want to –. Right.

Mr. Alueta: And so the point of the streamlining bills is to eliminate steps that are redundant. And because they feel that the Council is already going to approve it, and they can approve it with amendments according to this language. So there's no point in you going back to them one day saying here's the draft, the unexecuted one, and then come back after you draft it and get it recorded. Then come back again and say here's the final one. And then they make, you know, so –

Ms. Kaye: Okay, and so much as you've said so far makes sense, and I actually understand why the big part of the bracketed language would come out, but then at the end, it says "all required executed bilateral agreements have been transmitted to the Council for its information." I believe you Dave had a question last month on that speaks to not reviewing it or passing on it, that's just for information sake. I just want to make sure that's consistent with the language that you're leaving in.

Mr. Alueta: I see your confusion and I share your pain because I'm just looking at it and I'm trying to figure out – there seems to be a conflict there.

Ms. Kaye: Yes.

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Mr. Alueta: So your comments, and I guess my comments would be is you have no problems with the amendments provided that your last little addition “for its information” has no bearing on lines 37 through 48.

Ms. Kaye: Exactly.

Mr. Alueta: I mean, that’s the approach I would take at this point because you want to make sure there’s a check and balance between the administration and the Council. They are two separate and distinct roles remain that, and you’re not trying to cut the Council out of any authority in this case. And I don’t think the Council is going to cut themselves out in any authority honestly, so I don’t think –. I think if you had that type – if you had those type of comments, it would be good.

Ms. Kaye: Okay. At this point Commissioners, unless you have a specific question for Joe, again, I’ll ask if there’s anyone who wants to speak to this particular provision. Again, we’ll take them one at a time because I think it’s cleaner and easier that way.

Mr. Alueta: So, which sections because there’s –

Ms. Kaye: Now dealing with sections (1) and (2)A. (A1) and (2).

Mr. Alueta: Okay.

Mr. McOmbler: And that’s in relation to what now? The Council having an approval?

Ms. Kaye: Council right now has approval. This specific –

Mr. McOmbler: My question to you is this, I understand the agreement, the unilateral agreement, but what about private agreement? What about MOA’s that other parties have agreements with the developer? When do we tie that into the County knowing what those agreements are because that’s what happening with the MOA now. They’re saying well it’s nothing to do with us, it was a private agreement which was actually triggered by the Planning Commission at that time. They said, you have an agreement with Castle & Cooke, LSG, and we did that, and we struck up an MOA before they could go forward. But now, obviously, they don’t acknowledge that MOA. We’re on our own. So I think you need to address that. What about private agreements with project districts? And they come up. Private people can intervene in this process. And if they’re granted “interveneship“ into this, they’ll strike up an agreement. Where does that agreement go with the development? That’s my question. Thank you.

Ms. Kaye: Thank you Ron. Any questions for Ron, Commissioners? Anyone else want to speak to this particular item?

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*Mr. Reilly: Pat Reilly. I think the core value here is to give strength to unilateral and bilateral agreements by having them included in the original application so that the Council approves the unilateral and bilateral agreements. And therefore I would agree with the language that, but it also raises the caution as Mr. McOmer just said. If there are agreements outside of the application between two parties that aren't included in the application, it has no bearings on those agreements. Those two parties would still have to resolve them outside the realm of this. So what it requires and is incumbent upon all of us who are making agreements as development goes forward is to ensure that those agreements are encoded in the application, and fully referenced in the application and submitted to the County along with the application so that the Council approves it. The way I read "for its information" is that the Council itself does not enforce the agreement, but administration would enforce it. So as long as the Council is informed that the agreements, the unilateral or bilateral agreements, have not been executed, then that's what I'd want if I were a Council Member. I would want to know about it, but I'm not the enforcer at that point. I believe that's the administration that enforces the agreement. You can take it as you wish, but to me, it strengthens and enforces people making unilateral – the developer making unilateral, and parties making bilateral agreements to ensure they're in the original application and the Council approves it. Thank you.

(Changed cassette tapes)

Ms. Kaye: Thank you Pat. Any questions for Pat? Anyone else want to speak to this issue? Okay, public testimony is closed.

Mr. Alueta: Madame Chair? I just re-read it for the umpteenth-time again, but essentially, the lay man's term from reading this is that right now bilateral and unilateral – and I don't really know the definition between a unilateral and a bilateral, but the way this is – and so right now, the way this is reading is that unilateral agreements are the ones being approved by the County Council. So you guys got that.

Ms. Kaye: Yeah, that was my next question. It's only one.

Mr. Alueta: And the bilaterals, right, "are transmitted for comment to the Mayor, or designee, for further negotiation and modification, if appropriate, for proper execution." All of that is being taken out. So bilaterals, Council is being taken out of the loop as far as – and that's why it says "for its information" because what they're making reference to "for its information" is bilateral.

Ms. Kaye: Is the bilateral. Okay, and I'd like to know – you read my mind – what's the difference, why leave unilateral with the Council and take bilateral away?

Mr. Alueta: I do not know.

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Ms. Kaye: Okay then.

Mr. Alueta: If I knew the difference, I would probably help.

Ms. Kaye: Yeah Gerry.

Mr. Rabaino: I understand what is unilateral, okay. Unilateral, I assume, agreements have been recorded, but executed of bilateral agreements may have been transmitted for information. The information that is transmitted is not shared and should be shared with the Planning Commissioners in that sense of terminology because bilateral is two parties that's coming to an agreement. Where the unilateral everybody is on the same page with an agreement.

Ms. Kaye: Michael?

Mr. Hopper: Typically, a unilateral agreement is where only one party promises to do something in the agreement. That's the most common form of agreement we have. It's usually a developer promising to dedicate easements, dedicate land for park purposes, dedicate things for affordable housing.

Mr. Rabaino: . . .(Inaudible) . . . what Ron was saying okay. Back in '88 – I'm going to throw back history – there's a berm down there at Hulopoe Beach Park that was suppose to be taken cared of. That's unilateral. Okay? You moving forward into the '90s and the year 2000, the bilateral, yeah, is going back and forth with LSG, the Company and the community involved. Okay, so you get all these bickering still lingering. Okay, so this over here is informational according to what you have underlined. The question is the unilateral with the Company and the – the Company which is the developer – I'm not singling out Castle & Cooke – but I say the Company/Developer has a unilateral agreement with the County Council on this development project or project district. Whatever terminology you guys use in your guys transmittals. But when you go back to the history, when we was going to the hotel phases under the construction, the beach park was the main concern because of the flooding. And I'm using that berm, that is what Ron is referring to. Till today, you have flooding down there. For those who go to the beach often will see that. Ron has worked down there. I have worked down there, and I still work down there. But this is what referring, that little sentence right there makes a big different for we, the residents, of Lana`i. Not Moloka`i. Not Maui. It should be brought up to the Planning Commissioner where they can make the determination because it's our little aina that we're referring to.

Ms. Kaye: Would you now explain the difference between unilateral and bilateral? Thanks.

Mr. Hopper: Well, the unilateral agreement would have promises made by only one party.

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In this case it would be –. It's usually a developer who has to do something under the code. Conditions of zoning, for example, are recorded as a unilateral agreement, and that is recorded on the property. A bilateral agreement, and I haven't seen many in the context of – I don't know if I've seen any in the context of a change in zoning or a project district is an agreement where both parties make mutual promises back and forth. I think in the case of the County, it would be, say, an agreement between perhaps a developer or landowner and the County basically stating that if the developer does such and such, then the County would have to do something as well under the agreement. And I haven't seen that often because what usually comes out project districts are conditions that requires certain action on behalf of the developer. And the developer needs to show that they comply because the developer is getting an entitlement, a change in zoning, project district approval in exchange. And so, these are almost always unilateral agreements in my experience.

As far as Council approval, you know, the Council generally has some discretion in whether or not it wants to have these agreement approved by the Council itself or not. If the Council needs to accept land, for example, it always needs to approve that agreement. If there are certain other things, they may not have to. I can't go over all of the different possible types of unilateral and bilateral agreements that you could have. It all depends on the conditions the Council decides, may or may not decide to impose on a project district approval in this particular case. And how they're processed, I haven't really gone through this process very much before, but that's the difference between the unilateral and a bilateral agreement. And it is almost always a unilateral agreement that I see in these circumstances. I don't think and I haven't been working very long, but I don't think I've ever seen an actual bilateral agreement where the County also promises, or the County Council promises that it will do something in exchange for the developer promise. I don't think I've seen one of those before.

Mr. Rabaino: I . . . (inaudible) . . . okay, because you're saying, you're talking to us about unilateral, but this bilateral okay. Anything in the bilateral transmission and my interpretation falls into the bracket of memos of agreement, MOAs, letter of understanding.

Ms. Kaye: That's a private agreement Gerry. This is Council action. Okay, so there is a difference. I don't know if Joe was going to address that or not.

Mr. Alueta: Now I understand what it is, now I can tell you where it's coming into play and that is where you have a project district, they have an approval, as part of their agreement, unilateral agreement, they need to develop a water well. And we've had that for Makena, I mean, for other big project districts. The agreement is we develop the well, it's going to be this much, you guarantee that you're going to give us meters for our development, and that's the main, I guess, bilateral agreement. When the County is guaranteeing, or the Water Department is saying you build the well to our specs, we'll give you the meters for your development. And so that's the – and we've had that happen before. And again,

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that's a very technocratic determination. An engineer is saying you build this, and we'll give you the meters for that.

Ms. Kaye: Okay, I still don't understand why Council would not want to have the same review and condition making opportunity for a bilateral agreement than it would with a unilateral agreement.

Mr. Alueta: I honestly don't see them approving that amendment, politically, but I can tell you where it comes into play and why people would want to not have them come into play – I mean – or have the Council review it and make comments on it because it's political for one thing, and it's another step in which to extract or get exactions out of a developer at the last minute after you've made these agreements. The case of where you have –. The only one that I know of where they're arguing over now is that they've agreed to develop a well, the well didn't produce the amount of water, and the Water Department is saying well I can't give you. You said you'd produce a well, it was going to produce 15 million gallons a day, the sustainable capacity of that well is only 10. Therefore, they had to go into arbitration to negotiate how much water they're going to give the developer. They're arguing over, well, we agreed to this bilateral to give you meters if you gave us the well, but we thought we were going to get the well that had this sustainable yield. And someone else argues no, the sustainable yield is only this, therefore, we can only give you so much water. And that's where the fine – the attorneys come in to play and make lots of money and that is that what did the bill say? That you promised me meters, you didn't say –. You said I'd get the meter once I turn the well over. There's nothing in here saying I had to guarantee the capacity of that well. So there's so much fighting going on right now. So I can understand where that's coming in.

Ms. Kaye: How about – if – how about, just as a suggestion –. First of all I don't see and I don't think anybody last month had any difficulty with special uses or development standards in section 1. Two, accordance with the representations made to Council, I think is vital to leave in. I think that's a wonderful addition to the language. What if we would agree that unexecuted agreements being taken out is not a bad thing, but insert in the following sentence – this would be at line 41 – “the Council may approve unilateral or bilateral agreements with or without modifications.” And then the bracketed material, from 44 through 49, could come out as being excess verbage. Commissioners, while he's reading, any other thoughts? Any additional thoughts on this provision?

Mr. Rabaino: Sally, the one that you was saying – why don't you insert also sharing the information with the Lana`i Planning Commissioners?

Mr. Alueta: And so, Madame Chair, at this rate the comments that I'm hearing is, so again on line 41, potentially the Commission wants to add “the Council may approve unilateral or bilateral agreement,” right? Just add that line.

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Ms. Kaye: Well, I'm uncomfortable. I mean, as you say, I don't think the Council is going to let anyone take anything away from them. And if this is just a matter of moving one word up into one sentence and then getting rid of (2), then I don't see the harm. And it gives Council exactly what it's got now. In fact, it gives them even a little more because they can approve with or without modifications if it's unilateral, but if it's bilateral, they don't even have that.

Mr. Alueta: I guess the way it's worded now, right, with bilateral agreements is that – and I'm assuming there's some kind of legal charter provision here that they can't enter the agreement themselves, so that's the way – because it's a bilateral agreement between – and the reason is it's a bilateral agreement between an administrative department or the administration itself and the developer which they have the legal right to do. And I think the charter prohibits the Council from ordering the administration or anyone in the administration from doing something, and it's actually a violation. And that's why it says to, "for transmit bilateral to renegotiate or modify or whatever, but, so I'm wondering whether that's why they're not in there now.

Ms. Kaye: Well, they're not a party. I would think, legally, they can't probably insert themselves into a bilateral agreement that's been negotiated and struck between two separate parties.

Mr. Alueta: Right. I mean, I have no problem with your comments as far as changing that one, adding them, and then striking –

Ms. Kaye: No, that wouldn't make sense. I'm sorry, I take it back.

Mr. Alueta: Okay.

Ms. Kaye: Yeah, that would not make sense. Okay, Commissioners, your thoughts.

Mr. Green: I'll just make a comment that this is a pretty frustrating process and either we are rubber stamp because we don't fully understand everything here in this process or we ask questions and it takes forever to get a correct answer. So, that's just a comment from my part trying to do my duty here. I will say that I don't have any issues now that it has been explained with section (A.)

Ms. Kaye: The entire section or just (1)?

Mr. Green: The entire section (A), which is what we've been talking about for the last half hour. I'm fine with – I'm personally fine with the changes that have been recommended.

Ms. Kaye: Commissioners? Gerry I'm sorry.

Mr. Rabaino: Let's call for a question then.

Ms. Kaye: We don't have a motion on floor Gerry, so we're still asking questions at this point.

Mr. Rabaino: Well, it's my understanding that we wanted a check and balance system, correct, on this item? Where the brackets are deleted from the . . . (inaudible) . . . and submitted to the . . .(inaudible) . . . right?

Ms. Kaye: The unexecuted agreement shall be submitted to the Council – that language is recommended to be removed.

Mr. Rabaino: Yes.

Ms. de Jetley: Madame Chair, I have a question. So are we going to do this in sections like so we're working on section (A1)? So you need a motion for –

Ms. Kaye: No, no. Yeah, we could do a motion for (A1.) Then we could do a motion for (A2), or we could do them – there not that many and they're not complicated, we could do them together.

Ms. de Jetley: Okay.

Ms. Kaye: But, if you want to do them one at a time, that's easy enough.

Ms. de Jetley: I move that we recommend approval of the proposed section (A1) and (2.)

Mr. Green: I second.

Ms. Kaye: Okay, discussion? Okay, I would disagree with that. I think accordance with representations made to the Council in (2) is great. I think removing unexecuted agreements is great. Because we fully don't know the import, I think this Commission should consider not approving the Council shall review lines 44 through 49. I don't see the rationale for taking that out. And I also wonder if, based on our conversation before, we would want to consider removing "for its information," so that they have –. So any other? We have a motion of the floor, and we have a second.

Ms. de Jetley: Well, yeah, but I thought that we rarely saw bilateral agreements. That most of the agreements were unilateral. So I don't see what difference it makes if section 44 to 49 is deleted because according Counsel we rarely see them.

Ms. Kaye: We aren't going to see them anyway. This is Council. And as he explained,

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they have the ability, if it's a unilateral agreement, just one person making promises, to review it and make modifications. If it's bilateral, they're just reviewing it and sending suggestions, and I don't see the rationale for taking that away from County Council.

Mr. Alueta: And again, the line from our office, I guess, is that it's a stream lining bill. We're trying to eliminate steps from the perspective of the administration and I guess the perspective of the committee that was formed to make recommendations to stream line the thing. They felt this was a step that they're making recommendations, we would rather, if we can, get rid of this one on the bilateral and just have them get the bilateral agreement after it's done and be done with it, rather than giving it to Council.

Ms. Kaye: We understand that. If I was County Council, I'd scream.

Mr. Alueta: Yeah, I know, but I'm just saying, that's the party line, I'm telling today.

Ms. Zigmond: And sometimes streamlining comes at a heavy cost.

Ms. Kaye: Stanley?

Mr. Stanley Ruidas: Yeah, I agree with Sally. I think we should just not strike that part out and maybe the end part also. I figure something else besides "for its information." Maybe some. . .(inaudible). . .

Mr. Alueta: I'm sorry, you have a motion on the floor, so I'll wait.

Ms. Kaye: Yes, we have a motion on the floor, we have a second, and we're in discussion right now. So, the motion on the floor is to just accept every change there is in section (A). Unless someone wants to amend it, then that's the motion on the floor which has to be voted up or down. Okay, no more discussion, all in favor of the motion, say aye? Opposed? Okay, that motion fails. Maybe we could try another motion.

**It was moved by Commissioner Alberta de Jetley, seconded by
Commissioner David Green to recommend approval as presented –
MOTION FAILED.**

**(Assenting: Commissioners A. de Jetley and D. Green
Dissenting: Commissioners D. Gamulo, B. Zigmond, S. Ruidas,
L. Castillo and G. Rabaino)**

Mr. Alueta: My understanding from listening to the discussion at this point, Madame Chair, is that you have no problem with (1A) – (A1), excuse me – inserting his or her designated

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representatives and that's on line 36. But you have a problem with –. You have no problem with the new language of "in accordance with representations made to the Council." And you have – but you have problems with all of the other changes – the removal as well as the adding of "for its information." Does that summarize?

Ms. Kaye: I didn't hear too much chatter about the unexecuted agreements being deleted.

Mr. Alueta: Okay.

Mr. Hopper: I don't believe I'm reading the original language incorrectly, but I do not see where currently a bilateral agreement does not appear to have to approved by the Council anyway. It's sent to the Council, so –

Ms. Kaye: We get that.

Mr. Hopper: Okay, so, in striking this language, I mean to me anyway, doesn't seem to make a difference.

Ms. Kaye: It takes away their review, and their opportunity suggests comments.

Mr. Hopper: Right.

Mr. Green: Doesn't this go to the Council for approval and won't they look out for themselves? It seems like we're wasting a lot of time here by making a comment when the Council –. I mean, this doesn't affect us directly. It seems like the Council can take care of themselves, and if they think they're losing authority that they will take care of it.

Ms. Kaye: This is our job. As long and as tedious as it may appear, this is our job. We are supposed to be reviewing proposed changes to Title 19.

Mr. Green: I understand. I'm also saying, though, that I think your rationale was that the Council is losing power, and you don't think that's appropriate. I'm just suggesting that the Council will know better if it's losing power and will object than we will.

Ms. Kaye: My comment stands. This is a long and tedious process, and it's our job. So would someone like to try another motion?

Ms. Zigmond: Madame Chair, I'm not really sure if this is how I want to say this, but if the motion would be for item (A2), to leave in the bracketed material in lines 44 through 49 with the exception of changing his to his/her on line 46. 46. And deleting "for its information" on page 2, line 5.

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Ms. Kaye: Okay, so the motion is pretty clear. Do I have a second?

Mr. Gamulo: Second.

Ms. Kaye: Okay, further discussion? Are you –?

Mr. Alueta: No, I just want to make sure that I got it. So leaving the bracketed on page 1, line 40 and 41. That bracketed section stays in or goes? Take out the bracketed?

Ms. Zigmond: My motion was to only in reference to bracketed material on lines 44 through 49.

Mr. Alueta: 44 through 49. Okay.

Ms. Kaye: Which by default means –

Mr. Alueta: Put it back in.

Ms. Kaye: – that line 40 to 41 –

Mr. Alueta: Can be eliminated.

Ms. Kaye: Yeah.

Mr. Alueta: Okay. That's what I thought I heard. I wanted to make sure.

Ms. Kaye: Okay, Commissioners, any more discussion? Okay, all in favor?

Planning Commissioners: "Aye."

Ms. Kaye: Okay, that Gerry, one, two, three, four, hands, five. Okay, opposed? Two. Motion carries.

It was moved by Commissioner Beverly Zigmond, second by Commissioner Dwight Gamulo, then

VOTED: to recommend amendments to Section (2A) of Chapter 19.45, as discussed.

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

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Dissenting: Commissioners A. de Jetley and D. Green)

Mr. Alueta: So that's only for line 40 –

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

Ms. Kaye: And deleting “for its information.”

Mr. Alueta: Correct, on page, line 4 and 5.

Ms. Kaye: 4 and 5.

Mr. Alueta: Okay. I got it.

Ms. Kaye: Okay, now we're moving on to phase 2 approval. I just had a question that I don't think was answered last time. Yes?

Mr. Alueta: Unless I totally misread her motion. Her motion was only with regards to line, that small bracketed area. Did you incorporate the changes were in (A1), that whole paragraph, and then –?

Ms. Kaye: Alberta didn't you make a motion and we voted on that?

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

Mr. Alueta: Yeah, her motion –

Ms. Kaye: You were doing the whole thing, not just section one.

Ms. de Jetley: (1) and (2).

Ms. Kaye: Okay, then we probably need a quick motion on the changes recommended for (A1).

Mr. Alueta: So (A1) and then you have lines, on section 2 where you're adding on line 36, you're adding or her, and the underlined section.

Ms. Kaye: Or her. His or her.

Mr. Alueta: Yeah, his or her on line 36. And then on line 36 through 37 is the new section if you are supportive of those.

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Ms. Zigmond: Okay, Madame Chair, I'll make a motion that section (A1) that we recommend approval on that. On section (A2), lines 33 through 40, with the exception of his or her, stands and be approved.

Ms. Kaye: Does that work for you?

Mr. Alueta: Yeah, and that's first section of 41.

Ms. Kaye: Okay. Motion is on the floor. A second?

Mr. Rabaino: Second.

Ms. Kaye: Gerry seconds. Okay, any further discussion? Okay, Alberta?

Ms. de Jetley: I think we should just be gender neutral like on 36, the mayor or his or her, and on line 46, mayor or his or her. It's just – make it gender neutral, and it doesn't matter if says her or if it says his.

Ms. Kaye: That's in the motion.

Ms. Zigmond: Yes it does. Yes.

Ms. de Jetley: I know, but you said his or her.

Ms. Zigmond: His or her because we have a female mayor.

Ms. de Jetley: When you say his in this, it's implied that it is.

Ms. Zigmond: No, it's not. No, I don't agree with that.

Ms. Kaye: Hold it. Could we compromise and suggest that the mayor instead of any?

Ms. de Jetley: Yeah because you have female governor, and you have a male lieutenant governor.

Mr. Alueta: What's wrong with mayor?

Ms. de Jetley: Just the mayor.

Ms. Kaye: You should take it out.

Ms. de Jetley: Yeah, make it gender neutral.

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Mr. Alueta: Yeah, mayor or designed.

Ms. Zigmond: That's fine.

Ms. de Jetley: That's fine.

Ms. Kaye: That's fine with the other commissioners?

Ms. Zigmond: But his is not gender neutral, period.

Ms. Kaye: I don't think she was suggesting that. I think she was suggesting taking it out all together and that's a wonderful solution. Thank you for recommending that. Commissioners, with that change, I suppose, do we need a formal amendment to the motion? Yeah, it's a friendly amendment.

Mr. Hopper: You could do it by unanimous consent if you like, as long as everyone agrees.

Ms. Kaye: Okay. So any other discussion? Let's just call for a vote. All in favor?

Planning Commissioners: "Aye."

Ms. Kaye: Okay. Any opposed? Motion carries.

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

VOTED: to recommend approval as discussed.

Ms. Kaye: Okay, now, we can move on Joe, to phase II approval? And you have made no changes except for "a concurrent application has been filed," and I don't believe that was addressed last month. I think that's where we left it before you took us back to the first one.

Mr. Alueta: Yeah, it basically means if you filed a – we like to allow for people to consolidate their applications. And depending on the size of the project district, you may want to go in for, have phase I and phase II approved all at one time, concurrent. "Unless concurrent application has been filed or other wise provided in the project district ordinance, after phase I preliminary approval shall submit to the Planning Director a preliminary site plan." So basically meaning you can combine phase I and II, and come in and have all that information all at once. Rather than going –. Normally, project districts are large. It deals with 1,500 acres, 2,000-acres, 3,000-acres, that's the kind, the ones that we normally see. When you come in for that approval, you just have a generic concept. We're going to do

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single-family here. We're going to do some – you know, we want to have so many acres of single-family, so many acres of mixed used, and you normally get just a very generic approval of, yeah, we'll give you the approval for so many acres of this type of uses. It's then, later on as you refine the plan, you come in with your phase II and you do all your decisions where you're going to do your roads, and you're still allowed to move things around. And you kind of have a set. It's like a puzzle and different color swatches on this map of where you're going to have residential, where you're going to have commercial.

Up until, during the phase II, you can actually amend your phase II and move those swatches around as long as your overall densities, and as long as your overall acreage of your designated uses don't change. So if you're got 50 acres of residential, and 100 acres of commercial, and so much of hotel and so much of that, you can cut those acreages up and place them wherever you want within that project district and you refine that. So sometimes people have a better idea of what they're going to do of plans when they come in for a phase I and phase II right of the bat. Right now, the way it's worded, it sort of implies you have to get a phase I approval first before you can even submit for a phase II approval. From my reading of this is that you can do two at one time which we normally like.

Ms. Kaye: Who normally likes it?

Mr. Alueta: The developer, Council because they get to see everything all at once, and the public, and the administration because we get to review it all at once. The more information we have up front is better, that way everybody knows what's going on. If you – and I think the way financing is today you'd want to have that agreement, and get them that I'm going to do how much, where's my houses going to be, where's my commercial going to be? Like I say in the past, it use to be just here's a map, you know of these 3,000 acres, so many acres is going to be this and that, and that was it. Now, we get a little bit more detailed.

Ms. Zigmond: Okay, let me ask you a question. We had some discussion last month about water. Water was not included in (B1a) or any place else. So could you speak to how water would be addressed and where?

Mr. Alueta: When this –. I'm assuming probably the reason water was not included in this, in the first go around, when this ordinance was first drafted, was that Water Department was a separate entity at one point. It was only until the last few years, at least since I've been with the County, that the water now has now fallen under the administration. So it would make sense to sort of incorporate and fold water into it. So I don't have a problem with that. It's probably just because when this approval was drafted. When this ordinance was first drafted, the water was a separate entity. And so it's just an oversight that probably wasn't included now. And also, Water Department sort of sometimes they kind

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of pick and chose their fight. They kind of like their cake and eat it too, in the sense that they don't like to give promises early on. They always like to wait till you get your building permit. And that's why their stock letter says, "yes we have water right now when this project is being approved, but we're not guaranteeing you any water until the actual day you pull a building permit." I mean, that's their standard language. So you can put it in. I don't have a problem with it personally.

Mr. Rabaino: Madame Chair, I would like to – for that thing, yeah – include water inside there, in this section in phase II, for the island of Lana`i and the –

Ms. Kaye: Wait. Wait. Hold it. Where would you want to put it Gerry?

Mr. Rabaino: Where it says propose –

Ms. Kaye: For (a)?

Mr. Rabaino: (a).

Ms. Kaye: You want it in (a)?

Mr. Rabaino: Yeah, for (a). Include water for the island of Lana`i be included.

Ms. Kaye: Projected water use?

Mr. Rabaino: Yeah, for each development. In other words, spell it out.

Ms. Kaye: You know what, I just heard a comment and it's a good one. Not only projected water use, but source. That's one suggestion. And I want to ask Joe, I'm looking at what the Water Department sent over in their letter and they addressed this section. I'm sorry, they don't have lines on their – numbers on their lines but – about half way down the paragraph on page two that deals with 19.45.060 Amendment and Revision, on Lana`i where sustainable yield is only six million gallons a day, and where build out of the project district plus additional proposals for the island could result in accedence of this sustainable yield, the draft water use and development plan recommends certain actions and conditions to be met before additional phase II approvals are granted. So when you put the concurrent – now that I understand what is meant by concurrent application be phase I, phase II together – and if Gerry's suggestion of putting in projected water use and source is included under (a) then what you're saying is that it's just streamlining how much information – the steps in which the information would come before County Council, correct?

Mr. Alueta: Correct. And I really doubt that they would get phase I. I mean, it's possible

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they could get phase I with a long list, with a caveat, that yeah, you have phase I approval, but it's all bets are off if no water is available. But most likely, the way Council acts, and the way the general public wants, and Planning, we want to know, yeah, you're planning on this 3,000 acres out here, I mean, we want to know how are you planning to provide water. Where's your sewer? I think a lot of this is going to be "dealt with" regardless of what phase you put it in. They're going to ask those questions.

Ms. Kaye: Yeah, well, Kathleen couldn't answer that last month, and we asked her when would (a) show me the water bill kick in, or when they would have – she really just honestly didn't know. But if we would add this in, projected water use and source, and it was concurrently done, then it makes no difference. You're going to get the information at the same time. Correct?

Mr. Alueta: Correct.

Ms. Kaye: Okay.

Mr. Alueta: But if they only came in for phase I which – someone is going to ask it I'm sure.

Ms. Kaye: Well I know, and my issue with that is, you know, how entitled do you feel you are when you've gotten Phase I and haven't had to show your water source or projected water use?

Mr. Alueta: Yeah, but I think people – and that's the big issue right now with other. We have lots of project districts on the map, and it's really just a future, you know, someone could go forward, but you're not really entitled to anything until you get your phase II. And that's the way we're looking at it because we are taking project districts out of – they're not included in our urban growth boundaries. And we're saying, well, yeah, you've only got a project district is on a community plan, but you've never got anything else beyond that. You've never gotten beyond – you've never come in with more plans. You never fulfilled your obligation to develop water or develop this, so you really don't have entitlement on some of these lands. So under the – after utilities, you'll put water?

Ms. Kaye: Well, that's on the table. I guess I just want to clarify that we're not putting it further out by doing that. If now, for example, you could say no at phase I, you would have to show that, then I would not want it to be further away from the initial approval process.

Ms. Zigmond: And actually when I'm reading that paragraph by Mr. Eng, to me that's saying they don't want to wait until phase I.

Ms. Kaye: I think that what they're saying is that there can't be any more phase II granted until certain things are done. It just raised the question in my mind. I wasn't quoting it to

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make it relevant to our issue of the moment – just that made me think about at what stage would you want to come up with it? Right now it's no where so it's a good suggestion to stick it in phase II and if they agree, if everyone agrees, that concurrent applications, you're going to get it at the same time anyway.

Mr. Alueta: Right, and I believe that it's covered under this, you know, these unilateral agreements and bilateral agreements saying, you know, you provide the water during the phase I and you'll get your meters, and that's what those primary bilateral agreement. And again, that's the issue we've had.

Ms. Kaye: But that's you. We don't have meters that are given out quite the same way, remember, so we have to protect ourselves in a little different way.

Mr. Alueta: Okay.

Ms. Kaye: Okay, since we're doing these one at a time, we'll call for public testimony.

Mr. Reilly: Reilly, 468 Ahakea. I like the suggestion, and in fact, I would insert the language directly from the letter into this bill so to make it law, make it code. This is a private water system, not a public water system. It's public, but it's privately owned, which is different than what they have to do on Maui. So you have to cover. You know, you're concerned about the sourcing of the water at the phase II level, and the adequacy of the water, and the delivery of that water through a private water system is not, they're not thinking about that. So put that language in there. Make them conform to the Lana`i Water Use and Development Plan. Put what Mr. Eng wrote on that letter and recommend it in the code. Thank you.

Ms. Kaye: Thank you Pat. Any questions for Pat? Any other public testimony? Okay, public testimony is closed. Okay Gerry, do you want to try a motion?

Mr. Rabaino: Okay, here it goes. For (B) Phase II approval shall be processed, we want to insert water and where the source is under (a).

Ms. Kaye: Water use and source.

Mr. Rabaino: Projected water usage and source, with a chart.

Ms. Kaye: And are you comfortable with leaving in a concurrent application has been filed?

Mr. Rabaino: Yes.

Ms. Kaye: Is there a second?

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Mr. Green: I second the motion.

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

Planning Commissioners: “Aye.”

Ms. Kaye: Okay, motion passes.

**It was moved by Commissioner Gerald Rabaino, seconded by
Commissioner David Green, then unanimously**

**VOTED: to recommend approval of said changes in Section (B1),
and amend Section (B1a) as discussed.**

Mr. Alueta: (*Changed cassette tapes*) Your last section, Madame Chair.

Ms. Kaye: Pardon?

Mr. Alueta: Your last section, or proposal, the phase III.

Ms. Kaye: Yeah.

Ms. Zigmond: I have a comment. Okay, on page 3, line 6, I’m not really – “shall be subject to the Planning Commission approval.” Okay, I’m not comfortable with the Planning Director again approving non-substantial revisions because we might not always have Mr. Hunt. So I’d like to leave that with the Planning Commission.

Ms. Kaye: Would you think that –. Well, are you suggesting it be struck or are you suggesting it could stay in but we put except on Lana`i?

Ms. Zigmond: Quite frankly I don’t care what happens on the other islands. I’m only concerned with Lana`i, so if that’s the way it needs to be said, then so be it.

Mr. Rabaino: We should be taking care of Lana`i since we’re the Lana`i Planning Commission. I think we should insert that, yeah, except on the island of Lana`i.

Mr. Alueta: So on line 5, right before Planning Director, you would just put “except on Lana`i, the Planning Director may approve.”

Ms. Kaye: Okay. And then, of course, that has an impact on the very last sentence, “proposed revisions to the phase III approval shall be subject to phase III approval

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procedures,” but that’s phase III approvals are Planning Director. So that would have – if you want to leave that last sentence in, you’d either have to put except on Lana`i or you would have to change phase III to phase II to make it conform.

Mr. Rabaino: I agree. Change and insert “except on Lana`i.” Make it consistent.

Mr. Alueta: Or just say, “except on Lana`i –.” I think if you just move it down to another paragraph – I’m not a wordsmith – but if you still put “except on Lana`i, the Planning Director –“

Ms. Kaye: “Except on Lanai” means that phase III approval –

Ms. Zigmond: I’m not suggesting that we do phase III approvals. So perhaps we could say something like –

Ms. Kaye: No, no. It’s suggesting that we do.

Ms. Zigmond: Okay, I’m not seeing that at all.

Mr. Alueta: No, according to –

Ms. Zigmond: So if we said, like on line 5, “The Planning Director, except on Lana`i where it shall be the Lana`i Planning Commission, may approve revisions to the phase II preliminary plan if the revisions are not substantial,” da, da, da, da. The last sentence, “Proposed revisions to the phase III,” perhaps could be another paragraph, yeah?

Mr. Alueta: I think if you insert it that way, then it will only apply to that, rather than the entire paragraph. And then we just move that, make a new paragraph where it says – paragraph that whole, that last sentence down. Okay.

Ms. de Jetley: I have a comment on this phase III. By the time a developer, any developer – I’m not talking about this island specifically. By the time a project gets to phase III, it’s been reviewed and nit picked to death. We’re in the final stages on this so I think that the Planning Director should be able to approve revisions.

Mr. Alueta: He currently does and that’s how it is now.

Ms. de Jetley: That’s how it is now, and I think we shouldn’t fool around with the language . . . (inaudible. multiple speakers.) . . .

Ms. Zigmond: I’m not suggesting we do for phase III.

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Mr. Alueta: Yeah.

Ms. Zigmond: I'm only suggesting for phase II.

Ms. de Jetley: For phase II on this.

Mr. Alueta: She's only modifying for –

Ms. Zigmond: – for phase II, not phase III.

Mr. Alueta: Yeah.

Ms. de Jetley: And we have had an ongoing discussion about what is and what is not substantial, and I agree with everybody on that, that we don't really have a clear definition of what non-substantial means.

Ms. Zigmond: Why don't we air on the side of caution and keep that control here?

Ms. de Jetley: If you can word it. If we can all agree on the wording, I'll go along with it.

Mr. Alueta: I believe that the motion or the recommendation covers it. The way this sentence is structured right now, or the paragraph is structured right now, is that you have your preliminary phase II approval, and what the Director was trying to attempt in this was to get approval to do non-substantial revisions to the phase II approval which is different than the phase III. Okay. He currently has the authority to make revisions to phase III which is building permit phase. So I think that what the amendment is being proposed right now is that you don't want the Director on Lana`i making any judgement calls on amendments to phase II. So any phase II approval, any amendments to phase II goes through the standard phase II approval which is the Planning Commission, so it stays that way. But on Maui, they would – I can't remember what they voted on but that's – for you, you want them, not have them on Lana`i.

Ms. Kaye: Yes.

Mr. Alueta: That's fine.

Ms. Kaye: So could we have Gerry, I think we're ready for a motion. Are you needing to make a pit stop?

Mr. Rabaino: No.

Ms. Kaye: Okay, so, anymore discussion? If not, let's take a stab at a motion. I'm sorry,

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was that a motion?

Ms. Zigmond: Yeah it was.

Ms. Kaye: Okay, did we get a second?

Lana`i Planning Commissioners: Gerry.

Ms. Kaye: Okay then, let's restate it.

Ms. Zigmond: So we're looking at line five, the motion was, "The Planning Director, except on Lana`i where it shall be the Lana`i Planning Commission, may approve revision," da, da, da, all the way to the end of that sentence. The last sentence, "Proposed revisions to the phase III approval," da, da, da, becomes a separate paragraph so that that approval stays with the Planning Director.

Ms. Kaye: Okay. Any further discussion? Let's vote. All in favor?

Planning Commission: "Aye."

Ms. Kaye: Okay motion carries. No opposed, right?

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

VOTED: to recommend amendments to Section 2, of Section 19.45.060, as discussed.

Mr. Alueta: So we're done? Thank you.

Ms. Kaye: We're going to take a five minute break here folks.

(The Lana`i Planning Commission recessed at approximately 7:40 p.m., and reconvened at approximately 7:50 p.m.)

- 2. Chair's request that a workshop be given on procedures for community members to follow when an SMA or building permit or code violation is suspected.**
 - a. Planning Director's Memo dated January 19, 2010.**

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The Commission may conduct discussion on the matter and take an action regarding the workshop.

Ms. Kaye: Okay, we're back in order now. The next thing on our agenda was a request that we have a workshop and we compromised on Joe submitting something in writing. That came to us late, at the meeting last month I believe, and so I'm just going to check with everyone if the submission from Director Hunt is sufficient to answer our concerns.

There were actually two communications from Director Hunt. One was explaining the mix up we had last month on an open project report item being listed as an exemption and we pointed out to Kathleen that our rules had been changed, low, these many months. And so Director Hunt sent us a letter explaining and apologizing for the mistake. And it's been given. It's a minor permit so it doesn't come to us anyway. That's communication #1. The other one was in response to how questions or requests for review of proposed zoning violations are handled. That was dated January 19th. That's what I'm asking. That's on the agenda to see if that satisfies our concerns. Any comments?

Mr. Green: I think this is helpful. And I especially like the attachment of all of the items that are – that don't require a building permit. And I'm heartened to see that oil derricks are listed there.

Mr. Alueta: You happy?

Mr. Green: Yeah.

E. DIRECTOR'S REPORT

- 1. Planning Director's memo dated January 26, 2010 regarding the issuance of an SMA minor permit for the Hulopoe Beach Park mobile trailer and the issuance of SMA exemptions for Lanai projects.**
- 2. Open Lana`i Applications Report.**
- 3. Agenda items for the March 17, 2010 meeting.**

Ms. Kaye: Okay, can I take that as we're satisfied? Alright, next on the agenda is a communication from Wilson Okamoto Corporation. I believe Erin was suppose to speak to that. I'm not sure where she –.

Mr. McOmbler: . . .(Inaudible) . . .

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Ms. Kaye: Okay. Well then why don't we, if it's agreeable to the rest of the Commission, let's just take our agenda items out of order. We've already discussed under Director's Report, this is under item (E,) the memo from Mr. Hunt about the minor permit. I don't know that requires any more comments. Next should be open Lana`i applications report. Joe since you're here, you can handle that for us.

Mr. Green: Can I go back to the letter?

Ms. Kaye: Sure.

Mr. Green: On the review of Special of Special Management Area Exemptions and construction and improvements of a park ranger mobile trailer. I just have a question for clarification. The last sentence of the second paragraph, "Upon review of exemptions that have been issued since amendments to the rules were made, the department notes that two exemptions have been issued." Actually, it's not the last sentence. "These exemptions were for temporary structures for one day events at the Manele Bay Hotel and were issued by our Zoning Administration and Enforcement Division who routinely processes SMA exemptions." Is it –? I'm not familiar. I wasn't on this commission when the changes to the rules were made, but is it now proposed or would it be the case under the new rules that the exemptions to temporary structures would come from the Lana`i Planning Commission for approval?

Ms. Kaye: Yes.

Mr. Alueta: Yes they do. They would.

Mr. Green: Last question then. Is it clear that we can ask in a timely basis to fulfill that responsibility given that we meet once a month? As far as I presume these other exemptions, the Zoning Administration works everyday.

Ms. Kaye: David, we fought long and hard to get this passed into our rules, and it was pretty unanimous. And I'm not sure.

Mr. Green: That wasn't my question.

Ms. Kaye: Well –

Mr. Green: I just want to know if –

Ms. Kaye: We haven't had any, yet.

Mr. Alueta: What would happen is – because there was this is now the process, people

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would have to plan ahead and file their permits, you know, several months ahead of time to ensure they come before the – get on the Planning Commission agenda. The way it works is that based on your agenda, the information that we give the Planning Commission is no more information than what we receive to make that determination and we make a recommendation. If you concur with the exemption – or if it qualifies for an exemption, we tell you that. And if you concur, we then send the letter out.

Ms. Kaye: We had, at one time, had asked Joe to come back and let us know how many because he said we would be inundated, and there were five, I think, in five years. So it was a process we didn't see it would be cumbersome to the process.

Mr. Alueta: Right.

Mr. Green: Well, I wasn't so much concerned about the number. I was just concerned about if we know now that the process has been changed, do the people who apply for these permits, do they know that the process has been changed?

Ms. Kaye: I would assume that's the Planning Department's responsibility.

Mr. Alueta: Yes, they do because when they're applying for the permit, they would read the rules and the application, and so the rule would say that, yes, it goes before the Lana`i Planning Commission. Typically, you may have a few heartburn on the very beginning on few, but once we get them –. But again, we don't get that many, and sometimes, what happens is, in fact, on one of them, I believe, that although it started out as a temporary, as an exemption, they came back later and amended it, and we ended up issuing a minor permit for it, on some it so –

Ms. Zigmond: And I would suggest that if it's some sort of conference or some group that is at the hotel, they plan those things a long time in advance and I think they have enough time.

Ms. Kaye: That answers your question sufficiently? Okay, moving on. Erin?

D. COMMUNICATION

- A. Wilson Okamoto Corporation by letter dated February 5, 2010, requesting Early consultation comments on the proposed Lana`i Community Health Center Project, at TMK: 4-9-006:011, Lana`i City, Island of Lana`i (E. Wade).**

The Commission may provide comments on the matter for preparation

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of the Draft Environmental Assessment

Ms. Erin Wade: Good evening Commissioners. We have a request from Wilson Okamoto Corporation to take a look at the location of the Lana`i Community Health Center project. And you were provided a sort of brief summary of what the project entails on the location. And they will be generating an environmental assessment and wanted to get your early comments if you had any regarding the site or what should be included in the environmental assessment. So I'll accept your comments.

Ms. Kaye: Commissioners?

Ms. Zigmond: I just have a question so I know that I understand this process right. The draft EA is not yet out, and when it comes out, we will be, or whoever is sitting on this Commission at that time, will be asked to provide comments just like we did for the Senior Center, et cetera. Correct?

Ms. Wade: Absolutely correct. Right now they're just asking for topics that might be overlooked, to be included in the EA. So they will include the standard elements in the environmental assessment, but perhaps you had some additional things that you would like to have considered, so that is what this is requesting.

Mr. Green: Well I have one comment. Actually I have more than one. If you look at the services –. Well, first of all I think the Lana`i Community Health Center is a good thing. But if you look at the services they're going to provide, I think it would be good to understand the impact that the Lana`i Community Health Center will have on existing providers of those services on the island. So for example, what will the impact be on Straub? What will it be on Dr. Harmsen, et cetera, that are offering? I'm not saying it's good or bad, but I think it would be important to know what the impact could be.

Ms. Wade: Could you repeat the name of that doctor? Dr. Harmsen. Is that what you said?

Ms. Zigmond: She's the dentist.

Mr. Green: Yeah, the dentist on island.

Ms. Wade: Okay. Thank you.

Ms. Zigmond: David, if I could just mention something on that. The Lana`i Community Health Center is a non-profit organization as opposed to Straub which is for profit, and so they're operating differently, and they also serve people with no insurance or with – or who are under insured. I don't think they're going to make Straub close down.

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Mr. Green: I understand, and that could very well be the case. I just think there ought to be something that's covered in the environmental assessment.

Ms. Wade: I will make that request for you.

Ms. Kaye: Okay Commissioners, any other questions? Gerry?

Mr. Rabaino: Will you be providing a similar booklet like how they did with the Senior Center to the Commissioners later on after all this?

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

Mr. Rabaino: Okay, my next question is when you say mini-laboratory, what is this mini-laboratory going consist of? Page 1, under project summary.

Ms. Wade: I don't know the answer to that at this time, but I can ask them to address that in the environmental assessment.

Mr. Rabaino: Okay, and your staffing, how many people will be employed?

Ms. Wade: Let me clarify. I am a member of the Planning Department. I am not a member of Wilson Okamoto. I don't know anything more about this project than you know at this point. They're just asking to find out if there's any particular areas that you would like additional information. So I'm getting from you is you'd like to know more about the laboratory facility. You'd like to know more about the operations of the laboratory facilities, and also the number of employees. Is that accurate?

Mr. Rabaino: Okay. And the other one here in the paragraph after – it says Lana`i Art Center and general activities. Is the Lana`i Art Center going be attach to this building, or there's going to be two-stories?

Ms. Wade: What I was reading is it will be a one-story building. But some of the activities of the Lana`i Art Center will be incorporated. So if your question is to what extent, I can ask that.

Mr. Rabaino: Okay. And you say over here on the Sixth Street. Okay, Sixth Street, you going have 12 parking stalls. Is this going to be compact or standard? Got to make sure 4 by 4 vehicles fit and emergency vehicles.

Ms. Wade: The preliminary site plan that was delivered is standard parking space.

Mr. Rabaino: Okay, I think over here, you should perhaps be prepared to let us know what

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the usage of water, since what is an issue for the island of Lana`i.

Ms. Kaye: That's a really good suggestion because the last one came in from Munekiyo used reservoir as a source of water rather than a well, and did not have projected water use included at all. So that is something they should probably address very specifically – source and projected demand. Gerry, anything more?

Mr. Rabaino: You have the business town district. Is that going to be still in part of the design even though it's out of the historical zone?

Ms. Wade: Yes. It's in the Business Town Country Town District so it will be subject to the Lana`i Community Design Guidelines.

Ms. Kaye: The buildings that they're targeting are not what they call contributing buildings. In other words, they were not included in the nomination to the district because they were too new.

Mr. Rabaino: Okay, but it would still give that town flavor, yeah, the country town flavor?

Ms. Wade: Right. That would be a requirement.

Mr. Rabaino: Okay, this is a good plan. Just hopefully when they present their booklet, and the water issue is addressed. Thank you.

Ms. Kaye: Okay Commissioners?

Mr. Green: I just have one. You can't answer. I'm sure you can't answer this question, but I would like to have it answered in the final environmental assessment, but it's unclear to me, under project location and description, it says it's going to be built on looks like the block – the Lana`i Community Health Center will subdivide the parcel and use approximately 25,000 square feet, et cetera, of the western portion parcel for the new facility. And I just wasn't clear if the Community Health Center is leasing the entire parcel or if they are leasing only the parcel that the community health center would be on.

Ms. Wade: So your question is about the extent of the lease.

Mr. Green: Yeah, I'm just confused by the language that's here because it says the Community Health center will subdivide the parcel which makes it sound like they have the lease for the whole area. Then I think it's interesting that Maui Community College and the Lana`i Art Center is located on land that the community health center is leasing which seems kind of awkward, so I suspect that's not correct. I just think that needs to be clarified.

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Ms. Wade: Okay, will do.

Ms. de Jetley: One of the things that I'd like them to consider when they're doing parking is a lot of our senior citizens use electric cars. So there's going to be 12 parking spaces for patients, maybe they should consider a docking area for electric cars so people with them can plug in while they're waiting.

Ms. Wade: Okay, I will address that.

Ms. Kaye: Letty?

Ms. Castillo: Yes, that area that has been selected, I believe, that there's no lines in there. They have to do whole –. You know there are no water lines, there's no sewer lines, there's nothing in there. And that's the reason the post office did, was not situated in that area.

Ms. Kaye: Okay, any other comments? I only have one. On page 2, second full paragraph down – I'm sorry Matt's not here – waste water from the Lana`i Community Health Center will be routed to the Lana`i Waste Water Reclamation Facility for treatment and disposal. Lana`i Waste Reclamation Facility is currently owned and operated by Castle & Cooke. Facility is in the process of being turned over to the County of Maui. I believe that is incorrect.

Ms. Wade: Okay.

Ms. Kaye: The waste water treatment plant is a Maui County facility so they need to change that or clarify what they're trying to say. Any other comments Commissioners? I think we will, since it's an agenda item, if there's anyone who wants to speak to this. Okay, seeing none. Any other comments on this agenda item? Erin, you got what you need?

Ms. Wade: I do. Do you want me to summarize? I have eight comments. If you trust me, then we're good to go.

Ms. Kaye: Okay, now we have open Lana`i applications report. Joe?

Mr. Alueta: Okay, any questions?

Ms. de Jetley: I have a question about the Lana`i Senior Center – the Senior Center – because, you know, I know it's been ongoing for a number of years now, but the plan, the building plan that was presented in the public hearing is not the building plan that is now enclosed in our last big thick booklet. Because this plan now shows an elevator shaft and a clock tower. And an elevator is going to cost an excess of \$500,000 and the Offices of

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Aging and the DMV was never suppose to have been a part of the senior center. It was suppose to be a different office in a different section. So now suddenly we have an elevator connecting them with the senior center which will be on this level. So I almost think that something needs to be done, and the plan needs to be reviewed again because it is not the plan that was presented to us.

Ms. Wade: The plan that you received as part of the review of the EA is the same plan. I mean, you received the most current version of the plan in the EA document that was reviewed, and I do have comments from you, and we have submitted comments from you regarding the incorporation of the Council on Aging and the elevator shaft and all of those things. Those things were incorporated in your comments, and I think last month, the letter was provided to you.

Ms. Kaye: No we got it – yeah, last month, and we were going to follow up with that because we didn't review it last month.

Ms. Wade: Okay. So those comments were summarized and provided to the Director of Housing and Human Concerns. So is there another question about the process? Is that where you're going?

Ms. de Jetley: Yeah, I've been told this building is going to be torn down come April and then in the papers it says that the County is going to be in really bad way for the next two years approximately so who's going to pay for this empty elevator shaft that is stuck on this building now. That's what I want to know. And I want to know who's idea was it to place a clock tower on this building?

Ms. Kaye: Alberta, we submitted our comments last month.

Mr. Green: Can I ask, do you know what happened to our comments after they were submitted?

Ms. Wade: Yes I do. They were provided to the Department Director and I had a personal conversation with the Department Director about your concerns and with the project manager, Robin Tanaka. They have both since had conversation with the project's architect about your comments, and are taking them into consideration as they do another revision of the building design. So I can't explain to what extent the design is being revised because at this point the contract has already been awarded for the construction of the building, but it is, my understanding that the building plans are being revised based on some of your comments. So, I have also asked that the Department respond in writing to each and every one of your comments, and the comments of the Urban Design Review Board. So we're waiting those comments.

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Ms. Kaye: Anything further from the Senior Center, on the open Lana`i projects report?

Mr. Rabaino: Joe?

Mr. Alueta: Yeah?

Mr. Rabaino: I'm going from top to bottom. What is the status currently with the Lana`i Miki Basin and the airport because nothing is happening at the airport?

Mr. Alueta: Sorry, I just had that list, and somehow it disappeared.

Mr. Rabaino: That's alright, we like go home too.

Mr. Alueta: Does it say RFC on it?

Ms. Kaye: Joe, the first one is Miki Basin Heavy Industrial Change in Zoning DBA. This is the project that was here multiple times in front of us, and the time clock card was played and now it's in front of County Council. I can tell you last week, Gladys Baisa's committee did a site visit out there, and so they're processing it.

Mr. Alueta: Yeah.

Mr. Rabaino: And the airport one. Talk about the hangers and that building that was presented to us, when is the construction date?

Mr. Alueta: Don't know, that was just a comment letter. We were just asked to comment on it.

Ms. Kaye: RFC means request for comments.

Mr. Alueta: Yeah. Erin just talked about the Senior Housing Center. And then the Lana`i Community Health Center, you just had your meeting on it, and you provided comments.

Mr. Rabaino: Yeah, the only reason why I'm bringing up the airport, Joe, is because I work down the airport too. A lot of the staffing down there, on the State side, the employees are asking, when, so I figure I throw that at you. You probably would have an answer to that.

Mr. Alueta: Don't know.

Ms. Kaye: If we could ask, Joe, to make an inquiry and come back next month with a little more detail, if he has any. How about that?

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Mr. Alueta: Yeah, and I'll talk to Joe about it again.

Ms. Kaye: Okay.

Mr. Alueta: But normally, if we're just asked to comment from DOT, they don't tell us. So it would be more of a niele call that we would have to make. Okay.

Ms. Kaye: That's why you make those big bucks.

Mr. Alueta: I guess so.

Ms. Kaye: Okay, any other questions on open projects report? Okay, then I'm going just go back because we did get some communication items last month that we did not get to review because they were handed out late. And just one of them is the draft EA comment letter that's dated January 8th, and Erin, we need a correction to #11, page 2. Somehow that got misinterpreted. What we were trying to say – this is page 21, medical facilities – please include the Straub Clinic and Hospital. That's not what we were trying to say. Everyone knew about Straub, it was the Lana`i Community Health Center that was not included and continues to be left out of the EA. Even though, as you pointed out tonight, there's plans to build a new facility, they are currently operating on island. Okay? So that's a correction I had for that one. Anybody have any comments on that particular letter?

Then the other letter that we got was from the Cultural Resources Planner on the status of the Lana`i City BCT nomination. I don't know if anyone has any questions on that. I thought it was pretty straight forward. I will tell you for those of you who attended that hearing, that Councilperson Kahoolalahala offered to pull together a community meeting because he was quite upset that there were negotiations going on that didn't include the community. And that meeting is scheduled for this Tuesday, February 23rd, at 5:30 p.m., in the cafeteria. Okay then, I only have one more thing I wanted to suggest, and Bev you look like you want to say something. Yeah, I was going to make a –.

After listening to the conversations both last month and tonight, and reading the minutes, I think it would be a wonderful idea if this Commission asked the Planning Department to invite Castle & Cooke to do a workshop on the status of our phased I, phase II and phase III developments on the island. I know I have four years worth of maps for the project districts, and I have no clue what status they're at. And given that we're struggling with understanding how this process works, I think it would be really, really helpful to the Commission to invite them to do a workshop on that.

Ms. Zigmond: If I could just follow up on that, I think it's going to be important because there will be some new members coming up who may not have – who may need some more information on the different phases, so it might be a good idea.

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Ms. Kaye: And actually, I don't see anything. There are no agenda items listed for March, so if we could, if everyone agrees, if you want to have some discussion. If we can agree, we can make a motion, and then the Planning Department would send an invitation letter, as much as they did for the water workshops we had which were really, really helpful.

Mr. Rabaino: Yeah, I agree with Sally's proposal. Yeah, it would be nice if Castle & Cooke bring all of their representatives in to answer a lot of questions, and their future plans for the island itself. Yeah.

Mr. Alueta: We can ask, but, you know, given –. I'm just trying to think to myself on their side of the fence, you know. It would be great for them to do the presentation, you know, to have it, but at the same time, they have such a contentious issues with this Commission on most days of the week.

Ms. Kaye: I don't think that's true, and I don't think that's appropriate to state. I think it's up to this commission to decide whether the information would be helpful. And if we think so, then we appreciate it if an invitation went out. And what they do with it is certainly not up to up to decide.

Mr. Alueta: Okay, as long as it's –.

Ms. Kaye: Informational only.

Mr. Alueta: Right, but the Department will just send a letter to them. And we can draft the letter for the Chair, or if you want –

Ms. Kaye: That would be fine. That will be fine.

Mr. Alueta: That would be the best.

Ms. Kaye: Okay, you draft it for me, and we'll make it all nice.

Mr. Alueta: Okay, it sounds good.

Mr. Rabaino: Joe, I think it's a reasonable request because you guys know that I work in public areas at the airport, Expedition and around town, as well as a union member. There's a lot of people that comes to me knowing that they see me on tv, and they say Gerry good. The Commission is doing a good job. But I'm asking you, in front of all these Commissioners, that it would be appropriate and reasonable because a lot of our people are concerned with the future of all these projects. So, you know, there's no other justification but to ask them. And majority of the population here works for Castle & Cooke.

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The remaining 1,000 or less – because we have 20% of our work force gone – they want to know and there's a lot of families here on the entry level at the hotel, in the construction area, and the housing area, they're concerned, including the Carpenter's Union that has some of our Lana`i residents. So it's only proper and reasonable to make that request.

Ms. Kaye: Okay, somebody want to take a stab at a motion? Do we need a motion? Can we just make a request?

Mr. Alueta: Yeah, you're requesting that I draft something that we're sending from the Chair to do an informational workshop on the status of their project districts, and educate you and new commissioners on the status of where they are.

Ms. Kaye: Yeah, what phase is there.

Mr. Alueta: It's that –. I mean, we're the Planning Commission, and I'm the Planning Department, and I'm trying to get beyond what a community – I mean whether the forum stays focused on that information and how far it dwells on between a community meeting that's separate.

Ms. Kaye: That's our problem.

Mr. Alueta: Okay. Alright.

Ms. Kaye: Thank you.

Mr. Alueta: Alright.

F. NEXT REGULAR MEETING DATE: March 17, 2010

G. ADJOURNMENT

Ms. Kaye: Anything else we want to add for this evening's agenda? Okay, we're adjourned then. Thank you everyone.

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There being no further discussion brought forward to the Commission, the meeting was adjourned at approximately 8:20 p.m.

Respectively 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
Leticia Castillo
Alberta de Jetley
Gerald Rabaino
David Green

EXCUSED:

Matthew Mano

OTHERS:

Joseph Alueta, Administrative Planning Officer
Erin Wade, Small Town Planner
Michael Hopper, Deputy Corporation Counsel