

**LANA`I PLANNING COMMISSION
REGULAR MEETING
APRIL 21, 2010**

APPROVED 05-19-2010

A. CALL TO ORDER

The regular meeting of the Lana`i Planning Commission was called to order by Vice-Chair Stanley Ruidas at approximately 6:00 p.m., Wednesday, April 21, 2010, 2010, in the Old Lana`i Senior Center, Lana`i City, Hawaii.

Mr. Stanley Ruidas: Okay, it's six o'clock right now. Let the meeting of the Lana`i Planning Commission for April 21, 2010 begin. Commissioners present are Commissioner de Jetley, Ornellas, Barfield, Rabaino, Castillo, Green, Mano and Ruidas.

B. INTRODUCTION OF NEW MEMBERS – SHELLY BARFIELD and JOHN ORNELLAS

Mr. Ruidas: Okay, we want to introduce the new commissioners. Shelly Barfield, please stand, and we'll give you a moment if you want to tell us some background about yourself. No? Okay. Next new commissioner is John Ornellas. Do you want to say anything? Okay.

C. ELECTION OF CHAIRPERSON AND VICE-CHAIRPERSON FOR 2010-2011 YEAR

Mr. Ruidas: Okay, first order of business is election of Chairperson. Do I have any nominations?

Ms. Alberta de Jetley: Mr. Chair, I nominate John Ornellas for Chair, and I would like to nominate you, Stanley Ruidas, for Vice-Chair.

Mr. Ruidas: Commissioner de Jetley, we'll do the Chair first.

Ms. de Jetley: Alright, then I'll retract that. I nominate John Ornellas for Chair.

Mr. Ruidas: Thank you. Anyone else?

Mr. David Green: I'll second.

Mr. Ruidas: You no need to second. Anyone else want to nominate a Chair?

Ms. Leticia Castillo: I would like to have Gerry Rabaino to be the Chair.

APPROVED 05-19-2010

Mr. Ruidas: Anyone else? Okay, nomination is closed. Okay, all in favor nominating John Ornellas to be Chairperson raise your hand. We've got two. Okay, all in favor of Gerry Rabaino to be Chair raise your hand. Yes? On the mic please.

Mr. John Ornellas: Have we been sworn in? Are we able to vote? I signed the Oath, is that good enough?

Mr. Ruidas: Okay, please raise your hands again for Gerry. Okay we've got the new Chair for 2010 - 2011, Chairperson Gerry Rabaino. And at this time, I'm turning the mic over to you to vote for the Vice-Chair.

Ms. de Jetley: Mr. Chair?

Mr. Rabaino: Go ahead.

Ms. de Jetley: I'd like to nominate Stanley Ruidas for Vice-Chair.

Mr. Rabaino: Is there any other nominations besides Ruidas?

Ms. Castillo: I move that the nomination be closed.

Mr. Rabaino: Okay, is everybody in agreement with the nomination closed? Okay, all those in favor of Stanley Ruidas for Vice-Chair raise your hand. So be it for the record. Congratulations Stan.

It was moved by Commissioner Leticia Castillo, then the Commission

VOTED: for Commissioner Gerald Rabaino as Chair for the Lana`i Planning Commission for 2010 - 2011.

It was moved by Commissioner Alberta de Jetley, then the Commission

VOTED: for Commissioner Stanley Ruidas as Vice-Chair for the Lana`i Planning Commission for 2010 - 2011.

D. RESOLUTION THANKING PAST MEMBERS - DWIGHT GAMULO, SALLY KAYE, and BEVERLY ZIGMOND

Mr. Rabaino: Okay, bear with me now. Do we have an agenda? Hold on. Thank you. Thank you. Okay, first order of business – we already called the meeting to order, for the nomination of Chair and Vice-Chair, an introduction was done, election of the Vice and

APPROVED 05-19-2010

board, resolution thanking the past members – Dwight, Sally and Beverly. Do we have that?

Mr. Clayton Yoshida: Thank you Mr. Chair. Clayton Yoshida, Administrator of the Current Planning Division, Planning Department. We have before you three resolutions thanking outgoing members. One is for Sally Kaye who served as a member on this Commission since April 2006. And also served as Chair of the Commission from April 2008 until March 2010. And who's term of office expired on March 31, 2010. And Commission expressing their appreciation to Ms. Kaye for her dedication and untiring public service to the people of Lana`i and extending their sincere appreciation for Ms. Kaye's services and extending their best wishes in her future endeavors. And further resolve that copies of the resolution be transmitted to the Mayor, the Honorable Charmaine Tavares, and the Council Chair, the Honorable Danny Mateo. So if you could sign that resolution.

We also have one for outgoing Commissioner Dwight Gamulo who served on this Commission since April 2005 and who's term of office expired on March 31, 2010. Extending appreciation from the Lana`i Planning Commission.

And the third resolution is for Commissioner Beverly Zigmond who served on the Commission since October 2004 and resigned from the Commission on March 29, 2010. Expressing the Commission sincere appreciation for her services and extending their best wishes in her future endeavors. Also we have copies of a letter of appreciation from the Mayor Charmaine Tavares to each of these individuals which will be mailed to them. So if the Commissioner can sign the resolutions, we'd appreciate it.

E. APPROVAL OF THE FEBRUARY 17, 2010 MEETING MINUTES

Mr. Rabaino: Thank you. That will be circulated for everybody's signature, yeah?

Mr. Yoshida: That's correct Mr. Chair.

Mr. Rabaino: Thank you. We'll give a moment for that. But, on the next agenda would be the approval of February 17, 2010 meeting minutes. Have everybody read their minutes in their packet that they received? If there's any corrections, please do say so. Anyone get corrections? Commissioner de Jetley any? Green? Stanley? Mano? Castillo?

Ms. Castillo: I move that the minutes of the February meeting be approved as circulated.

Mr. Rabaino: All those in favor say aye.

Mr. Matthew Mano: You never had a second.

APPROVED 05-19-2010

Mr. Rabaino: Second please? Anybody second?

Mr. Green: I second.

Mr. Rabaino: Thank you. All those in favor say aye.

Planning Commissioners: "Aye."

Mr. Rabaino: So be it.

It was moved by Commissioner Leticia Castillo, seconded by Commissioner David Green, then unanimously

VOTED: to approve the February 17, 2010 Lana`i Planning Commission meeting minutes as presented.

F. ORIENTATION WORKSHOP NO. 1

- 1. Roles and Responsibilities**
- 2. Discussion of Boards and Commissions Booklet Distributed by the Office of the Corporation Counsel**
- 3. The Sunshine Law**
- 4. Ethics**
- 5. Ex Parte Communications**
- 6. Rules of Practice and Procedures**
- 7. Recent U.S. Supreme Court Decisions on Takings Issues**
- 8. Public Access Shoreline Hawaii (PASH) v. Hawaii County Planning Commission**
- 9. Topliss v. Hawaii County Planning Commission SMA Case**
- 10. The General Plan Update**
- 11. The Community Plan Update**
- 12. Land Use Regulatory Framework in Maui County**
- 13. Hawaii State Plan**
- 14. State Land Use Law**
- 15. Zoning**
- 16. Environmental Assessments and Environmental Impact Statements**
- 17. Other Related Boards and Commissions**
- 18. Lanai City Design Guidelines**
- 19. Meeting Agenda**
- 20. 2010 Meeting Schedule**

APPROVED 05-19-2010

Mr. Rabaino: Next on the agenda is the orientation workshop, #1, roles and responsibility.

Mr. Yoshida: Thank you again Mr. Chair, members of the Commission. Clayton Yoshida with the Planning Department. And with me tonight from the County are Leilani Ramoran-Quemado, your secretary to boards and commissions. Your Deputy Corporation Counsel James Giroux. And from our Long Range Division, we have Dave Michaelson and David Yamashita. And we'll provide several increments of our workshop tonight, basically covering roles and responsibilities, the sunshine law, ethics, the General Plan update, Community Plan update and the land use legal framework. And then we'll have workshop #2 at your next meeting in May when we're going to discuss Special Management Area Permit, Shoreline Setback Variances, Flood Hazard Districts, and the County policy against discrimination. And the Long Range Division will also provide a time line for the Lana`i Community Plan update. So with that, I'm going to turn it over to your attorney Mr. Giroux, James Giroux, to go over some of the points.

Mr. James Giroux: Thank you Clayton. Hi! Good evening. James Giroux. I'm with the County Corporation Counsel. And I've got several things to go over with you tonight. I'm going to start off with the Sunshine Law, and then I'm going to Ethics, and then I'm going to go over the contested case power point that I put together, and also a case law update. Some of the case law that might be important for you to know and understand as part of your, you know, roles and responsibilities. I'm going to – some of this is going to be a little bit overwhelming for you because you haven't heard all of the planner's overwhelming information. So this is really an overview for you guys. And in the future, this will give you, at least, a frame work to ask me questions and to understand kind of what some of the issues may be that we need to discuss as a body, and that you will be making decisions on. So to begin, we're going to start off with our open meetings and our Sunshine Law.

The Sunshine Law comes under the Hawaii Revised Statutes Chapter 92. What is the Sunshine Law? The Sunshine Law is Hawaii's opening meeting law. It governs the manner in which all State and County boards must conduct their business. What is the general policy and intent of the Sunshine Law? It is to open up government process to public scrutiny, conduct business as openly as possible. Sunshine Law is to be liberally construed in favor of open meetings. Exceptions to the Sunshine Law are to be strictly construed against closed meetings. Absent a specific statutory exception board business cannot be discussed in secret.

Open meeting. What is required? Every meeting of the board is open to the public and all persons are permitted to attend. All interested persons shall have an opportunity to submit data, views or arguments in writing on any agenda item, and that's consistent with your rules. All interested persons shall have the opportunity to present oral testimony on any agenda item. The board may make reasonable time limits of oral testimony. Most boards now in Maui County are giving most testifiers three minutes. That time limit has to be

APPROVED 05-19-2010

stated clearly before the board starts taking oral testimony so that the public is treated evenly and fairly.

Notice. Notice is mandatory. Written public notice must be posted at least six calendar days before the meeting. They must list all of the items to be considered at the meeting. It must contain the date, time and place of the meeting. And that's so people can actually show up. No additions, once the agenda is filed, unless two-thirds vote of all members to which the board is entitled. And you're entitled to nine. So you have to have two-third votes to add anything to the agenda. Often times there may be an issue of order, you know, on which item is to be taken up first. As long as the board is in agreement that you want to move something, and as long as the purpose is not to exclude the public.

No item shall be added if it is of reasonably major importance, and action thereon will affect a significant number of persons. So what this means is that even if you want to add something, and you get the two-third vote of your total board make up, you also have to ask the questions, and your lawyer will probably have to get involved of whether or not that item is of reasonably major importance. And what you can do as part of an exercise when this comes up is to think about is this just about board procedure or is somebody going to be affected by a decision being made? And usually you want to err on the side of let's just agree to put this on the next agenda, and that way everybody will have a fair opportunity to comment on your decision.

The other mandatory thing is your minutes. At a minimum, you must have the date, time and place of the meeting; members of the board recorded as present or absent; substance of all matters proposed, discussed or decided, and record of any votes taken; any other information requested to be noted by members. This is a public record and it is to be made available within 30-days of the meeting whether or not you vote to approve it or not. Most boards do take the opportunity to at least get a chance to make a comment on their minutes. But, it's whether you adopt it or not, or approve it or not, the public still has the ability to access it within 30-days. You're very fortunate in Maui County now, most board meetings are verbatim, so you actually get a whole transcript. Some people have been saying they're getting more than they want. But I just have to tell you, you guys are very privileged to be able to get full records of these types of meetings.

What is a meeting? A meeting means the convening of a board for which a quorum is required in order to make a decision or to deliberate toward a decision upon a matter over which the board have supervision. It's very important that you understand what a meeting is because what you don't want to have is an illegal meeting. Now, the easiest thing to remember is what's prohibited and what's allowed. More than two members of a board cannot gather to discuss board business unless there's an exception. The easiest thing to remember is that if there's two members of this board in the same room, that is allowed. If there's two members on the same board in the same room, they can discuss board

APPROVED 05-19-2010

business as long as you're not trying to commit that other person to a vote. If there's three members of this board in a room, that is okay. If there's three members of this board in a room discussing board business, that is an illegal meeting. You must cease any conversation of board business.

The other thing that you have to understand about this concept is what is board business. Board business is defined as matters over which the board has supervision, control, jurisdiction or advisory power and that are before or reasonably expected to come before the board. This is important because you have to understand what is your jurisdiction, your powers and your duties. One easy concept to understand is if something is on your agenda, and your agenda is posted six-days before the meeting, don't discuss the matters with your fellow commissioners if more than two people are present from the board. There are matters because you're Lana`i citizens that are often talked about. You just have to be cognizant of who you're speaking to, who's present, and what kind of commitments you're making during those conversations. So that's just something that as board members it's self policing and what you don't want to do is find yourself in a position where somebody accuses you of violating a Sunshine Law and therefore taking you out of the ability to vote on a matter.

Exceptions. And again the exceptions are to be interpreted very narrowly. Investigative exceptions. The investigative exception is where two or more, but less than quorum, of the members are picked. There's a scope of investigation and a scope of authority defined at a meeting of the board. That means an agenda meeting. All findings and recommendations are presented to the board at a meeting of the board, and deliberation and decision making on the matter investigated, if any, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the findings and recommendations of the investigation represented to the board. And what this means is that at a meeting there should be something on the agenda that says we're going to form an investigative group. We need something to be investigated. At that meeting, the members should be defined and the purpose of that investigation needs to be defined clearly. At a subsequent meeting, once that investigation is done, those findings are presented to the board of the whole on an agenda meeting. The agenda should read findings by investigative committee. Excuse me, coming down with a cold here. At that meeting, you cannot discuss or deliberate upon those findings. You have to wait for a subsequent meeting in order for deliberation and action to happen. A lot of times people think that the investigative exception is something to expedite matters. And a lot of times that doesn't really happen. It actually draws things out further.

The executive meeting. This is for your lawyer. These meetings are closed to the public. A vote is taken at an open meeting where two thirds of the members present agree to go into executive session. And the reason is, one example – there's many reasons to go into it, but the most important one is for me – is to consult with your attorney on questions and

APPROVED 05-19-2010

issues pertaining to the board's powers, duties, privileges, immunities and liabilities. If somebody says hey something is illegal, you're doing it illegal, your procedure is illegal and you want to talk to me about it in confidence, I'll notify you that we should probably go into executive session, take a vote, get two-third vote, and we'll discuss it. Those matters discussed in that meeting are confidential if you stay on the topic of the purpose of that executive meeting. If you stray from that, that minutes to that meeting maybe made public.

Another exception is your contested cases. A board exercising its adjudicatory functions governed by HRS Chapter 91-8 and 91-9 are contested cases, and you do not have to follow the rules of Chapter 92. A lot of times the public, you may be in the middle of deliberation and you may have to recess and may have to have another meeting. That next meeting, if you're in the middle of a contested case, you do not have to take public testimony. You may, but you're not required by law. If there are violations, one of the consequences is voidability. Any final action taken in violation of sections 92-3 and 92-7 may be voidable upon proof of violation. A suit to void any final action shall be commenced within 90-days of the action. This means that if you take an action, that action is going to be perceived as valid. However, if somebody does take this to suit and it's found to be a violation, the judge can then determine your action as voidable.

Enforcement. The attorney general and the prosecuting attorney shall enforce this part. The Circuit Courts of the State shall have jurisdiction to enforce the provisions of this part by injunction or other apparent remedy. Any person may commence a suit in the Circuit Court in the Circuit, in which the prohibited act occurs for the purpose of requiring compliance with or preventing violations of this part or to determine the applicability of this part to discussions or decisions of the public body. The Court may order payment of reasonable attorney fees and costs to the prevailing party in a suit brought under this section.

The proceedings for review shall not stay the enforcement of any agency decision, but the reviewing court may order stay if the following criteria have been met. One, that there's likelihood that the party bringing the action will prevail in the merits; the irreparable damage will result if a stay is not ordered; no irreparable damage to the public will result from the stay order; and public interest will be served by the stay order.

Penalties. Any person who willfully violates any provision of this part shall be guilty of a misdemeanor, and upon conviction, may be summarily removed from the board unless otherwise provided by law. In Hawaii, a misdemeanor is punishable up to a year in jail, and a \$10,000 fine, or both. That's the maximum penalty.

Alright, onto Ethics. How do I get rid of the side there? Ethics, this comes under the Maui County Charter, Article 10, Code of Ethics. Under that article there's prohibitions, and I believe it's with your packet. And the three things I want to go over are accepting gifts,

APPROVED 05-19-2010

business transactions or activities, activity, or have a financial interest which may tend to impair independence of judgement in the performance of official duty; and failure to disclose financial interest.

Again, the issue – I’m sorry something is really burning the back of my throat – the issue of accepting gifts. If somebody gives you a gift, just be aware of what the purpose is, or somebody could actually take it to think that it was meant to influence your decision making. People are going to give you gifts – Christmas or whatever – but just be aware that if that gift can be taken to be something to influence your decision making or your independent judgement, err on the side of not receiving that if you think that it’s going to interfere with your ability to perform your duties on this board. If the Ethics – if you’re found to violate these points, there could be fine, you could be removed from office. Your rules address a certain aspect of this. Lana`i Planning Commission Rules 12-401-25. Whenever a conflict of interest or other ethical question is raised by anyone regarding any member of the Commission, the affected member shall promptly make a full disclosure of circumstances to the Commission. If the Commission member has a financial interest in any matter that maybe affected by an action of the Commission, that member shall be disqualified from voting in all actions relating to such matters. What I want to emphasize is that if somebody brings it up that at that point you should disclose what that interest is. It may not amount to a conflict. It may not amount to anything, but explain it so the other board members are comfortable with you participating in the action. As long as it’s disclosed that’s the safest thing. If you feel that something may arise and somebody may challenge your participation, it’s best that you disclose it yourself. If there is a recusal, you can recuse yourself, you can still participate, but you cannot vote.

When in doubt, get an advisory opinion from the Board of Ethics. If any officer obtains an advisory opinion from the board and acts accordingly, or acts in accordance with the opinions of the board, the officer shall not be held liable for violating any of the provisions of this article. So it’s always safest for you to raise it yourself, go to the Board, explain to them what the situation is and they’ll write you an opinion and they’ll say, “yeah, you can participate, don’t worry about it,” or, you know, you should err on the side of recusing yourself. If you follow their advice, you’re not going to be held liable.

Mr. Ornellas: It’s not like we can walk down to the County building. So how do Lana`i Commissioners do this?

Mr. Giroux: Let me explain that. You can give me a call and you can talk to me about the issue. We can kick it around a little bit. And if you don’t feel that I can address the issue, you know, with clarity, then I’ll direct you to the board. And in our office, we have a secretary who – our office actually staffs that board – and she will direct you in to writing the letter to whoever the Chair is. You can send it to Corporation Counsel and then they’ll put it on the agenda in order to get it addressed. Any other questions? No. Moving on to

case law review.

This is some case law that I put together that often comes up that we need to understand how it affects your decision making. One of the big issues that comes up a lot is the issue of takings. And it's important for you to understand this concept. The takings clause of the 5th Amendment of the United States Constitution made applicable to the States through the 14th amendment provides "nor shall private property be taken for public use without just compensation." One of the principal purposes of the takings clause is to bar government from forcing some people alone to bear public burdens which in all fairness and justice should be born public as a whole. There's been a couple of cases that have been decided that help boards and commissions and political entities to understand what this concept is. And one of the essential concept is the essential nexus. It says although the outright taking of uncompensated permanent public access easement would violate the takings clause, conditioning an appellant's rebuilding permit under granting such an easement with the lawful land use regulation if it substantially furthered government purposes that would justify denial of the permit. And what that means is that if your commission has the authority to deny somebody a permit, then you also have the ability to condition that permit within the scope of your powers. The government's power to forbid particular land uses in order to advance some legitimate police power purpose includes the power to condition such use upon some concession by the owner, even a concession of a property right so long as the condition furthers the same governmental purpose advanced as justification for prohibiting the use. And this comes out of Nolan versus California Coastal Commission. It is a Supreme Court Case.

It's important to understand that concept, the initial concept of that nexus because if you understand the powers that you have - and a lot of times you're dealing with Special Management Use Permits and things like that, and if you understand - and the planners will explain to you what are the powers you have - what you need to determine whether or not that permit is going to be able to be denied or to be granted. And you can work within that concept and find out what are the government's legitimate interest in reviewing that permit. Once that's found, once there's a nexus is found within your duty and the condition that you're setting, you have to go to the next concept called rough proportionality. And Dolan versus the City of Tigard kind of explained this concept. It say whether the city's findings are constitutionally sufficient to justify the conditions imposed on Dolan's permit, the necessary connection required by the 5th Amendment is rough proportionality. No precise mathematical calculation is required but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the proposed development's impact. So you have to look at is the developer with this condition going to carry a burden that is proportional to his impact onto the community. If somebody is going to build a hotel and they're going to be impacting the coastal waters, you can only make them do what's going to be affected - what their impact on those coastal waters are going to be. You can't make them clean up the County sewage spill. You can't make them

APPROVED 05-19-2010

take out all of the debris from the five other hotels down the road. You have to look at their impact and say what is a fair burden for them to clean up or to protect the near shore water.

This is known as the Nolan Dolan test. First, look at the legitimate state interest. If you're dealing with an SMA, all of the policies and objectives of 205A are legitimate state interest. Then look at the essential nexus. What kind of impact is that person making and does it have a nexus to those legitimate interest of impact of near shore waters of access, native Hawaiian access? All of these issues that are archeological sites. All of these things are legitimate. Protecting all of these things are legitimate state interest. The next thing is that rough proportionality. Is that condition going to fit within that impact that that development is creating? And that's how you can fashion conditions in order to stay within the constitutional bounds of takings.

The SMA law. The objectives and policies of HRS 205A are examples of legitimate state interest. Among the CZM's stated objectives and policies are the protection, preservation, restoration, and improvement of the quality of coastal and scenic and open space resources, and the designing and locating of new developments to minimize the alteration of existing public views to and along the shoreline. And as kind of segues, the denial of a Special Management Area Use permit. Before a denial is made, you have to make a certain analysis. Topliss versus the Planning Commission. Even if a development is shown to have a substantial adverse affect in accordance with the Statute, HRS 205A, the Commission is required under HRS 205A, 26, 2, section B, to determine whether that affect can be practicably minimized. And when minimized, is clearly outweighed by the public health safety or compelling public interest. The Commission may impose reasonable conditions to achieve the minimization. So Hawaii law is consistent with Federal law in this aspect.

Conditions. The Commission can put conditions on the granting of Special Management Area Use Permits as long as the conditions are reasonable and further the policies and objectives of 205A. The Commission cannot delegate its duties. The Commission must make findings that development will not violate the policies and objectives of HRS 205A prior to issuance of the SMA Permit. And this comes out of Alaloa versus Planning Commission of the County of Maui. And in that case it was found that it wasn't a proper condition to grant the permit and have a condition that says the developer can later decide or develop a report which identifies cultural resources. That report has to be made prior to the development, or prior to the giving of the SMA Permit, so the maker – the policy or the Commission can look at that report and decide how to protect those resources and not delegate it to the developer. The Commission has an affirmative duty to protect cultural resources. The Commission is obligated to protect the reasonable exercise of customarily and traditionally exercised rights of Hawaiians to the extent feasible. And that's coming out of PASH.

APPROVED 05-19-2010

In order to protect cultural resources, developers should be required to retain qualified archeologists to determine significance of various archeological sites on lands to be developed and prepare written report regarding preservation or salvage of historical resources on archeological site prior to the issuance of the SMA Permit. In order to protect the reasonable exercise of customarily and traditionally exercised rights of Hawaiians to the extent feasible, the Commission must make specific findings and conclusions as to one, the identity and scope of valued cultural historical or natural resources in the area, including the extent to which traditional and customary native Hawaiian rights are exercised in the area. Two, the extent to which those resources including traditional and customarily native Hawaiian rights will be affected or impaired by the proposed action. And the feasible action, if any, to be taken by the Commission to reasonable protect native Hawaiian rights if they are found to exist.

Another issue that comes up is permits from religious organizations. And what you may hear when you're analyzing these types of permits is this acronym RLUIPA, the Religious Land Use and Institutionalized Person Act of 2000. It comes under the Federal Code 42, USCA, Section 2000. RLUIPA prohibits the government from imposing or implementing a land use regulation in a manner that imposes a substantial burden under religious exercise of a person including a religious assembly or institution unless the government demonstrates that the imposition of the burden on that person, assembly or institution is in furtherance of a compelling government interest and is the least restrictive means of furthering that compelling interest. In Maui County we urge you to first look at the permit as a land use permit. If you come to the end of your discussions and the overwhelming decision is to deny the permit, you have to do this analysis before you deny it. You have to look at whether or not it's going to substantially burden the person's religious practices. And if it does, you have to look at some mitigative way that you are not going to absolutely prohibit the religious activity. It has to be in some way allowed in a restrictive manner so that it does not violate the land use principals that you are trying to develop as a community. A lot of times what people don't understand is that you can allow a practice, but you can limit the amount of people. You can limit the time. You can limit – you can regulate the noise. You can still allow the religious activity but limit the impact to the community. And that has to be part of your discussion before you actually decide to not allow somebody a permit for something that's going to be part of a religious use. Any questions? Gerry?

Mr. Rabaino: I have one. For example, we have old churches on the island. And if they want to restore or anything like that and preserve, would this affected because it's within the shoreline management concept?

Mr. Giroux: Well, I think, first, you would probably get that permit under your shoreline, your Special Management Use Area Permit, if it's a major operation. So you would get, you know, the church of so and so to do demolition and reconstruction of a church possibly.

APPROVED 05-19-2010

If it's in the Special Management Area, you first analyze it under 205A. Then you'd have to do your objectives and policies of 205A, go through that. If it's inconsistent with that, you have to look at your Topliss analysis, whether or not these impacts can be mitigated or if there can be conditions put on it to mitigate it. If you can't and you're looking at denying the permit because these impacts cannot be mitigated, then you have to do your RLUIPA analysis. And if you deny that, it's the church's ability to practice their religion but it will be substantially impacted.

Mr. David Green: Mr. Chairman, I need to excuse myself (*Changed cassette tapes*). I need to leave.

Mr. Rabaino: Okay. You're excused.

Mr. Giroux: Okay, contested cases. I put this together because we are getting a lot of cases that the boards on Maui are now taking these contested cases. Your rules allow you as a board to decide whether or not you as a board want to take a contested case and be the hearings officer, if you want to select a few people from your board to be the hearings officer, or if you just want the Chair to be the hearings officer. So I put this together just to give you kind of a frame work of what the responsibilities of a board who's conducting a contested case are. The contested cases are governed under the Hawaii Revised Statutes Chapter 91, also known as our Hawaii Administrative Procedures Act. What is a contested case? A contested case means a proceeding in which the legal rights, duties or privileges of specific parties are required by law to be determined after an opportunity for agency hearing. Required by law means that the hearing is required by statute agency rule or constitutional due process.

I should have changed this. This is Maui's Rules. I'm going to look in your rules. I'm pretty sure it's consistent with this. But all proceedings in which action by the commission will result in a final determination of the legal rights, duties, or privileges of a specific party or parties, and which is appealable pursuant to section 91-14, as amended, is a contested case.

Under our case law, the latest case that came out was E&J Lounge Operating Company versus the Liquor Commission. And out of that case, one of the major findings is that if a public hearing is a contested case, all provisions of HRS Chapter 91 apply. Special Management Area Use Permit public hearings are seen as contested cases – Mahuiki versus Planning Commission. And the State Land Use District Boundary Amendment public hearings are seen as contested cases – Town versus Land Use Commission.

In a contested case, there are requirements of notice, submission of evidence, cross examination and rebuttal evidence, and the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of

APPROVED 05-19-2010

persuasion. And the degree or quantum of proof shall be a preponderance of the evidence.

When an applicant has a permit in front you that is considered a contested case, it's important to remember that it's the applicant's burden to bring evidence to you to convince you that they've met the criteria in order to be given a permit. It's required that the decision maker shall personally consider the whole record or such portions thereof as may be cited by the parties. So it's important that all the Commissioners look at the record if you weren't present at the hearing and you're going to make a decision to review the transcript. Every decision and order adverse to a party must be in writing and accompanied by separate findings of fact and conclusions of law. This is very important because your decisions are recording as orders. That means staff and your legal counsel have to produce something for you that would be substantiated and law if challenged and taken to a higher court. It has to be sufficient that that judge could look at that order and decide whether or not your decision was in accordance to the law. Those finding of facts, decisions and orders are then served on the other party and they do have an opportunity to have judicial review. So if you deny somebody a permit, it's very clear and I will ask you on the record to clarify your decision making process. It's not that I'm against what you're choosing to do, it's just that I'm asking for clarification so that if it is challenged and goes to higher court than that court will have sufficient evidence in order to see that your decision was made properly.

Judicial review. An administrative agency's findings of fact are reviewable for clear error, while its conclusions of law are freely reviewable. And administrative agency's findings of fact will not be set aside on appeal unless they are shown to be clearly erroneous in view of the reliable, probative and substantial evidence on the whole record or the appellate court, upon a thorough examination of the record, is left with a definite and firm conviction that a mistake has been made. So if you're relying on reports, if you're relying on anything coming out of the departments, if you're relying on testimony, then the court is going to look at that and say as long as there probative evidence within things that you have been presented that your decision would be upheld.

As a general rule, an administrative agency's decision within its sphere of expertise is given a presumption of validity. And one who seeks to overturn the agency's decision bears the heavy burden of making a convincing showing that it is invalid because it is unjust and unreasonable in its consequence. Upon review of the record the court may affirm the decision of the agency or remand the case with instructions for further proceedings, or it may reverse or modify the decision and order if the substantial rights of the petitioner may have been prejudiced because the administrative findings, conclusions, decisions, or orders are, one, in violation of constitutional or statutory provisions, such as takings and RLUIPA; in excess of the statutory authority or jurisdiction of the agency; or made upon unlawful procedure like not letting somebody testify or present evidence; or affected by other error of law; or clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or arbitrary or capricious or characterized abuse of discretion or clearly

APPROVED 05-19-2010

unwarranted exercise of discretion. So if you make a decision with no evidence or no reason, then the Courts will begin to think that you didn't really look at the project and you made a decision without clearly going through an analysis.

Things to remember. When dealing with a contested case you are exercising your adjudicatory function. You must remain impartial and not openly make conclusory remarks until all of the evidence has been received. Your decision must be based on the evidence on the record. Avoid any statements that may be mistaken as an attack on somebody's race, sex, gender or religion. Any questions?

Mr. Ornellas: Mr. Chair, if we assign or approve a permit with conditions and later on down the road we find out that the conditions weren't followed, can we rescind permits?

Mr. Giroux: Right now I'd have to look at your rules to exactly what the procedure is, but it's called the Morgan Case coming out of Kauai that said that in any agency law where the body has the ability to grant a permit, it has the inherent ability to also take it away as long as its procedures are followed. Usually you have two venues. One is an order to show cause where the enforcement arm of the agency goes out, gives somebody a notification, you've violated this condition, please come before the board to appeal that decision if you don't feel that you violated it, and that board can hear your response. Otherwise, you need to pay a fine. The other procedure is the order to show cause. If there's a procedure where the board has a procedure for an order to show cause, an order can be sent out and once that order is served, that person has so many days to come in and justify why his permit shouldn't be revoked. And once that happens, that is a contested case, and that person has all the rights, duties and responsibilities under Chapter 91 in order to preserve his permit. So as long as he's given a fair hearing and all of the facts are into evidence, and the decision is made on the evidence, then you can decide what to do about corrective action on that permit.

Mr. Ornellas: And you will guide us as far as the path we take?

Mr. Giroux: Right. As your Counsel, I will give you your options. I will make you aware of what your procedures are. And I will also be active in helping the Chair in making sure that you're following your own procedures in order to get through the process. A lot of times boards will hire out a retired judge to actually hear the case. And what we've been seeing lately is that the boards are deciding to hold on to that power of a hearing. It can be a headache on one side because if both parties, you know, let's say have attorneys, there's discovery issues, there's meetings, you know, there's pre-order hearings, there's exchange of documents, there's pre-hearing motions. All of these things have to be disposed of. And what we're trying to do as our office, Corporation Counsel, is to assist the boards and commissions to take on that role in order that we would hopefully eliminate the expenditure of having outside lawyers, or outside judges have to hear all the evidence, do all the work,

APPROVED 05-19-2010

present their findings to you, and then you decide that either it wasn't sufficient or they didn't really look at the issues that you're interested in, or they didn't address the issues that are important to the board. So that's where we need to be able to equip the board with the ability to actually process and deal with the contested case on its own. And we're not saying you're on your own, but you would be assisted by Corporation Counsel.

Mr. Rabaino: Any other questions? Discussions? Okay. You can move to the next one.

Mr. Giroux: I think we're done.

Mr. Rabaino: We're done. Okay.

Mr. Giroux: Enough law talk, let's get to Planning.

Mr. Dave Michaelson: First of all Mr. Chair, members of the Commission. Thank you so much for having us. I was telling Matthew when I walked in that my favorite road trips are Moloka`i, Hana and Lana`i, so my blood pressure seriously points go down. First of all, we're going to take a little different path and what James does tends to be very linear in nature because he has to be. He has to keep myself and yourself out of trouble. But what I do is very creative and it's inspirational, and it's long range planning.

Let me tell you a little about my division. My division is completely separate from Clayton's. It's called the Long Range Planning Division. We essentially have four main sort of work scopes. First of all, we update all the island plans, the comprehensive plans. We have a GIS section. It's called Geographic Information Systems. It's a way to analyze and store geographic data, cultural data, archeological data, environmental data, social data – and we'll be using that a lot when we come over here and work on your community plan. I'm going to cover an incredible amount of ground in a really short period of time, and I apologize for that. But I have my cards here. I answer my phone calls. I answer my e-mails. And I also want to recognize David Yamashita. He's with my planning staff. He'll be working very closely with you on your community plan update. A very talented guy. We're very, very fortunate to have him here.

I'm going to take you through a little journey. First of all, a little about the statutory frame work for this. Bill 84 was passed in 2004. And it's essentially the legislative backbone for this whole process. Now that does not mean we can't sort of deviate from it occasionally, but we have to meet the requirements of it so we can go beyond. It changed radically how Maui County does long range planning. First of all it talks a little bit about the public participation steps that we need to take. We tailor them for each island and each community plan because they're so different. And if you try to use what worked on Maui, on Moloka`i, it does not fly. And if you try to do what they do on the west coast for the islands of Maui, it doesn't fly. It essentially forms an advisory committee. It's called the –

APPROVED 05-19-2010

the big one in Maui, I'm sure you read about in the papers, it was called GPAC, General Plan Advisory Committee. These have a softer. It's community plan advisory committee. They will be formed later in the process. Obviously some of you may in fact served on that GPAC. And it also identified mandatory elements. And here's a glitch quite frankly with 84 and we're going to have to fill it for you guys is that when it talked about the Maui Island Plan requirements, it was very laser beam specific of what we had to have in that plan. The community plans are a little different because you are both a community plan and an island plan. So as we formulate the process with you and the community, we'll make sure that we tailor those elements that works for you folks.

This is sort of a chart of how we get from where we want to go to how we formulate the plan. There's often times a vision statement for each element: housing, transportation, cultural and heritage resources, environmental resources, housing. There's the Maui Island Plan required us to come up with a directed growth strategy for the island of Maui, and we have four different kinds of boundaries on Maui. We have an urban growth boundary, a country-town boundary, we have rural service centers, we have rural residential. Those are not locked in for the community plans. In fact, on Moloka`i, I hear a certain kind of directed growth strategy that they want to take. So again, we're not bringing Maui to the other islands, and we'll work with you as we try to come up with a way to do it. It also has bench marks which are really important, and this was not part of the old planning methodology. We established for Maui to track how successful the Maui Island Plan is. We have what are called sustainability indicators. And they range everything from how much affordable housing are we producing. How much prime ag land are we consuming. Those sort of things. And we'll develop again. We'll tailor that for you folks as well.

The Community Plan updates are very different than the Maui Island Plan. The Maui Island Plan is on the web if you wanted to take a look at it. It's very impressive, very bold document. The Community Plans are grounded on the landscape. It's more about people development patterns, historic preservation, environmental protection and things like that. So they essentially take an island plan and the Countywide Policy Plan which was flying at a very high altitude and it gets you on the ground. And that can be a bit of a challenge.

This was the old Planning methodology. It had a Maui County General Plan that was very broad, very sort of vague policy statements, very inspirational I think in nature, and then it drilled down to the Community Plan. The new one is different and I think you folks were involved. Were any of you involved in the Countywide Policy Plan? Very difficult document because it had to address three very different islands under one sort of policy document. So when you look at the Countywide Policy Document, you'll see that it's very broad. Then we drilled down to the Island Plans. The Maui Island Plan is now in front of the Planning Committee, in front of Council. They're about 70% of the way through it. And of course, everything stops during budget. So they'll pick that plan up again in June. So up until the time that occurs, I'll be over here quite a bit with David and Kathleen, and once they shift

APPROVED 05-19-2010

into the Maui Island Plan, I'll disappear for four months, but I'll still be working closely with Dave. After the Island Plans, then we're going to do – yours is the first Island Plan that will kick off and then Moloka`i will be staggered about six weeks to two months behind you sequentially. We plan on kicking off a workshop. Actually, I'm sorry, it's the other way around. Moloka`i is going first, you guys are about four weeks behind them. We're planning probably a first public workshop in – do you think July or August would be fair – July or August. Your next Planning Commission meeting, David Yamashita and Kathleen Kern from my office will coming over to talk to you specifically about your community plan update. So hopefully you'll get all your questions answered.

This in general was the process that we followed for the Maui Island Plan. We had a very rich public participation. Probably, I've been doing this kind of planning, community planning, for about 25 years now. I just gave away my age. But it was one of the richest public participation engagement process I've ever been involved in. At times it was very painful to be honest. But I think at the end of day we came out with a product that represents, I think, the majority of how people feel about the island of Maui. We'll do something very similar to this for you folks, but obviously not near the detail that we did with Maui. Maui is a very complicated settlement pattern, just by default. You've got very urbanized areas. You have very rural areas. You have places like Hana, Paia, so the level of detail that we got into, it was kind of analysis paralysis if you've ever heard that term. But we make sure that we tailor what we do over here for what issues we're going to deal with.

The first question we're going to ask not only ourselves, but the community, is who are we planning for? And I love working with high school kids and junior high kids. I did quite a bit of it on the Maui Island Plan. And if any of you guys can get us into that with a contact to help us do that. But here's an example with Baldwin High School. I went in for six classes. And when I started out – and we did table top exercises with them and how to make maps, and telling us what they were thinking about their community – but I asked them three questions. I asked them how many of you were born on Maui? And I'm guessing anecdotally about 85% of the kids in these five classes were born on Maui. Then I asked them how many of you want to live on Maui the rest of your life? And almost the same 85% hands went up. And then I asked them the kicker. I said how many of you think you'll live here in 10 years, and the hands vanished. I mean, they just went down. And to me, as a community planner, that was like a bell ringer. So we started asking them, what's up? And it's what you'd expect. Where am I going to work? Where am I going to live? Is it going to be the same Maui that I lived on and I grew up on? So we tried to integrate a lot of those concepts into the plan, and I'd really like to do the same thing here.

The other assumption is you are going to grow, okay. You are going to grow, but not nearly the rate that Maui is going. For example, the population projections for Maui to 2030 is averaging about 2 ½ % a year. The projections – and we're working on them for you right

APPROVED 05-19-2010

now – the projections that we have for Lana`i is like less than 1% a year, which is good news/bad news. Good news is it's very manageable. You know, your whole world is not going to turn over like it happened in Maui like in the late 70s and early 80s. So that's the first thing. The second thing is you've got to believe that these processes work, that you can –. You don't have to have somebody else control your future for you. Now here you've got a rather unique environment to try to manage that, and we're going to try to help you out as best we can. And finally, that we're not a commodity. We're a community. People live here.

There's another thing that will always come up in plans particularly for a place like Lana`i, and that's this idea of sense of place. Alright, when you're here, you know you're on Lana`i. You know you're here. And there's a lot of different reasons for that. It's not just physical. It's cultural. It's social. This guy wrote a great book called *Pattern Language* and I always use this slide just cause he's kind of an hero of mine. But it's not only physical, it's spiritual, and I think you know what I mean by that. And that's something that makes planning on the islands very different. You'll hear a lot of people talk about the word sustainability, and it's kind of a catch word. I've heard it sometimes, but here's how I look at it. The decisions we make today should not compromise future generations for living the life style that we've lived. And again that's a social component, and an environmental component.

I think you've all heard the whole seven generation concept which I think is really important. Native Hawaiians always had this concept that when every decision we make, we should be thinking about what are the implications to my kids, their kids, and their kids. And if we do that, I think generally we do a pretty good jobs. Again, here's the growth projections. We'll finish this up for you guys before we convene CPAC. We're going to try to have as much information as possible. This is Maui Island that compares both resident population and visitor population. I just thought you might be kind of entertained by the slide. It's pretty dramatic. We were growing roughly between six and eight percent annually during the big boom in Maui. Now again it's gone down. But my point is that the worst planning is you plan for less, and you get more. And that is exactly what happened to Maui. Look at the infrastructure problems that we have. That was caused because we planned for less and we got more. If you plan for more and you get less, you're in pretty good shape because all your infrastructure is there. I'm not going to walk you through all of these. These are just sort of some concepts of what makes a great comp plan. If they do all of these, they're comprehensive, they're consistent, it's specific. The fiscal impacts are very clearly defined. And the most important one is the one on the bottom, that the debate is open, honest, and transparent. That's the death kneel of a plan if that is not followed. If the community doesn't think that they had input, and they can't track the process through. These were guiding principals that we used for the Maui Plan, and I think they're applicable to every island, that the stakes are high. The stakes are incredibly high. If we do it wrong, we're not going to sleep at night because – before we live right? So it should be bold. It

APPROVED 05-19-2010

should be bold. It should take some chances. It should be based on the best information possible. We will make a commitment to provide the community with the best geographic data we can, social data we can, environmental data we can, archeological and cultural resources.

Best practice is essentially we're not reinventing the wheel here. So if we think things are going to go wrong, we'll tell you based on experience. And finally you've got to respect the process. My prospective as a community planner is not, and my staff, is not to come over here and tell you what you guys should do with your island. The creative process where your community can articulate to us a vision and we'll come up with options of how you can get there. That's what a true community planner does. These are other things. This gets back to that slide before – specific, measurable, achievable, realistic and timely – if those are true, you're going to have a pretty good plan.

This idea –. First of all, the model of the ahupua`a is the most brilliant, natural resource planning model I've ever seen, and it's unique to the islands. And what that suggests to me is that you have to respect the history and how these islands have developed and how they functioned pretty darn well without a whole lot of intervention. I always use this slide. And it's not really like we can re-establish the ahupua`a system, but we can use it's philosophical underpinnings of like inter-generational equity, caring and sharing, all those sort of things. So that model is out there. Be braced for a complicated process only because when you do one thing to one sector, be it environmental, social or economic infrastructure, it tends to sometimes unintended consequences. So one of our jobs is to say if you're going to do this with housing or you're going to do this with historic preservation, it might impact other things. And let's make sure that we're all honest and we understand that.

Public engagement is what it's all about. Again, this is not our plan. This is your plan. David is going to come and talk to you in, I guess, a month, your next meeting, about some ideas that we found to be really effective. You can't use a western model. It doesn't work because we're just different. Right? It's island style plan, if you will. So I won't walk you through these specific ones, but again, the one thing that I think all of us agree on is it's more important – you'll never hear me talk this much, again, though this whole process because it's really about us listening and thinking about where we want to go. So David will bring some of those ideas. And any suggestions that you might have because you know this island, it's your island, let us know.

This was an example of what we did on the Maui Plan. We did a bunch of public workshop where we allowed people to have a lot of different ways of voicing their concerns or what they really liked about the island, what they didn't like, what issues were out there, what solutions might work because some people feel really comfortable standing up and testifying. Right, they're the professional meeting goers. That doesn't represent your entire

APPROVED 05-19-2010

community by us at any stretch. We did a lot of stuff where we actually sat down in people's kitchen and talked about the future of Maui and that was very valuable.

First of all the Countywide Policy Plan is law. It was signed by the Mayor. It has the legal force of law. Again, it was a tough thing to crack because the islands were so different and we had to mush them into this one plan. But just to give you a sense of what it talked about, the flash point issues are what you would expect. Right, affordable housing, schools, parks, public services, regional open space networks. One of the really important conclusion to the Countywide Policy Plan, and it has found its way into the Maui Plan is we have to coordinate land use infrastructure and transportation planning together because if you don't you'll get Kihei, for example. And it also brought home this unique sense of place, alright, and that's going to be very important on this island, and it's going to be very, very important on Moloka`i.

The Maui Plan highlights, again, we've adopted a directed growth strategy. We're working through Council through it. There was a real significant key country movement. And not only that, but to protect these unique sense of place that we have. Paia, you know when you're in Paia, right. You know when you're in Makawao, so let's not make decisions that compromise that. There was a lot of issues associated with coral reef degradation on the island. And we found through a lot of research a direct connection between whatever happens in those watersheds it ends up affecting the reefs. So we've adopted it. We've come up with a lot of policies, and a couple of approaches. And that very well may be something that we work on here. We also identified transient corridors. It's a great debate because some people want like mag lev on Maui. Other people just want a place where a bus can run. So that would be an awesome, awesome discussion for sure. This is what it comes down to, and this is why David will be over here in a couple of weeks, or a month, but it's this idea that these community plans have got to be home grown. They've got to respect the cultural uniqueness of these places. And they always have to step back and say are we killing the golden goose? Are we doing something that takes us down the wrong road. So that's it for me. Again, we'll sort of kick you off in the summer. David will bring – you'll bring a tentative schedule right in a month? But we're anxious to get started. Now the one constraint, and I'm not complaining, but we are under some really significant budgetary issues with the County, and that will affect these plans. It will affect how much travel we can make. In some cases it will affect how much staff we can allocate. But I think as long as we keep them where they are now – essentially there's going to be three of them going simultaneously. Your island, Moloka`i and Hana. Now we're getting pressure to do more and more. First of all, one, we can't do it because it compromises the quality. If you don't have the attention you need, and secondly, we're pretty bare bones, we're not going to get any more staff. So with that, you've got any questions?

Mr. Ornellas: A couple of questions. The first one is, does the Lana`i Planning Commission have any responsibility of finding names to be put on the Community Plan? Could they?

APPROVED 05-19-2010

Mr. Michaelson: You could. For example, if you have a list of folks who you think are appropriate, you can either (a), have them write a letter of interest to Council, or if you wanted to put a list together, I can't guarantee the Council would follow that. But you could certainly submit a list saying these are folks we think is appropriate. Is there 13 on the Lana`i CPAC? I think it's 13.

Mr. Ornellas: And this is a Commission? Is it like the CAC's?

Mr. Michaelson: Yeah.

Mr. Ornellas: I sat on the CAC for Lana`i. It was 1993 plan, but it got adopted in 1998, so I see you guys smiling so you know. And a lot of things happened between 1993 and 1998 that we weren't too happy about. So what's the guarantee that we sit down and do a community plan, and then ten years down the road we're still trying to get it adopted?

Mr. Michaelson: I'll take two tries at that. The first is that one thing that is different between the 1990 enabling legislation and the 2004 enabling legislation is once the thing is drafted both the Maui Planning Commission, or I guess it's this Commission – is that right – this Commission has six months to approve it. Council has, I believe, a year to approve it. If it gets to that point – and you can't extend those deadlines. So that's one difference. The second one, I think, which is a more enlightening part of your question is how do we know these things will get implemented? And the legislation also requires every year we have to make a report to Council saying this is what your plan said we need to do, and this is how much of it we've gotten done in that year. In some cases it's as simple as re-writing code, right, make it clear, make it more "Lana`i-ized" if you will. In some cases there's much more aggressive programs like there's a transfer development right program that we want to institute on Maui. That's going to take some time. That's not going to happen in six months, so the legislation holds our feet to the fire which is good.

Mr. Ornellas: And I can also assume – well that word gets me into trouble a lot – assume that you'll use the 1998 as your base line?

Mr. Michaelson: Correct. The legislation actually says it's a community plan update. It's not starting from scratch. That is key to making these things happen because a lot of people put a lot work into there. Now we may identify areas where – just like you said, a lot has changed. So the first thing is to see what is in there that is still true. But yeah, that's totally our intent. Like Moloka`i – have you ever seen Moloka`i community plan? It's a great plan. It's probably the best community plan that we have in the County, but it never got implemented. So they're hopping that over there, I could tell you that. And you know, they're going to hold our feet to the fire this time, which I think they should.

Mr. Rabaino: So how soon will our ones will start? You said July and August?

APPROVED 05-19-2010

Mr. Michaelson: July and August is kind of our target to have this first public workshop. And then from then on, we'll be coming back frequently as we get –. Like right now we're trying to get all the base line information together. So when people say how much have we've grown in 10 years, for example? That's reasonable question, right? We can tell them that. We can provide intelligent answers.

Mr. Rabaino: So under the three diagrams that you have over, Lana`i – try go back – under the three diagram, you have Lana`i, Maui, Moloka`i. Okay, so the Lana`i Island Plan is the one you're referring to July/August, right?

Mr. Michaelson: That's correct.

Mr. Rabaino: And how often will you come within those two months?

Mr. Michaelson: You know David will come prepared to answer that. It's very important from our perspective that we have boots on the ground. So we're going to be very strategic about it and we may not be able to send all four of us, or three of us, because of the budget. But you'll see a lot of us. David and Kathleen Kern have spent several days over here doing interviews just to sort of get a feel. And it's a pretty wide spectrum of folks – Castle & Cooke, he sat down with us folks – but that's first sort of let people know that this going on. Let's get a feel for what's going on. Let's make sure we understand the issues. Then the big public workshop will, again, kick off in July/August.

Mr. Rabaino: So in other words the Commission will get all the information from you, but when you come over to do your so called survey research, you'll be mingling with the city among the people to get their ideas, and then finally the commissioners?

Mr. Michaelson: Yeah.

Mr. Rabaino: Okay.

Mr. Michaelson: And you know, we're going to count on you folks to get the word out about this. You know, we set these dates, we're going to want to know where everybody hangs out if we put a flyer somewhere the most people will see it. We'll do mailers. We'll use the newspaper. But my experience on Maui and some of the other islands is there's this sort of informal communication system. So as long as you get to those people, you tend to have a much more successful sort of public outreach than if you did the typical spill in the newspaper. Well not everybody gets the newspaper.

Mr. Ornellas: You perked my ears when you said you've already spoken to Castle & Cooke. I have question about the make up of this CAC.

APPROVED 05-19-2010

Mr. Michaelson: Okay.

Mr. Ornellas: I mean, are you going to load it down with Castle & Cooke employees or –?

Mr. Michaelson: No, if we did we would be committing suicide.

Mr. Ornellas: Yeah, on Lana`i you would.

Mr. Michaelson: We totally understand that. But the CAC's are appointed by Council and the Mayor. We have no involvement at a staff level for cherry picking those CAC's. But if you don't have everybody at the table –

Mr. Ornellas: Yeah, I don't disagree with you. So these list of names, if you're going to start doing this in August, the list of names will have to go in front of the Council very, very soon.

Mr. Michaelson: Well, here's the other thing about the CAC, and I bet this is different than the process you followed. But their clock starts ticking when they are formed, and it's only 180 days. So we want to get as much into the process as we can, obviously, inviting those folks. The other thing that becomes very problematic is if we set the CAC up today, for example, and we have a public workshop, and more than three of them show up, James Giroux – my phone will ring – going Michaelson you're violating the sunshine law. So that's why we want to push that putting those folks together in a way where that 180-days still allows us to do a good product. So I wouldn't suspect that will occur. Actually, let me talk to Jeff Hunt and see kind of what he's feeling in terms of the ultimate timing, but it's down the road. It's down the road.

Mr. Ornellas: You know, because our community is very small. And for us to put together community meetings is not really that big of a deal. I mean, we do the phone tree and so if we want to get started now, unofficially, then this might be a good – we'd get a head start.

Mr. Michaelson: I terms of forming a CAC?

Mr. Ornellas: No, to talk about the issues.

Mr. Michaelson: Absolutely. We're on the same page.

Ms. de Jetley: I have a concern. You know we have a contested case hearing with Solomon Kaho`ohalahala. And I think that a number of us who are involved in this lawsuit will not be considered by him to sit on your committee. And all of the people – all of the people who are involved on this are fairly active in our community and I don't think that we will be represented on your committee.

APPROVED 05-19-2010

Mr. Michaelson: I think the only advice I could give you is that there are other – there are other Council people and you can contact them about your concerns. But that's really kind of beyond the breath of what my division does, or what I can do within this process. But I recognize your concern. I sat through several of those nominating meetings, and they're pretty contentious for sure. That was polite wasn't it?

Mr. Rabaino: Okay, any other more items to talk about or are you done with your presentation? Commissioners, do you want to take your time out or do you want to go through the Director's Report? Time out? Okay, let's take three. Correction, five.

(The Lana`i Planning Commission recessed at approximately 7:35 p.m., and reconvened at approximately 7:42 p.m.)

Mr. Rabaino: Planning Commission come to order. Please be seated Commissioners, and let's start our second half. And I believe on the agenda we're going to start with the Land Use – 11, 12, 13, 14, 15, correct?

Mr. Yoshida: Yeah, Mr. Chairman, we'll be starting with the Planning framework which is found on page 20 of the handout. I guess as a foot note, we'll be sending you copies of the Countywide Policy Plan that was adopted last month and it is available also on the Maui County website.

So the department again consists of four primary divisions: Administration, Long Range, Current and Zoning Administration and Enforcement. We're all under the Planning Director and Deputy Director. The administration division carries out the department's overall administration functions. And the administrative planning officer works on legislation for the department. Dave Michaelson talked to you about the Long Range Division and what they do. We have the current division that processes all permit requests which must be considered by the Commissions, County Council and some other boards and commissions, as well as, processes many administrative permits, and staffs the Commissions. The Zoning Administration and Enforcement Division administers the day to day aspects of the zoning ordinance and the flood hazard ordinance, comments on building permits building plans regarding zoning consistency, comments on subdivision proposals, and enforces the zoning ordinance and special management area regulations in the coastal zone.

In the next slide, it goes into detail about some of the resources available to the department and to the Commission. We have in the center the Lana`i Planning Commission. The Urban Design Review Board (UDRB) is advisory and makes recommendations on design related matters of projects located within a special management area. Further the board makes recommendations on other areas related to design such as Comprehensive Signage Plans (CSP), design guidelines for Country-Town Business zoning district, and other areas that the department deems necessary for input. The board consists of nine members, and

APPROVED 05-19-2010

four alternates. Four of the members have an interest in design and the remaining members are design professionals such as architects, landscape architects, and civil engineers. Additionally, the board is required to have members from both the islands of Moloka`i and Lana`i. The board is staffed by the Planning Department. So currently, the Chair, Kay Okamoto, is the Lana`i representative on the Urban Design Review Board.

We also have the County Arborist Committee which is advisory and makes recommendations regarding to trees within subdivisions, and landscaping for parks and other public places such as a road right-a-ways. They may nominate exceptional trees for protection such as the banyan tree in Lahaina. This comprises of nine members and staffed by the Parks Department.

We have the Maui County Cultural Resources Commission (CRC) which has the final decision making authority within historic zoning districts number one, two and three. This includes both approval of uses and architectural design. The Cultural Resources Commission also provide advisory comments and recommendations to the appropriate Planning Commissions, other boards and commissions, Departments, to County Council and Mayor related to cultural resources. The CRC may also prepare nominations to the Hawaii or National Register of Historic Places. The Commission consists of nine members with disciplines of archeology, planning, architecture, architecture history, Hawaiian culture and ethnic history. Additionally, the CRC is required to have members from the islands of Moloka`i and Lana`i, and is staffed by the Planning Department. Kepa Maly was on, the Lana`i representative, on Cultural Resources Commission but he resigned at the end of last month due to health reasons, so we have a vacancy on the Cultural Resources Commission for a Lana`i resident.

There are other Federal, State and County agencies that provide comments to the Department regarding their specific function. For example, the State Department of Health provides comments on individual waste water systems. In the next slide, we`ll take a look at the laws and regulations providing the Planning framework.

We have the Hawaii State Constitution that sets forth the structure of governance of the State, and provides the working of both the State and County governments, and the enactment of State laws by the Hawaii State Legislature, known as the Hawaii Revised Statutes. Under that, we have the Hawaii State Planning Act, or Chapter 226, which was adopted in 1978 to establish a state wide planning system. Chapter 226, HRS, also provides the enabling legislation for the Countywide Policy Plan and the respected development of community plans that we have today. The Hawaii State Planning Act set forth elements such as side population and physical development patterns, unique problems that needs land use, transportation systems implementation priorities. Other than that we have the General Plan and Community Plans, and Dave Michaelson talked in depth about that. The Long Range will talk to you some more about that next month in terms of

APPROVED 05-19-2010

a time line.

We have the Maui County Charter, which was last amended in 2002 to provide further guidance on the General Plan update. And we have Bill 84 that Dave Michaelson talked about which is quantified in Chapter 2.80B. Passed by the County Council to provide further guidance on the current General Plan update process and clarified the role of the completed documents in County governance. The Planning Commission would conduct a public hearing and provide recommendations to the County Council for any community plan amendments on the Island of Lana`i.

We also have the State Land Use Commission, which is governed by Chapter 205, Hawaii Revised Statutes, which is more commonly known as the State Land Use law. It was adopted in 1961. All lands in the State are designated into one of four categories: ag, conservation, rural or urban. The County has jurisdiction over lands located in the ag, rural and urban districts. Lands located in the State conservation district are under the jurisdiction of the State Department of Land and Natural Resources. So in the case, we often get questions about this proposed Lana`i Wind Farm Project, which is located on conservation lands, so that's under the jurisdiction of the State Department of Land and Natural Resources. There are two actions to which the Commission would commonly review. One is the State Land Use District Boundary Amendment. Someone wants to change the classification, State Land Use classification, of their land from one district to another. Let's say they want to change it from ag to urban. And the second type is the Special Use Permit to allow for certain unusual and reasonable uses within the State ag and rural districts. This use must be deemed unusual and unreasonable based upon the five criteria listed in the State Land Use Commission rules.

For State Land Use District Boundary Amendments, if it's greater than 15 acres, that's processed by the State Land Use Commission. The Planning Department is a mandatory party to any district boundary amendment involving lands located in Maui County. So an example of that was what happened in the late '90s with say Manele. They reclassified from ag to urban for the golf course, reclassified from ag to urban for the surrounding residential unit uses around the golf course. So that went to various State Land Use Commission proceedings.

For lands that are less than 15 acres, 15 acres or less, for district boundary amendments, the Commission will conduct a public hearing and then provide its recommendations to the Maui County Council for district boundary amendments located on the island of Lana`i.

Mr. Rabaino: Can I ask you one question?

Mr. Yoshida: Yes.

APPROVED 05-19-2010

Mr. Rabaino: You know when he says they re-zone, how many times can they re-zone within a year period if they want to re-zone land?

Mr. Yoshida: Well, I think whenever they want. If they want to change the State Land Use designation of the lands. If it's more than 15 acres or if it involves conservation lands, then they have to go to the State Land Use Commission reclassify the lands.

Mr. Rabaino: What I'm trying to get at is how many times can they do it, you know, go flip flop? Is there is a time period or a time frame for that? Because it says 15 acres over there yeah, so if you look at the time when they initiated the 15 acres – I'm referring to Miki Basin – how many times they can change a zoning within – does it have a restriction or a limit to it?

Mr. Yoshida: No.

Mr. Rabaino: In changing from urban to agriculture or multi-use.

Mr. Yoshida: No, but I think the State Land Use Commission will look at what is known as kind of parceling of a project where you say, well, I'm going to do 10 acres here and then four years later, I'm going to do another 10 acres, and four years later, I'm going to another 10 acres. So cumulatively it's more the 15 acres threshold, and the total project was more than 15 acres. So they would say why are you folks going through that process for cumulative, that you're parceling it out, so you don't have to go to the State Land Use Commission.

Mr. Rabaino: Yeah, because my curiosity is if they give you, let's say you have five years to do it, and they exceeded the five years, do they have to re-do it all over again in the due process? Or is the penalty and question is why did you delay within that time given period of five years to do what you said you would do on paper? That's my curiosity. So in other words, can it be extended or you can deny it? I mean, can the Commission deny it or the land use can deny it?

Mr. Yoshida: Well, I guess as James had talked about previously with the State Land Use Commission there is that order to show cause proceeding. I mean, we kind of went through that with the so-called irrigation condition for the Manele Golf Course several times. With the County, I guess it's a little different because it's a legislative action. The Council ultimately approves the re-classification so if it's taken away, I think the Council also has to act to revert it back from if it was – if it went from ag to urban and now they want to revert it back from urban to ag, then the Council ultimately would have to take that action to revert it back.

Mr. Rabaino: But what I'm trying to say is can the Planning Commission give suggestion

APPROVED 05-19-2010

in the direction of, or the recommendation, whether to move forward or to make sure they adhere to what they already said on paper?

Mr. Yoshida: Well, you want to answer that James?

Mr. Rabaino: Okay, let me put it in layman's term. I tell you I'm going to clean this area in 10 days, the 10 days exceeded, and I going come back to you, can I extend and then you give another time period. Now is there any way a group or department that can control that back and forth situation?

Mr. Yoshida: I think the applicant could pass to amend conditions including time frame, and we would go through the same proceeding.

Mr. Rabaino: John, you want to add in?

Ms. de Jetley: Yeah, I had a question on something else. What happened to the State's important ag land? What happened to that?

Mr. Yoshida: I believe that right now individual owners, so far, I think only individual owners have come in for the designation of important ag lands. Alexander and Baldwin for their – they identified on Kauai, I think it was like 5,000 acres to be designated as important agricultural lands. And that has to go through a hearing with the State Land Use Commission, and the State Land Use Commission has to grant classification of this 5,000 acres of important ag lands. I think Alexander and Baldwin also went to the island of Maui for 29,000 acres to be designated as important ag lands with the State Land Use Commission, and that was done about a year ago. But so far none of the governments have – the County has come forward designated certain lands as important ag lands because the laws are fairly recent within the past few years. So the Alexander and Baldwin petition was on Kauai and Maui were like the first two that the State Land Use Commission dealt with. But it is out there, but it's just very new, relatively.

Any other questions? We do have Special Use Permits. If it's more than 15 acres then the Planning Commission holds a public hearing and makes a recommendation to the State Land Use Commission, and the State Land Use Commission makes the final decision. So an example of that is your land fill, which is 25 acres. So that went to the Lana`i Planning Commission first, then a public hearing. They made a recommendation to the State Land Use Commission, and the State Land Use Commission dealt with the permit.

If it's 15 acres or less, then the Commission, the Planning Commission, is the final decision making authority, so you have the final say. So say some of those riding stable facilities that they have at Koele that exists through a State Special Use Permit of 15 acres or less. At one point in time when the Company wanted to do the solar farm, that was 10 acres, so

APPROVED 05-19-2010

that went to the Planning Commission. The Planning Commission had a public hearing. The Planning Commission made a decision and they provided, imposed conditions on the Company, so that's what we have. It depends if it's 15 acres, or more than 15 acres or less than 15 acres.

Okay, we have zoning which is Title 19 of the County Code and we have various –. Title 19, again, is divided into two sections. Article One which interim zoning which has existed in Maui County since 1958, and Article Two which is comprehensive zoning. And basically from that flows various types of land use entitlements. The Commission may be advisory on some and also the final decision maker on other. Yes?

Mr. Ornellas: When the CAC comes up with their changes for the update, will the County take action on changing of zoning if the CAC so decides to do so?

Mr. Yoshida: Well, I think if, you know, things are kind of aligned. Like say it's designated business commercial, it's in the State urban district, you know, we may go in and just comprehensively try to zone commercial. We did that for the properties around Dole Park which is your commercial district because you know it's like why does Blue Ginger have to go in for a zoning change? It's been there for how many years. Well, what if there's a fire? You only have like, it's interim, and they only have one year to re-establish. I mean, the grand-fathering is only for one year. If they don't re-establish the use within a year, then they lose their grand-fathering, and then they have to come in for zoning. So we did go for Lana`i City, aside from the 201 project that the Company did prior to that, we did try to zone the properties that were residential but not in the 201 to R1 rather than interim. We did try to zone the properties around Dole Park that were interim zone to a BCT zone so that the owners, or the operators, would not have to come in for zoning on their own. I believe that it is the intent to try implement the community plans where possible through zoning, after the community plan update is complete.

We also have the coastal zone management act. From that, we have your Special Management Area Permits and your Shoreline Setback Rules. And we'll be having an orientation workshop next month when our staff will be here to provide more information on this. The Commission is the final authority on Special Management Area Use Permits and also on Shoreline Setback Variances. An example of Shoreline Setback Variance was for the Lana`i Canoe Hale that they wanted to build at Hulopoe Beach, you know, within the shoreline area. They had to get a second shoreline setback from the Lana`i Planning Commission.

Ms. de Jetley: So let me ask you, is that Canoe Hale still pending because it's been sitting there for 20 years?

Mr. Yoshida: They got all the permits. I know they got the permits. They got the SMA and

APPROVED 05-19-2010

they got the Shoreline Setback Variance from the Lana`i Planning Commission when Dolores Cabral was the Chair. That might have been about 15-16 years ago, when Dolores was the Chair.

Okay, we Chapter 343, which is the Environmental Impact Statement law. And the Commission may review either Environmental Assessments which we have been reviewing a lot in the later part of 2009 with the Lana`i School Master Plan and the Lana`i Aircraft Rescue Facility. And then we have also Environmental Impact Statement. Also if they do a Community Plan Amendment then they would trigger Chapter 343 where they have to produce some sort of an environmental document.

Okay, we have County zoning, Title 19. Moving very quickly, there are a number of entitlements again. Sometimes the Commission is advisory, sometimes it's the final decision makers. We have the Change in Zoning under Section 19.510. If somebody wants to change their zoning designation from one designation to another, say R3 to B2, the Lana`i Planning Commission will hold a public hearing and they will provide a recommendation to the Council. The Council is the final authority. So last year the Commission dealt with the Miki Basin expansion from the Company which called for a District Boundary Amendment and a Change in Zoning so the Commission held a public hearing, made a recommendation to the Council, and the Department transmitted its recommendation to the Council. So far the Council has only had a site inspection.

We have the Conditional Permit to establish uses not specifically permitted within a zoning district which are similar, related or compatible to permitted uses. The Lana`i Planning Commission holds a public hearing and provides a recommendation to the Council. The Council is the final authority. So an example of that is the Manele Small Boat Harbor Ferry System Improvement parking lot, which is in the Project District. Which is not specifically permitted in a project district, but got a Conditional Permit from the Council to have that parking lot where the boat trailers and so forth are parked. And this picture is of the West Maui Community Federal Credit Union building which is in a residential district.

We have the County Special Use Permit. There are certain identified special uses within a zoning district and specific criteria were established. The Lana`i Planning Commission holds a public hearing and they are the final authority. Say if somebody wants to do a church in a residentially zoned district, they need a County Special Use Permit to do that. We have Planned Development. They don't have any on Lana`i right now. This is at Puamana in Lahaina. This is to encourage desirable design and land use patterns within existing natural environments, overall density, while maintain common open space, recreational and community facilities. It's a three step process. The Commission reviews and approves each step. No public hearing is required.

Then we have Project Districts. Now Lana`i has two Project Districts, as you all know,

APPROVED 05-19-2010

Manele and Koele. And this is to provide a flexible and creative planning approach rather than specific land use designations established through your community plan. It's a three phase process. Phase One you hold a public hearing, and then you make a recommendation to the Council on the design standards – the building height, permitted uses, floor area ratio, lot coverage. I mean, that's all in the County Code for Manele and Koele. Phase Two is preliminary site plan where the Commission holds the public hearing and approves or disapproves a preliminary site plan, so you are the final authority at the phase two level. So the Company wants to do Wellbeing Center at Koele. Again, to the Planning Commission. The Planning Commission has a public hearing and it makes a decision whether to grant the site plan, the preliminary site plan, or not in the phase two approval. If they do, then they can proceed to Phase Three approval which is the final site plan which is handled administratively.

Mr. Ornellas: Clayton, if we, if the Lana`i Planning Commission, disapproves a condition, can it be overridden? Once we shoot it down, that's it? It dies?

Mr. Yoshida: Well, like anything else in America, you have the right to appeal. And the appeal – again, you know, James was talking directly about developing a clear record, reasons why you approve or deny something. If the applicant feels that your decision was an error, they could take the decision and appeal it to the Second Circuit Court.

Okay, we have famous Bed & Breakfast (B&B) Permit that the Council spent the better part of 2008 dealing with. This is to allow small local business the opportunities to provide visitor accommodations in their residences in residential and rural districts. For Lana`i, it's up to three bedrooms and two dwellings. The Commission approves all Bed & Breakfast on Lana`i, all bed and breakfast permits. So far we haven't had an application for Lana`i.

There's also your Country Town Design Guidelines established –

Mr. Rabaino: Try back up Clayton. You said on the bed & breakfast, what you said on the last phrase?

Mr. Yoshida: The ordinance was enacted in January of 2009, and all bed & breakfast permit applications have to come before the Lana`i Planning Commission for approval. And thus far, we haven't had any B&B permit applications from Lana`i.

Mr. Rabaino: So none has been submitted in other words?

Mr. Yoshida: That's correct.

Mr. Rabaino: Okay, thank you.

APPROVED 05-19-2010

Mr. Ornellas: Or in other words, we have the bed & breakfasts on Lana`i are illegal?

Mr. Yoshida: Possibly. Yeah, strong possibility.

Ms. de Jetley: If I remember very clearly, we stated that we did not want the County interfering with the bed & breakfast operations on this island because Lana`i relies on the hunting community that comes to this island. And if we started imposing regulations, it would be a major hit on our residents doing business here. We didn't want to be part of what was going on Maui island or Moloka`i. We wanted to establish all of our bed & breakfasts here as grand-fathered in to our economy.

Mr. Yoshida: Well, I think – well the compromise is that you're the approving authority, so the final decision is in the hands of Lana`i residents. You're all Lana`i residents. You folks make the final decision. And you folks know the life style on Lana`i. And if you come for a baby luau and you've got to stay some place and you cannot afford Koele or Manele, where do you stay?

Mr. Rabaino: Lei, out of curiosity, can we request what was determined on the bed & breakfast since everybody is new? Well, mostly everybody is new. Well because according to Matt, they did some kind of language for it. At least we'll be able to have knowledge to that. If you can get access to that. Would that be possible?

Mr. Yoshida: Yeah, we can.

Mr. Rabaino: And we can share it among the Commissioners?

Mr. Yoshida: The bed & breakfast ordinance of 2009 is on the County website under the Planning Department because it was a big hot topic last year. We can circulate copies of the ordinance to the Planning Commission.

Mr. Ruidas: Clayton, I think I remembered that. We deferred a couple bills regarding TVR's, Bed & Breakfast and all that to the update of the community plan.

Mr. Yoshida: Okay, but we can circulate whatever was passed regarding bed & breakfast last year to the members of the Commission.

Mr. Ornellas: Was there exceptions just for Lana`i as far as the TVR's?

Mr. Yoshida: Well, the Council hasn't dealt with the TVR legislation yet. As Dave Michaelson said they've been focusing their efforts on approving the Countywide Policy Plan and the Maui Island Plan because they have time limits. They have - you have a year to approve the Countywide Policy Plan. You have a year to approve the Maui Island

APPROVED 05-19-2010

Plan.

Mr. Ornellas: But as Stan and Matt said that something had already come through Lana`i and there was some exceptions. They just deferred it so it's nothing.

Mr. Yoshida: Well the County, after the Council filed the Bob Carroll bed & breakfast bill in March of 2007, the Department did come through the Planning Commissions in October of 2007 with its proposed bed & breakfast permit, transient vacation rental package. So each commission heard the department's proposed bills and made its recommendations to the Council Planning Committee. I mean, for Lana`i, you don't have to put up these big four by four foot sign when they apply. Like on Maui, the sign has to be four by four foot, and indicating like I've applied for a bed & breakfast permit, five-bedrooms. And it has to be up, visible to the public for the duration of the time that it takes the department to process your bed & breakfast permit. On Lana`i and Moloka`i, I think it's like one square foot. It's a much small sign.

Mr. Mano: But Clayton, wasn't that bill – didn't the Mayor introduce that bill because of the problems that they were having, so they wanted it County wide, right? And then we decided we wanted to defer it because we felt that Lana`i was, that economically speaking, because of the hunting seasons and all that. That's why I think we deferred it because the hotels would never allow the hunters to go there and clean their animals. I mean, no way. Four Seasons, you've got to be kidding. So, like Stan said, you know we did defer it. You know we didn't know what happened to it because I know the Mayor really wanted to set it as law where everybody had to get a permit. They had to – the regulations had to be so that it had parking areas for their places because they were cluttering up the streets. Because I know I heard all of that come out, but we decided on Lana`i we wanted to defer it.

Mr. Yoshida: Well again we can circulate the ordinance that was adopted for your information.

Mr. Ornellas: Can we add that to the agenda for the next meeting Mr. Chair?

Mr. Rabaino: Yeah, I requested for the handout and to put it on the agenda. Can it be done – that we are requesting distribution of the outcome?

Mr. Yoshida: Yeah, we can circulate within the next couple of days the ordinance.

Mr. Rabaino: Okay. So we can have that for next month's meeting?

Mr. Ornellas: So we can discuss it.

APPROVED 05-19-2010

Mr. Yoshida: You want to discuss the ordinance?

Mr. Ornellas: Sure because deferred means there's no action. But somebody, a new Mayor or somebody might have different opinions and might come down with a heavy hand. And we want to protect our bed and breakfasts here on Lana`i, and vacation rentals. So I'd like to be proactive rather than reactive.

Mr. Yoshida: I think we can probably pull out the minutes from that meeting when the Commission made its decision, number one; and we can circulate copies of the ordinance that was adopted last year and that would be the information you'll need.

Mr. Ornellas: Just reference what Matt was talking about. The monies that these people, the people that come to Lana`i for hunting and all that, we figured out it's about \$2 million a year that comes to this island for the rentals of vehicles, the homes, also what goes into the stores. Now with Island Air charging an arm and leg for baggage, they're going to the store and buying more stuff now, instead of flying it over or barging it over. So it's very important to this island as far as the economy goes.

Mr. Yoshida: Yeah, we can provide that information to the Commission. Okay, we have the Country Town Business Design Guidelines for Lana`i – Lana`i City Design Guidelines – and that was adopted in 1997 by rules of the Planning Commission. And the Department administers the design guidelines. We are trying to update the design guidelines because there's a conflict regarding the building height for commercial properties around Dole Park. Between the design guidelines, it states up to two-stories, and the community plan policy states one-story, so we're trying to make the two consistent. It's just the design guidelines were adopted before the community plan.

We have Off-Site Parking if a person wants to provide required parking on another lot within 400-feet. The Planning Commission approves it. There's no public hearing required. There's Accessory Use Permits for – that's defined in a given zone. The Commission is the approving authority. There's no public hearing. I think the Commission dealt with this for the County Environmental Management Department wanted to do a recycling center there at the corner on the industrial property so they needed an Accessory Use Permit approval from this Planning Commission.

Okay, we're going to talk a little bit about Environmental Assessments and Environmental Impact Statements. Again, this is under Chapter 343, Hawaii Revised Statutes. It was adopted in 1974, to deal with environmental, social and economic consequences. It assures public participation, and the various decisions are published in the Office of Environmental Quality Control, or OQEC, environmental notice. For all projects there are certain triggers that are identified of when they have to provide or do an environmental document. These include shoreline setback variances, community plan amendments, the

APPROVED 05-19-2010

use of State or County funds. There are also exemption classes, and if there are significant environmental impacts, they may be required to do an environmental impact statement. So these are the nine triggers again. Again, you see, the Commission probably will get most involved with the use of the shoreline area, amendments to the County General Plan. There's pre-consultation, and then there's a production of a draft EA, 30-day comment period, production of a final EA. If they feel there's no significant impacts, then a Findings of No Significant Impact is issued, and there's a 30-day challenge period of that EA determination to the Courts. If there may be significant impacts, then we'll do an Environmental Impact Statement, some more rigorous process where you have to do an Environmental Impact Statement prep notice, then the 30-day comment period on that, and then we'll prepare a Draft Environmental Impact Statement. There's a 45-day public comment period on that. Then we'll produce a final EIS. If it's acceptable, then the adverse parties have 60-days to challenge that determination. If it's deemed not to be acceptable, then the applicant has 60-days to appeal that determination.

Mr. Ornellas: Can you go back to the slide before this? If you can't get back there, that's fine. When the community – when the County of Maui submitted an application to the Historic, the National Historic for Lana`i City, so would an EIS have to be done if we were to proceed? I mean, I guess, the community has taken it upon itself to re-submit to support the County. Would either an EA or an EIS have to be done to Lana`i City if we're going to become a historic district?

Mr. Yoshida: I don't necessarily think you have to do an EA or EIS. I think if you have a property that is on the State National or State Register of Historic Places, like a lot of the properties in Lahaina town abutting Front Street, and you want to do some kind of improvement to the property, that triggers Chapter 343. And they would have to do some kind of environmental document or an exemption determination for the proposed action. Like, let's say, the State wanted to put another row where boats could (phonetic) in Lahaina Harbor. That's in a historic district, in a National Historic District. So they would have to do – and that's also a government action – use of State funds, so those would be like two triggers for them to produce an environmental document. The actual placement of the property on the register itself, I don't think it requires you having to do those things, environmental document. It's just if you do anything with the property.

Mr. Ornellas: Will the Lana`i Planning Commission have anything to do with that if it's on the National Register, in the process – will we?

Mr. Yoshida: If it is a, I think, if we come down to the difference between –. If it comes down to the difference between applicant actions and agency actions. If it's a private action versus a government action, and the Lana`i Planning Commission is deemed to be the authority, then the Commission would one, comment on the draft environmental document, and two, accept or not accept the final environmental document. So that's what happens

APPROVED 05-19-2010

in Lahaina where we have this national historic landmark district which kind of runs from the ocean and goes up to the highway. I think the older section of town.

So again we have the EA versus EIS, and we look at impact, mitigative measures and alternatives. And we look at various, all phases of action, the types of impacts and significance criteria and unresolved issues. So the difference between primary impacts versus secondary impacts, primary are direct impacts, second impacts are indirect impacts.

(Changed cassette tapes) . . . Then we look at regional and site specific impacts. And also short term impacts versus long term impacts. Cumulative impacts. And then there are the significance criteria. So measuring significance, you know, there are quantitative measures and qualitative measures regarding scenic vistas and aesthetics. There are mitigative measures that are proposed, and there's alternative analysis that's part of the environmental document.

Then we wanted to talk a little about when an application is received and has to go to Council for approval. Let's say, any application like Change in Zoning or Conditional Permit is first assigned to a planner, and they determine if the information provided is complete or not. If it's not, then they send a letter to the applicant stating the deficiencies with a deadline to resolve it. If it is, then they transmit it to various government agencies for their review and comment, typically giving a 30-day review period. And if there are substantive comments, we ask the applicant to address them and try to resolve them before we go to the Planning Commission. The Department will deem the application, if they're resolved, they deem the application complete and we schedule the project for a public hearing with the Planning Commission. We send out a notice to the applicant and government agencies 45-days prior to public hearing date. The Department publishes a notice in the newspaper 30-days prior to the hearing. The applicant would mail out a notice of hearing 30-days to adjacent landowners, or landowners and lessees within a 500-foot radius 30-days prior to the hearing. Sometimes it requires the applicant to publish a notice in the paper once a week, for three weeks. The planner would prepare a report and recommendation. The public hearing would be conducted with the Planning Commission, and the Commission would make a recommendation for approval or denial. If they recommend approval, then land use maps are prepared, Corporation Counsel prepares a bill for an ordinance. If it's a denial, then the Department transmit, just transmits the application report and transcripts to the Council through the Mayor for consideration by the Council Land Use Committee. So in the case of the Miki Basin expansion, there was no recommendation from the Commission. But, if the Council chose to approve it, then the Commission had some recommended conditions. So no bill for an ordinance was prepared. Just the record of the Commission was transmitted to the Council. Okay, any questions?

Again, for the meeting schedule, we are scheduled to meet on the third Wednesday of the month, typically here, as long as Human Concerns lets us, starting at six o'clock.

APPROVED 05-19-2010

Sometimes for the more larger, largely attended meetings, we may move the meeting to the Lana`i School cafeteria because it has a bigger seating capacity. Okay, and if you're not going to be able to attend a meeting, please let Leilani know. If we don't have a quorum, then we can't have a meeting. So it will be better if we know ahead to time. Any other questions that you may have?

Mr. Rabaino: Clayton, since we're going into the longer days, instead of six, can we move it up? No, instead of six o'clock, maybe 5:30 p.m. because the days are longer, yeah, more sunlight. I mean, that's up to you guys. I'm just throwing it out. If you guys can brainstorm that one. You know because the meetings going to be long, yeah. We can start a half an hour early. As a suggestion. I'm thinking about these guys because you guys travel in, yeah, from Maui. You guys what, usually charter the plane. Well, Commissioners, just ponder and back, brainstorm on that one.

Ms. de Jetley: Mr. Chair, these meetings are really long as they are now. If we started at 5:30 p.m., they'll just continue on for three hours instead of two hours, two and a half hours. I think they'll just jam more things on the agenda.

Mr. Rabaino: Okay. Well, I'm just throwing it out there.

G. DIRECTOR'S REPORT

- 1. Open Lana`i Applications Report.**
- 2. Agenda items for the May 19, 2010 meeting.**
- 3. Scheduling of the following public hearing:**

MR. JEFFREY S. HUNT, AICP, Planning Director transmitting Council Resolution No. 10-17 referring a Draft Bill Amending Chapter 19, Maui County Code relating to Small Wind Energy Systems to the Lanai, Maui, and Molokai Planning Commissions. (J. Alueta)

Mr. Yoshida: If there aren't any other questions, I guess moving on to the Director's Report. We have circulated a list of open projects on Lana`i by tax map key number. If there are any questions on that? If there aren't any questions. On the May 19th meeting --

Mr. Ruidas: I had a question.

Mr. Yoshida: – we're going to have orientation workshop #2.

APPROVED 05-19-2010

Mr. Ruidas: Clayton, I had one.

Mr. Yoshida: Yes?

Mr. Ruidas: What is the catch basin Castle & Cooke?

Mr. Yoshida: I just think it's just a – I think we talked about the project districts being a phase three – I mean, three phases. This is for, I guess, Castle & Cooke, for a phase three approval, I guess, down in Manele. It's kind of tied in to this SMX 2010/0132.

Mr. Ruidas: Is that the drainage for the big swimming pool or the small swimming pool?

Mr. Yoshida: We can get the information to the Commission with the location plans. Any other?

Mr. Ornellas: Those two projects was just submitted a month ago.

Mr. Yoshida: Correct. End of last of month.

Mr. Ornellas: So it's going to come before us?

Mr. Yoshida: If it is – well your SMA rules were amended so if it's either an SMA exemption determination, that comes before you. If it is an SMA use permit, that comes before you. An SMA minor permit is handled by the Department, like the ranger station at Hulopoe Beach Park was an SMA minor permit so that was handled by the Department. If there's any exemption determinations, that goes to the Commission.

Mr. Ruidas: Lana`i landfill RFC, what is that designated?

Mr. Yoshida: It's just a request for comments. I think they wanted to get some monies from the U. S. Department of Agriculture for bulldozer so they normally ask the different departments if they have any comments regarding their grant funding.

Mr. Ruidas: Okay.

Mr. Yoshida: Any other questions? The next meeting again will be May 19th. We have orientation workshop #2. I guess we can discuss at that time the semi-annual report that Castle & Cooke provides regarding, I think, water usage for the Manele single-family and multi-family project. And then we'll provide you with the information on the bed and breakfast permit, minutes from the commission and so forth.

And then we also circulated the Council Resolution No. 10-17 regarding small wind energy

APPROVED 05-19-2010

systems. And that will come before the Commission in June, at your June meeting, June 16th. And then we have a letter from Clay Rombaoa on behalf of Steve Bumbar regarding the informational meeting on Castle & Cooke Resort's projects at which they're saying they would like to defer that until the July meeting. So we can get a little bit further into the Community Plan.

Mr. Ruidas: I got something Clayton. This is actually for Chair Rabaino. For this Friday, we don't have representative from the Commission on the LWAC, so I think we need to appoint a primary and alternate – Lana`i Water Advisory Committee.

Mr. Ornellas: I'll volunteer.

Mr. Rabaino: John, okay.

Mr. Ornellas: If nobody else have any objections.

Mr. Rabaino: That's for this Friday?

Mr. Ruidas: This Friday and for the next meetings.

Mr. Ornellas: – all of the rest of the meetings.

Mr. Rabaino: Okay, John, and the alternate?

Ms. de Jetley: I believe David Green wanted to also serve on that, so maybe he could be the alternate because he lives at Manele.

Mr. Rabaino: Okay. Is it okay with the Commissioners? Okay, so John and David will be for the –. David going be the alternate and John will be the – for the water commission thing – for the record. Okay, thank you. Okay, John? And David Green alternate. Thank you.

H. NEXT REGULAR MEETING DATE: May 19, 2010

I. ADJOURNMENT

Mr. Rabaino: Anymore stuff Clayton?

Mr. Yoshida: That's all I have.

Mr. Rabaino: That's it?

APPROVED 05-19-2010

Mr. Yoshida: That's it.

Mr. Rabaino: Thank you.

Ms. de Jetley: Mr. Chair, I move that we adjourn.

Ms. Castillo: Second.

Mr. Rabaino: Okay, it's been closed. Thank you.

There being no further discussion brought forward to the Commission, the meeting was adjourned at approximately 8:40 p.m.

Respectively transmitted by,

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

RECORD OF ATTENDANCE

PRESENT:

Stanley Ruidas, Vice-Chair
Matthew Mano
Leticia Castillo
Alberta de Jetley
Gerald Rabaino
David Green
Shelly Barfield
John Ornellas

OTHERS:

Clayton Yoshida, Planning Program Administrator, Current Division
Dave Michaelson, Planner
David Yamashita, Planner
James Giroux, Deputy Corporation Counsel