

**LANA`I PLANNING COMMISSION  
REGULAR MEETING  
JUNE 16, 2010**

**APPROVED 07-21-2010**

**A. CALL TO ORDER**

The regular meeting of the Lana`i Planning Commission was called to order by Chair Gerald Rabaino at approximately 6:01 p.m., Wednesday, June 16, 2010, in the Lana`i High & Elementary School Cafeteria, Lana`i City, Hawaii.

**B. APPROVAL OF THE MAY 19, 2010 MEETING MINUTES**

Mr. Gerald Rabaino: It's 6:01. Meeting comes to order. We have a quorum. We have one member missing which is still vacant. There hasn't been an appointment from the Mayor. Any circulation from Corporate Counsel passed to the members? Go right ahead, adjust the speakers per Commissioner de Jetley. Or am I talking too loud?

Okay, as we continue, is any circulation needs to be passed out by Corporation Counsel? Next on the agenda approval of the minutes. Approval of the May minutes. Commissioners, add comments or changes?

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

Mr. Rabaino: Okay, all in favor say aye? Second? I need a second.

Mr. John Ornellas: I second.

Mr. Rabaino: John Ornellas will second. Are we together Commissioners? Hi Stanley, welcome to the committee. Okay, all those in favor say aye.

Planning Commissioners: "Aye."

Mr. Rabaino: Any opposed? None. So moved and carried.

**It was moved by Commissioner Leticia Castillo, seconded by  
Commissioner John Ornellas, then unanimously**

**VOTED: to approve the May 19, 2010 meeting minutes as  
presented.**

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

- 1. MS. KATHLEEN ROSS AOKI, 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,**

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**and Molokai Planning Commissions. (RFC 2010/0052) (J. Alueta)**

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

Mr. Rabaino: Next on the agenda. Public hearing. Action to be taken after public hearing. Kathleen Ross Aoki you have the floor.

Ms. Kathleen Ross Aoki: Good evening Commissioners. In front of you today, we're going to have a public hearing transmitting Council Resolution No. 10-17 referring a draft bill amending Chapter 19, Maui County Code relating to small wind energy systems to the Lana`i, Maui, and Moloka`i Planning Commissions, and we have Joseph Alueta here who will be giving a report.

Mr. Joseph Alueta: Good evening Commissioners. My name is Joe Alueta. I'm your Administrative Planning Officer. I've been before this board several times. It's been a few months. I see a few new faces. Just to give you a brief overview as the Administrative Planning Officer I review and comment on, or draft ordinances, dealing with Title 19. I also am primary liaison between the Planning Department and Council and the Commissions when resolutions like this come down. And I also do rule changes when you guys do amendments to your SMA Rules or your Planning Commission Rules in general. I am your lead person to help you along with those changes.

But today, as you know, there's two ways we can amend Title 19. One is by through the administration which is Director initiated or through the Council Resolution. Under the Council Resolution, it's relatively or suppose to be fast track through the system so we try to get it out to all agencies to comment on as well as to all of the Planning Commissions. And we have a deadline to get back comments from the three Commissions by July 22<sup>nd</sup>, so we try to get it done as soon as possible.

Again, the ordinance before you, or Resolution before you, excuse me, is 10-17, and it's relating to small wind energy. And the proposal by the Council or one of the Council members at this time was to create a whole new subsection of Title 19 called 19.67 which would deal with small wind energy systems. At the same time, do some minor amendments to the definition section of that Title 19. The Department, Planning Department, and this administration has been very supportive of alternative energy, not just wind, all alternative energy including solar, solar water heaters, photo voltaic, hydro and what not. As you know, currently, we already have a definition called energy system small scale within Title 19. And as we have been updating Title 19, some of you are familiar, we came before you with amendments to not only 19.02, which is the Interim District; 19.38, the Agricultural District; 19.29, the Rural District. We also came in for amendments to

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19.08 and 19.09 which is the Residential Districts, and then we also had that five bills dealing with the Business District: BCT, B1, B2, B3, and the BR Districts. And all of those times that we updated the Code, we've amended Accessory Uses to include energy systems small scale, and that would include the wind. And we've also, in all of those times we've updated each Chapter, we've set up parameters for not only for giving a height bonus to roof mounted or building mounted energy systems of a 10-foot height bonus so that you could put up either your panels, tilt your panels up or have a small wind system on top of your roof, we've also allowed for freestanding antennas. In most districts, it's been a maximum of 50-feet with a setback established of one foot per every foot in height for that freestanding antenna or wind tower. We feel that methodology which we're going through which we are, one, amending each section, establishing the height limits for those sections, as well as the standards by listing them as an allowed use is the methodology. We support that idea of wind energy because again like I say, they're included in energy system small scale, but we do not feel that the standards that are being proposed by the Council should be in Title 19. It should be in Title 16, which is the Building Code. So, we deal with Zoning and we think that every zoning category, residential or business, apartment or hotel, you should list, if you want energy systems, you should list them in that section of Title. And if you feel that you need a special height limit, which we have been doing, we establish those for each zoning category, but we leave it at that. Okay? How the thing should be designed, built, structural or who should sign off on it, that's a building code issue. And my analogy is we list in the residential district, we list single-family homes as an allowed use. We don't list that you have to have two by fours, 16 on center, and the whole building code. And we feel that's sort of going down the line of what the standards that are being established through this resolution for 19.67 that they go into great depth because it doesn't matter what code or what title or section it's in. All that matters, if you put up a small wind energy system these are the standards you need to meet. So regardless what zoning category you're in, you need to meet these building code standards. The same thing, if you build a single-family house, these are the building code standards. So we think that Title 16, or a lot of these standards should be in Title 16.

And what's interesting is that if you look at Exhibit 3 of the memo report, Public Works, has already, before this bill came out, and before we already knew that people were coming in for small wind energy, photo voltaic – as West Maui photo voltaic have become popular – they've already come up with their own standards. They recognized that it's a building code issue, and they came up with their own policies and procedures that state exactly how, and what permits, or if you need a building permit or electrical permit. And it says if you're going to need electrical permit, who can you sign off on one, what electrical contractor, or what type of license do you need to be able to do that. So again, we support the resolution in this concept of wanting to promote alternative energy including wind. We feel that sticking it in 19 is only going to confuse the matter, and we'd rather have it all in building permits as far as the standards. And as the Planning Department, as the County, goes through an update of Title 19, we will add energy systems small scale. So our belief

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is we should be prudent and just add it in the district we want it to be in as we go through the whole Title 19 update.

Interestingly enough, if you look at the agency comments, the one agency that did have concern was U.S. Fish Wildlife with regards to towers over 50-feet, or wind structures over 50-feet. And I kind of laugh because we pulled the height of 50-feet that was the height limit that we've been using throughout our update at 50-feet as being the height. And so it's good that we're sort of luckily on the same page before we knew that study existed. So that's another reason why you should try to do it on an individual basis for each section of the Code.

We did have some good comments regarding from our meetings on Maui. Maui and Moloka`i have already reviewed it and I'll just share some of it because the Department does support it. And if you look on – and this is looking on Exhibit 1, and if you go to, you see the ordinance and you see where it's on Chapter 19.67 that's the draft bill from the Council. If you flip through Exhibit 1, you see the top, it says Exhibit A, and it will say small wind energy systems. Okay? If you read through this, the comments that we got from the general public or from people from the industry was one, they had a concern with regards to the purpose of the bill which regards to section 2, small wind energy enhance the reliability and power quality of the power grid. All data that we have, anytime you install an unstable power source onto a grid, you create havoc with that grid. So the larger percentage that unstable source such as wind or photo voltaic becomes the grid tie into your master grid. I becomes a larger percentage – it creates instability. And so one person suggested that with appropriate control, then it most definitely does enhance so they wanted to add a caveat that it does enhance, or small wind energies with appropriate controls enhance their reliability.

Another issue that some of installers have – wind service installers – and it's nice and windy tonight for this bill, so it's very good. Is that if you look on Section 19.67.030 and this is a development standard, paragraph (c) talks about no power of wind energy systems shall be located within or over drainage – I'm sorry (b). Actually (b) and (c), but (b) – no part of the small wind energy system shall extend 20 feet above the ground, three public utility lines or other structures. Many of these small homes, home units, are actually attached to the roof of a structure, attached to your roof. And so if you – that whole section would basically negate the majority – I mean, 90% of the small wind energy systems that are being marketed out there. And that was one of the things that these installers are going, you know, not everybody wants to have a pole or a tower in their yard. They want it integrated or connected to their roof or a section of their wall. And if you've been to Maui, like say the Maui Ocean Center, they have those like five or six little windmills. They're attached directly to a wall. Based on this section, you wouldn't be able to do that kind of stuff.

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Again, there are some issues that needs to be addressed. In my staff report, if you look on page 3 of the memo report, again, we support the idea, we feel it should in Title 16. And then some things that are addressed in the standards of the proposed ordinance, but should be more clarified in any update to 16 is – and these are – some of them coming from agency comments. One is licensing requirements. Again, the proposed ordinance cites two different types of licensing, an architect and then an engineer, and then you should decide who you want. You know, what type of lighting. We don't need to say it now, but it should be clarified, who can sign off on one of these things and what's going to be the requirements.

On noise levels, the proposed bill has not to exceed 60 decibels. I've looked at some others nationwide. I've looked at some different ordinances for small wind energy. A lot of them use around 50 decibels. Or some actually use 10% above the ambient noise level and then you have a max. Because many of these small wind energies, they don't make that much noise, but there is a little humming sound to them. If we have it, if the thing is located in the commercial district near a busy roadway, the ambient noise level is a little louder than 10 decibels above that you may not notice it. And it may be a pretty loud intersection. Or if it's attached to a mill like HC&S. And if you've been there when they're running it's pretty noisy. And if even the thing was making a lot of noise, you wouldn't hear it because the ambient noise level would drown out the sound of that windmill. So it's just something to consider how you want to establish the regulations or the standards.

Electrical interference. There are two types of electrical interference that I talked about nation wide. One is when you have a flaw in the motor, it can create a buzz. If you ever had like in your car, and you have your starter motor or your generator gets a little – your alternator gets a little funky, it causes interference with your radio. I don't know if you've ever had that happen. That's the kind of interference that you would have – similar to that. You would get an interference. And then there's an interference of line of site. What we call the line of site. Most of these radio frequencies like your cell towers, your microwave, your receivers and transmitters, work on the line of site. If you're sticking up tall towers with blades that's thin, if that signal is passing through or either hitting that tower, or passing over where that blade is spinning, you can create a break up in that wave signal, and create again interference down the line. So you've got to be careful where you're allowing some of these things to be propped up. And so, you just need to have a general restriction on what type of interference you're going allow.

Security. It's not addressed in this ordinance, but many of the other ordinances around the country address security, like you either removing the ladder or the bottom two feet, or fencing in the whole wind structure if it is a ground mounted wind structure. That should always be a concern. You don't want people messing with it, you know, or creating problems with a tower or something with a blade. And safety for kids also.

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Electrical interconnections. It's kind of a minor issue that occurs, but in many areas they require all the electrical connections to be under ground utilities. And currently we require that for new subdivisions.

And then insurance. It's not addressed, but nationwide, some lawyers and a lot of other people have just a homeowner has their insurance saying that they'll cover this if there is a catastrophic or if the thing is a design safety. And I think that type of insurance would limit your fly by night people so that, you know, windmills that are or small wind structures that are installed are done by a reputable company. The machine or the equipment being installed is, you know, a reputable, has a good warranty on it because again these are high spinning wind turbines for the most part, and a lot of them are made out of composite materials that can be easily damaged either by someone shooting at them, or by a bird hitting them, or someone throwing a rock, or just like (phonetics) and there could be catastrophic failure for this thing.

And so those are the key points that I wanted to point out as far as the ordinance, the proposed resolution. We, again, support it, but we want it to be in 16. We don't want it to be in the Planning Department's Title 19. We think we are already adding it in Title 19 as making it an allowed use, but we don't want to have to try to regulate what we consider to be more of a building code standards. And that's all I have as far as presentation. You guys have any questions at this time?

Mr. Rabaino: Commissioners, any questions? Comments? John?

Mr. Ornellas: So a pole that's holding up a generator, it can be up to 50-feet tall? Is that what you're – is that what you kind of said that's the max?

Mr. Alueta: Well, the way we are doing it now to each of the Code section, updating it, we're allowing a free standing wind turbine, or tower, in like say in the business district or residential district to be up to 50-feet, but it has to be set back one foot for every height in the pole. So we'd have to have a clear radius. So if you had a 10,000 square foot lot, you could potentially have a 50-foot pole, but it would have to be right in the middle.

Mr. Ornellas: Okay, so if somebody wants to put up on their lot, and they're going to put 50-foot, so you obviously got to have a 50-foot perimeter around it.

Mr. Alueta: Yeah.

Mr. Ornellas: Now is that to the tip of the blade?

Mr. Alueta: Yes.

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Mr. Ornellas: Once you put the blade to the highest point to the ground.

Mr. Alueta: Correct.

Mr. Ornellas: How did Moloka`i? Were they supportive of your motions or your ideas?

Mr. Alueta: Yes. Of which one? Of having freestanding poles 50-feet?

Mr. Ornellas: Uh-huh.

Mr. Alueta: Yeah, and that's already been added to 19.38 and 19.39 which is the Rural District. It's also been added to the Interim District, already has been adopted by Council. And so those are amendments that we added on last year. Bills that this Commission as well as the other Commissions have voted on have been having that same height limitation, but doing it within the residential district as well as the business district. And with that same caveat of one-foot for every – one foot setback for every height of the pole, of the tower. And those have been transmitted – those are going to be transmitted to Council shortly.

Mr. Ornellas: Let's say a homeowner or somebody here on Lana`i wants to put little windmills, little windmills on their roof, and he wants to follow the ridge gap, and he puts up let's say five or six of them. That all has to be approved first by an architect?

Mr. Alueta: Well currently Public Works, as shown on Exhibit 3, would set that regulation as far as who would have to sign off on it. So right now they require like a structural engineer or an architect. For the electrical, they would need to have an electrical engineer, an electrician, meet the electrical code and all of that. Right now, the proposal that we have that is going to be transmitted to Council, that has been standard throughout, that we have been adding is that they can go 10-feet above the height. So if a person had a single-family house, they could do it with no problem because they wouldn't exceed 30-feet. But in the proposals that we have sent up and that was reviewed by this Commission as well as the other Commissions, you're allowed up to 10-feet above that 30-feet. So if they already had like a 30-foot house, and they wanted to put up a five or six foot windmill which is about the size of the small winds, they would still be able to do it because they would get the height bonus only for that, only for the alternative energy or small scale energy systems.

Mr. Ornellas: Okay, and your neighbors, we did come up that these things do generate some noise. What's the neighbor's recourse if these things make too much noise?

Mr. Alueta: Again, that's where you're going to have the standards if they're in the building permit section, and you establish a sound limitation. That's where it is. Currently there is none. And that's why it would be good to establish them in the building code.

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Mr. Ornellas: And then also on 19.67, I guess it's page 5, abandonment. It says if a small wind energy system is inoperable for six consecutive months, the owner shall be notified that the system must be restored to operating condition within six months of receiving a notice. If he fails, then he's told to take it down. Who enforces that?

Mr. Alueta: Well, right now, the way this bill is structured, it would have the Planning Department enforce it, as opposed to a building code enforcement. And that's one of the issues that --. This ordinance that you see before you right now doesn't exist. It's a draft bill that's being brought to you for comments. The Planning Department's main comment is this is building code standards. Just like if you had an unsafe building or an abandoned building, they would deal with those types of issues. Or who signs, how noisy it is or whatever, we feel a lot of that and who should sign off on it, whether an architect, an engineer or electrical, those types of things are dealt with at the building -- should be dealt at the building permit level. And that's why we feel that instead of putting 19.67, they should say 16.26 or whatever, you know, some section of the building code. Currently no one enforces it.

Mr. Ornellas: So in number (c), it says the Planning Director may pursue enforcement. So you're going to come on to Lana`i and knock on somebody's door, and say, your windmill hasn't work in six-months.

Ms. Kathleen Aoki: No because what we're proposing is that all of this should fall under Title 16, which the Public Works Director would administer.

Mr. Rabaino: Commissioners, any other questions?

Mr. Stanley Ruidas: I got.

Ms. Rabaino: Go ahead Stanley.

Mr. Ruidas: Last month, Kathleen, I asked for that draft from last year, concerning the height of the building that is suppose to go through. I think that was 45-feet, wasn't it, as far as the structure?

Mr. Alueta: No. Right now we're --

Mr. Ruidas: Almost 50.

Mr. Alueta: For towers? For free standing?

Mr. Ruidas: For height of the building.



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Mr. Alueta: For the residential district it's 30-feet, and then you would get a 10-foot bonus, so 40-feet would be the maximum.

Mr. Ruidas: I thought it was 45. Anyway, that's why I asked for that thing last month, so that everyone else could see that. So that's the one you were talking about that nobody knows about.

Mr. Alueta: Yeah, 19.08 and 19.09.

Mr. Ruidas: But any way, yeah, I see a lot of holes in this stuff. As far as power connection, on grid, off grid. It's kind of redundant as far as from the 16 to whatever the 19. But the power company already have their own standards, and this is like changing the standards when you do net metering. And that's kind of hard to enforce, I guess. But I think we've got to specify vertical access and horizontal access, but, you know, if this goes through. And I saw plenty things, but I cannot remember. But one of it was the height thing. And I think what we did, we almost did last year, was we almost deferred it to the community plan. If I remember, almost. But anyway, I'll come back to you again after when I remember.

Mr. Alueta: You raise some good points Commissioner Ruidas is that this wouldn't supercede the MECo's inner connective policies whether or not they allow for it or what they require with regards to emergency shut offs and stuff like that. This would just deal, and again, the policies or the procedures that we've established in our update deals with energy system small scale. And they allow for basically anything that's energy system small scale. Meaning as long as you're using 51% of the power generated onsite, that's considered subordinate to the uses onsite. Where this is being specific to wind as you say, vertical or horizontal, but the way Department has been going about updating this Title 19, we're not specifying solar, photo voltaic, solar water heaters, solar photo voltaic, or wind, or bio, we're just saying energy systems small scale. And energy systems small scale can be biomass specifications, it could be photo voltaic, solar water heaters, vertical axis, horizontal axis, wave energy, hydro – it doesn't matter. We're just saying you're allowed to do it under energy small scale. But, you know, how you build it or whether it's safe, it's the building code.

Ms. Aoki: Just for the Commissioners information, I do have the bill that we brought to you or the amendments that we brought to you last year that you were asking about. So the maximum building height for vent types antennas and small scale energy systems it's the format states increases height allowed for those structures attached to roofs to have a maximum height of 40-feet. So it's just as an FYI, this is what was transmitted to you.

Mr. Ruidas: Yeah, I think this one, this bill, this draft bill only goes towards mostly towers and hardly roof top mounted systems. And I guess under the net metering program they

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have AC disconnects which is suppose to be disconnected as soon as there's a malfunction in the power grid, you know, so that the lineman don't get electrocuted. But, yeah, that portion in there would be not consistent with the policy.

Mr. Rabaino: Go ahead Alberta.

Ms. Alberta de Jetley: I had questions on that, the 19.67, the abandonment. If a system isn't operating, who sets the clock running, and how is it reported because within the community already there are systems that have been mounted that aren't working. They're installed. They're up there. So who decides when a homeowner decides to put a system on their house and it's not working, who calls the shots on the time limits? How do you enforce it? I don't think it's enforceable.

Mr. Alueta: Different jurisdictions handle it differently. Most of the ones I've seen on the code wise if it's not used for a year. So I think six months is a little short, but one year is typically being done across the country. As far as when the clock starts is when somebody reports it, like saying it hasn't been working for several months, can you let this guy know and maybe a notice of warning can go out. And then from that time, a notice of warning or a notice of violation would go out depending. That's normally how, I mean, the clock starts from there.

Ms. de Jetley: So what you're saying then is that a neighbor would have to report the violation to you.

Mr. Alueta: That's how all violations are done pretty much.

Mr. Rabaino: David, do you have anything?

Mr. Green: Well I agree with your comments that you have in the letter, and I see a lot of issues in this proposal, but I was unclear what action are you specifically recommending that we take?

Mr. Alueta: We would recommend that you support the concept of having of the Council's desire to support alternative energy, but you feel that you would concur with the Planning Department that the standards that they are proposing should be located within Title 16 and not in Title 19. And that the issues and concerns that the Department raised which are outlined on the bottom of page 3 and on page 4 should be somehow incorporated in whatever, in Chapter 16. And that's pretty much my, hopefully, my goal I guess tonight coming out of here. Maui and Molokai basically did that. Their motions were to, one, support the wind energy as an alternative. Two, have it redrafted as 16 and only make changes to Title 19 as appropriate. Three, adjust the language to allow small wind on or near structures. Four, they commented to the Council that they redraft it with Public Works,

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Maui Economic Development Board, MECo and Planning. And five, that the standards and comments be incorporated in the revised bill – meaning the comments from pages 3 and 4. That's what Maui adopted and then surprisingly Moloka`i adopted that same comments. They felt it was on the same track that they were going.

Mr. Rabaino: Commissioner Mano, do you have any comments? Shelly? Letty?

Mr. Ornellas: There's nothing in this ordinance that – it's just basically 51%. You have to use 51%. You don't have a size of the turbine or the amount of energy that this thing could produce.

Mr. Alueta: The current definition that's being proposed on Exhibit 1 of the resolution with regards to the definition of small wind energy systems reads means a small scale energy system as defined in this section and also consisting of a blade or a wind turbine tower ladder associated controls and conversions. It does not set up any type of maximum capacity or minimum capacity in there. Under small, under energy system small scale, in Title 19.04, which is the definition section right, it basically says – I'm trying to memorize it – but it basically says, you know, energy system which is subordinate to an existing use or to a use. So what the Department, from the administration's stand point have said is that if you're using 51% of the energy being generated for your onsite consumption and you sell 49% that's considered, that system is subordinate or it's considered an energy system small scale. Once you become a producer in which the primary purpose of that system is to generate energy for offsite or for offsite customers, you're no longer an energy system small scale, but you are a power producer. And that's how – that's based on how the energy system small scale is written in 19.04 right now. Under this one, I'm not sure how you would define or whether or not they would allow an unlimited size.

Mr. Ornellas: Okay, so you've come to us to make this Lana`i specific in some parts. We don't have to follow the Moloka`i. We don't have to follow the Maui. This is basically – we can add our own bailey wig to this and what, you guys are going to take it and then hash it?

Mr. Alueta: You have a bill before you, from the Council, right, to propose to amend Title 19. Your responsibility as the Planning Commission is to provide comments back to that Council. My job as, for Planning, right, because we administer Title 19, is saying hold on there, we think this shouldn't be in Title 19. This should be in Title 16. So again my comments to you and my recommendation I guess because we staff you, we're your support, is that we recommend that this be in 16 and along with the other comments that we had. And those are what, you know, Maui adopted, and Moloka`i adopted the same thing. If you think for Lana`i this works for you in being in Title 19 you can say that if you've got no problem. I mean, it's up to you. You are providing comments back to Council. But again, our recommendation is that it shouldn't be in Title 19. It should be in 16. And we're

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already amending Title 19 to allow for energy system small scale which I think is a better definition because one, it sets a limit of the size by virtue of how much is being used onsite by these subordinates. Whereas, I'm not sure what this energy system small scale wind energy system has any limits.

Ms. de Jetley: What my concern is is that from what we've been hearing is that Maui Electric is not accepting more power in our grid because they can't support it. Is that so Stanley? Stan?

Mr. Ruidas: My friend said that no it's not true. Net metering is one of the best programs that Maui Electric is doing. Yes it's true that some grids as far as circuits are maximized with renewable energy and you only can have certain percentage of renewable energy on that circuit. And that's what my friend said.

Ms. de Jetley: So basically like the Manele Project District is maxed out, but the town is not maxed out, that we can have energy systems within the town?

Mr. Ruidas: Yes. Because of the solar farm which is a purchase power agreement, that's the only way you can sell back power to the company. And with that line being, like I say, fully maximized on renewable energy as far as the purchase power agreement and the net metering concept, that's why that circuit is, I guess, maxed. One way to fix that I would say is to separate the grids or to separate the circuits and then you can have, what you call, a separate Manele unit circuit.

Ms. de Jetley: One of things that we must consider is this whole concept now. There's probably going to be a lot of changes over the next two or three years on this whole project because it's still new, so I would suggest that we go with the Planning Department's recommendations to go to redraft it as Title 16 and let the experts like Maui Electric and the people that are going to be doing this power, do all the nitty gritty stuff. Because for us to say well you can't do this, you can't do that, we don't know what they're going to actually do. So I would suggest that we follow Joe's recommendations.

Mr. Rabaino: Commissioners, any suggestions? Comments? It was a motion? Sorry, John second?

Ms. de Jetley: I can make a motion. Let's open the floor to the public and after that we can make a motion, but let's open the floor then.

Mr. Rabaino: Wait, I haven't said my peace yet, so I gave you guys the opportunity to do so.

Ms. de Jetley: Okay.

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Mr. Rabaino: Your recommendation is to move, according to what I'm hearing, is that Title 16 be incorporated instead of the other way around as you mentioned earlier. Correct? Okay. And so far some of the Commissioners here have already hinted in that direction. My question to you on the next page is the license department. You said there were two types of license classification – design and certification?

Mr. Alueta: Well, there are several different licenses out there. And whatever standards are used, right, it should be consistent. In the proposed bill they make reference to a structural engineer, then an architect. And the comments that came from Public Works was decide who you want. They shouldn't be clear on what it was. I mean, whether you want an engineer, or electrical engineer, a structural engineer or you just want to say an engineer can sign off on it. Public Works already has their standards or policies on Exhibit 3, and so, I think that during the drafting of this in Title 16, they're the ones that are going to have the most input on and the best input on who they think should be the ones to sign off on small wind energy systems. Because I'm not sure – I mean, I don't know, I'm not sure if I want an architect to sign off on it, or if I want to have specifically get a structural engineer to sign off on one portion of it, and have an electrical engineer sign off on another portion as far as interference. I think that should be hashed out. And it's sort of hashed out in Public Work's policy of what licenses they accept. But again, that's all, what do call, Title 16. I mean, it's really 16, and it shouldn't be in 19.

Mr. Rabaino: Okay. So there are several things that I'm concerned with, yeah, is that you're going to have a lot of – I'm going to use the word vendors – other companies out there. Do you have an exact standard of what is permissible in residential as far as wind energy is concerned – what that? – the type of modular that going be putting up. And the other factor that's also tied with that is the conversion box where the Maui Electric or the one that is installing this wind energy, will it be able to handle the amount of excess energy that is produced by each individual homes in order to sell it back to Maui Electric? And does Maui Electric, as Stanley said, the grids will be able to accept excess electricity from these converter box? Because I was going through the web and I'm looking at this thing here, and I'm kind of like, okay, you're going to put up this tower. What type of wind equipment you're going to use up there in the resident zone? Have these designers established what type of equipment that will be accepted in the residential versus the multi-family homes?

Mr. Alueta: From the Planning Department, we feel the main issues for energy systems, for any energy system, it should be do you want small scale energy systems on the thing. So far everyone has voted yes. And to encourage people to do small energy systems they've said you get a 10-foot bonus above the 30-foot max height to accommodate it on a roof. And we would allow you to do it on a wind tower if you needed a tower and we set the standards of how high and what the setback is. And those are all legitimate zoning district standards. When it comes down to certification of whether or not this windmill is

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made in China or Vietnam and has it been UL certified or whatever, that is something that the building code, as well as Product Safety Commission or whoever, deals with. From Planning's standpoint, we're not concerned about that. We're only concerned with how tall, can you have it at all in the zoning district and what's the maximum height we want it to be, and that deals specifically with each individual zonings. In the business district, you're going to allow taller ones. And in the business district, you may allow bigger ones. But as far as what license you need, who certifies the equipment and all of that, that deals with one building code issue that Planning Department is not equipped to deal with. There are electrical issues that the Planning Department is not equipped to deal with. You know, structural issues, that again is a building code issue. And that's why we're headed down. As far as grid tie, that's a MECo issue. And when you get your electrical permit, right, before you can tie into MECo, and before you can tie into their system (*Changed Cassette Tapes*), you have to get MECo to sign off on it. Otherwise, you're going to be having to do a stand alone system in which case you're going to do a battery system, meaning you're not going to be tied into the grid. But again, that shouldn't preclude. Someone can still have a small scale energy system, it's allowed, but they're not tied into MECo because they're only using battery. They're freestanding. So again that's not an issue that should be in Title 19. And actually that issue shouldn't be in 16. It should just be between MECo and the customer. But all of the other standards that are in here and the ones that we've highlighted we feel are building code issues, and they should be in 16.

Mr. Rabaino: Okay, thank you. Commissioners, any other questions? Okay, we will now open up for public hearing testimony? Is there a sheet out for the public testimony? Any list, Lei? Nobody? Anybody wishes? Riki Hokama you be first, and then Ron McOmber be second.

Mr. Riki Hokama: Commissioners, thank you very much. My name is Riki Hokama. I'd just like to offer a few comments and ask for your consideration, and if you would ask also the Department. I'm just curious hearing the Department's comments this evening regarding the Council's proposed draft. And it's hard to understand what was said to Council since in their Committee Report, if you will look, it's just a very short, half page verbiage of very generic statements. Nothing specific about what was discussed in the Committee or what was some of the issues that may have been brought up prior to decision making. But I am curious whether or not the Council Committee and the Council itself understood what the Department is recommending to all the Planning Commissions which is to go Chapter 16 of the Maui County Code. And they're saying from their statements this evening they have a lot of good points that they are making to you, so I'm just wondering did Council chose to ignore those comments or were those comments not provided.

Second, it's interesting this administration has an energy office and two very good energy people who specializing in the field, and yet there is not comments from either one of them. So why isn't the Mayor's administration that has specific energy personnel not giving

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comments on this proposal?

Some of the other things I would like to ask you to consider Commissioners, in the proposed draft from Council, is regarding the special use permit and in all zoning categories. I can tell you that during my tenure on the Council, under Special Use Permit, we had the darnest time when it came to cell phones over the last 12 years. I know we've had communities up in arms in the Paia area after someone put up this huge cell tower, went through one permit, the Director of Public Works signed off, and all hell broke loose because it was too tall, it was too ugly, the neighbors didn't want it in their community. I mean, it became a big Council nightmare from a bad administrative decision. So please think about how you would like to have this thing process. And I think currently one of the proposals, if a Special Use Permit, currently I understand the proposal has to come to the specific Planning Commission. So you members would be making the call for Lana`i. And I think that might be one of the ways to eliminate potential problems and have an administrator on Maui making a decision that's going to impact our community here.

Hearing Mr. Alueta, I'm also concerned, and I had hope someone would have done some kind of financial analysis, or financial information to present to you of what this means to the general community. Because if enough producers want to become sellers of energy and utility is still bound to provide all the firm power and island needs, what happens to rates? I don't know. That's why I'm just asking the question. I don't know what the answer is. But I would hope you would ask some of those questions before the County makes its final decisions on how it wants to move alternative energy forward.

And I hope you would ask the Department because with all respect to Commissioner Ruidas, I don't think under this proposal the Maui Electric, in Kahului plant, with that vertical little wind energy thing would meet the standards because I don't think it has sufficient setback. I don't know if the Maui Ocean Center with those four blades on top of the wall at the parking lot area, facing Honoapiilani Highway, would make the standards either. But I would hope you would have engineers involved in this review before a final decision is made.

My other comments that I would like to ask you is also I would agree with Commissioner de Jetley. I think it should be the owner that notifies the County that they will stop being a small alternate energy producer and not wait for somebody to complain about it. And if there is nonconformance, if there's penalties, I would hope that the new legislation would create a penalty provision portion in the ordinance. So it's up front and well stated, what would happen if you violate this area. And worse comes to worse, the County can always put a lien on the real property of the owner where the small energy system is going to be placed. So there's ways of making it work, and I would hope you consider those comments Commissioners, and I thank you very much for your time.

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Mr. Rabaino: Commissioners, any questions for Riki? None? Next speaker, Ron McOmer.

Mr. Ron McOmer: Good evening, my name is Ron McOmer, resident of Lana`i. We've been in pretty extensive meetings with MECo in the last couple of weeks, talking about all wind stuff, wind farms and all this other stuff. What I don't understand is why the Department doesn't have comment. They've got from everybody else in there, but they don't have any comments from Maui Electric. Maui Electric needs to have comments on this. And there's other wind suppliers other than windmills, folks. There's barrel ones. Like they've got one in front of Maui Electric's office in Wailuku that's spinning all the time. And so there would be a difference in setback because you're not going to have the wind, you're not going to have the blade and you're not going to have all of this. So there's small units that sit on top of roofs that are squirrel cage types. So we need to look at this a little bit more, and you need to get comments from Maui Electric before you folks make your decision on this stuff because they may say we don't want it. But you go all this expense, and the County gives you permits and you put it up, and Maui Electric says we don't want it. And I can understand that because it can really play havoc with their system. They're working on it, and they're a long ways away. But I just don't understand why all the comments from Department of Ag and everything else is in there, but there was nothing from MECo in there. You need to get all the players on this folks. Thank you. And another thing, if we had 50-foot setbacks in Lana`i City you could forget about that. It ain't going in a 3,000 square foot lot. Where in the hell would you put it? You'll have to drill a hole through the middle of your house and the blade would be hitting your roof. So any way, it kind of excludes small communities like Lana`i and Moloka`i and places like that, and Hana, unless you have a big ranch. So thank you.

Mr. Rabaino: Commissioners, any questions for Ron? Ron, please be seated. Ron, I've got a question for you. You said – being that lots in Lalakoa I, II and III – we're all neighbors over there. The biggest lots over there is running 6,000 and the smallest lots over there is 5,000. Now they're looking at that if we're going to put a tower, for example, one foot setback. I'm going to use my property as an example. I'm a corner lot. I sit on a 5,000 lot, and I'm going to put it there. It's not going to work because I don't have any room. I just got to go on the roof, period. That's the reason why I asked earlier.

Mr. McOmer: Yeah, we've got a 3,000 square foot lot. I mean, we've got a lot of these that are sitting over here.

Mr. Rabaino: Yeah, but I'm referring to mines at Lalakoa, but when we come to the heart of town, that's going to be another question in play because it's owned by Castle & Cooke. How would they feel about that? Would they be incorporating on their property too?

Mr. McOmer: Who knows what they can do.



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Mr. Rabaino: My question for you is can we see when in our little district area of town – I mean wind towers in our district, would that be more acceptable? Because that side of the city is very windy.

Mr. McOmber: Yeah, we can see it if you can get a type of unit that would work that way. Probably going to end up doing photo voltaic more than you would wind. But then you've got battery storage problems. Just like they've got out there in the middle of that field. They have no way – they haven't done that yet. It's very expensive. So again we're back –. If you envision wind farm, you envision propellers. Well, that's not necessarily the only things available. There's several units available that are just like units on the roof of your house. Now how noisy they are, it would mostly the noise would be transferred through your roof into your own house if it got noisy I would imagine. But I wouldn't worry about it. I don't see how it can play out in Lana`i right now anyway because none of us have enough property that we can do that.

Mr. Ornellas: I do have questions for the County.

Mr. Rabaino: Okay, any public testimony, come forward. Go ahead Basques.

Ms. Winnie Basques: Good evening. My name is Winnifred Basques. I've been here for 48 years. Now you folks are going tell us you going put this turbine on the roof. You know how that thing going look like? So ugly. It's ridiculous. And who's going to foot the bill? The homeowners over here getting hard time for pay for their mortgage, and yet they going to put this wind turbine on the roof. Hello? Who's dreaming up this kind of information. You know, I hate to say this, every time when you folks come over here, I hate to say this now, you folks dream up these new things. Oh, let's go to Lana`i. Let's see how the people going feel about it. Hello? We the 3,000 people on the island. The same people come here all the time. I hate to say this, when we talk about issues, we have to sit down and talk about real issues on the island. The economy. No jobs. How people is going to pay for all of this stuff. Yes, energy is we need. Look the wind now, it's blowing. We don't need it. We have mother nature for take care of us. This kind stuff, who's going to pay for bringing in the barge, going set up everything, going get the permit. And you know how the noises going to be at night? People no can sleep. Can we do this or can we not do this? To me, I think is think about something else more important, really important. This stuff is not – it don't go. I hate to say this because why? We live on Lana`i. Fine. We can do this kind stuff, but in the long run, who is going to repair all this? The County or the residential people who's paying for it? What happen when it doesn't maintain what it's suppose to be doing? And where does the material come from? China? Does it come from China? The windmills suppose to come from China. Where is it? Something – I know – that's all I can say because, you know, look at it on both sides of the picture and see how it goes when MECo, Castle & Cooke, the residential people on the island of Lana`i. Hello, and thank you very much. Is there any questions?

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Mr. Rabaino: Commissioners, any questions for Winnie? None.

Ms. Basques: Mahalo.

Mr. Rabaino: Thank you Winnie. Any other from the public wish to testify? None. Okay, this public hearing is closed. We're going to take a three minute break, five minute break? Okay, three minute break.

*(The Lana`i Planning Commission recessed at approximately 7:05 p.m. and reconvened at approximately 7:10 p.m.)*

Mr. Rabaino: It's 7:10 p.m., reconvene Lana`i Planning Commission. The wind energy item.

Mr. Alueta: Thank you Mr. Chair. If I can, I'll just address a few of the questions that came from the public if I may. First of all, we did communicate with Mr. Molina, which was Council Member Molina who was the originator of this bill. We had been in conversations with him. We had already informed him that we were already updating Title 19 to allow small scale wind energy as part of the – again, as I said, the definition for energy system small scale. And we're establishing the use as well as the height limitations for each districts. Also in the initial draft that he had sent us to comment on, he was putting in Title 20, so we didn't have defense of like you're putting in the wrong Chapter. He's putting it in another Chapter that we were not going to have to administer. So that was part of the reason that the comments. But somewhere along the way he decided to change it and put it into Title 19 and that's why we had to come out with some of these comments that we have and concerns of it being put into Title 19 and not in Title 16.

Victor Reyes, I believe who Mr. Hokama was talking about, did comment on this. He did come and testify at the Maui Planning Commission. And many of his comments and concerns were actually incorporated in the recommendations from the Maui Planning Commission as well as the Moloka`i Planning Commission. And those primary concerns were that, one, in the preamble, with regards to the purpose and intent, as well as the comments with regards to not having, or dealing specifically only with power structures as was noted. And that there are roof mounted, there are wall mounted towers, there are vertical windmills and horizontal windmills. And the way this is set up is that you would not be able to put these on an existing home or on structure the way it's currently set up. Also, the other thing he pointed out was that on section (c) is that you would not be able to co-locate. A lot of times you have these very tall MECo steel hurricane proof towers or power line poles on Maui, and that's a utility easement. This code also prohibits you from locating within a utility easement. And so he felt that in the future, and there are some places where there are basically, you have your power lines, and then on top of it, there's a horizontal wind generator on top of it that feeds directly into the grid. So that again is an issue and

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concern.

With regards to the height. He's talking about the towers. Again, that's a zoning issue and that's why we are putting height limitations of up to 50-feet and giving a 10-foot bonus that are mounted onto a structure. So the zoning code takes into account roof mounted structures and also tower structures, and sets height limits for both of those which has already been reviewed by this Commission as being appropriate. It was unfortunate the issue that happened was – he spoke of was in Skill Village in on Maui, which is in Haiku. It was zoned interim, and for some reason in 1958 when they wrote the interim ordinance, they forgot to put in a height limit. And they also forgot to put a setback requirement. And so a cell phone communication company came and put a 199 foot tower in the middle of a 5,000 square foot lot, which created a problem.

So the Planning Department has quickly remedied that. We did have an interim district amendment that you all saw, and that's when we also added small energy systems in there as well as putting height limits on tower structures such as those at 50-feet for the interim district. And also set up a height limit for single-family homes and setback for single-family for the interim district. So we have gone ahead and addressed that in recent years. So again, I hope I covered everything. I think I got all the questions, but if I missed anything, just let me know and I'll try to address it if you have any other questions.

Mr. Rabaino: John?

Mr. Ornellas: So you said Reyes I take it is part of the County's energy department?

Mr. Alueta: Yeah, he's part of Maui Economic Development, MEDB, and that's why one of the –

Ms. Aoki: He's with OED, Office of Economic Development, under the Mayor. So he's the Energy Coordinator. Victor Reyes.

Mr. Ornellas: Okay. So why wouldn't he be put on here? I mean, you said he did some things for you guys and wrote some stuff for you guys, but why isn't there a space for him? I mean, you've got stuff from the Police Department, Department of Health. Since it's dealing with energy, why wouldn't they be one of the –?

Mr. Alueta: Because of the time frame, they're normally not a commenting agency. Office of the Mayor is not a commenting agency. And again, we didn't draft this. This is drafted by the Council. So it's sent down, and we're on a time frame to get it out. And so Planning Department typically just sends it to our standard, more on the environmental side and land use side.

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Mr. Ornellas: Can I make a recommendation to the Department? Have it – when it deals with energy because we are now going full boar here on Lana`i as far as our windmills on the north end. People may want to put up on their houses. So we would like to make sure that at least the County’s energy people are aware and they give their comments.

Mr. Alueta: Yeah. And like again, 99.999 of the bills and ordinances the Planning Department deals with has nothing to do with it. This is the first one. And again, it’s one of those that, again, we say we don’t want it in our ordinance. It shouldn’t be in Title 19. It should be in Title 16. But your comments are well taken. I mean, if that comes up again, we will – like I say, if we have an issue on farm land or ag land, we send it to our farm coordinator in OED.

Mr. Ornellas: Yeah, I’m sure you’re going to end up with a lot more energy related ordinances in the future. And do you guys usually ask Maui Electric for comments? I maybe not you exactly you guys, but does the County ask for –? Well, I mean, this is another thing –

Mr. Alueta: No, I like that. When you finally realize “you guys.” Everybody just likes to say “you guys,” and we’re like the entire government.

Mr. Ornellas: Well, you’re the County. You guys the County. Again, this might fall under the same heading. We are going into a lot of energy issues from here forward both on Lana`i as well as the State of Hawaii. You would think getting information and getting information from MECo concerning an ordinance or something like that that may effect something that they do.

Mr. Alueta: We do comment. We do on land use permits. So when somebody is coming in for a developmental permit, an SMA, and we know it’s going to be a high power user, we then would send it to Maui Electric for comments. On this issue, right, again, it’s an ordinance issue. It doesn’t mandate anybody to do anything. It just makes it available for people. Again, and that’s the line that we’re taking with our ordinances, our land use ordinance. All we’re saying is you’re allowed to do it, but there are three other steps you have to go through. There’s your land use ordinance which says you can do it. Then there’s the building permit that says you have to build it. And then if you’re planning –. So and once that’s determined, it’s are you going to be grid tied or are you going to be sustainable. And at that point, if you’re going to be a grid tied system, you need MECo because you’re actually selling it if you want to connect to MECo’s grid. And so, I’m only dealing with, my expertise is in the land use side and not in the building permit side. And that’s why a lot of these standards that are in this, you know, I don’t want to sound like I’m beating the dead horse, but many of the standards that are in here aren’t land use issues. They’re building code issues, and so we want to move all of these comments that are in here, into the building code issue.

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MECo, they have their own rules, and you can talk to them and you can try to coordinate as best you can, but they're still going to have their own rules and establishments that I'm not sure that they would want us to codify. And I'm not sure that the County wants to codify a private company's standards into this. I mean, have them dictate to us.

Mr. Ornellas: But again, you are coming to us to – and we have questions, how does this fit in with MECo and we don't know what MECo's thinking. It looks like we have until July 22<sup>nd</sup> to finalize this, and if I can ask staff when is our next meeting. You know, I don't know.

Mr. Alueta: Commissioner, I'm just trying to find out from a MECo stand point, what are the issues that you would think MECo would have? Because again this is a land use issues or a building code issue. And for MECo, their determination is they have their own electrical standards that tie in with the building code, with the electrical code. And then they have their capacity standards which, again, would not deal with either building code or land use issues. Because their capacity issue is going to be dealt with, again, on circuits or on the region. On Maui, we have some areas on Maui that they're still accepting grid tied systems. In the region I am, they still allow grid tied systems.

Mr. Ornellas: Well, I don't want to belabor this, but I would think coming to here, I mean, you guys, the County, know that Lana`i and Moloka`i ask questions that are a lot different than what is asked on Maui. And because we don't get to see, we don't get to see these people, we would like to have a little bit more information so that we can make an education – and if it fits for our city of 3,000 people, or 2,600 people. So if you guys can just be a – if the County can be just a little bit proactive knowing we're coming here today, energy is an issue, we're going to try to do a small electrical thing, the County, maybe you guys should have gone through the County Office and say hey, we're going to Lana`i, what do you guys feel about this ordinance. Or Maui Electric, what do you guys feel about this ordinance. Maybe they would have showed up tonight and say hey, you know, this is the best thing since sliced bread. And at least we'll feel confident that Maui Electric is aware of this, as well as, it could fit in our city.

Mr. Rabaino: Commissioners, any more? Alberta, no? Okay, with that said, we'll take a vote. I need a motion.

Ms. de Jetley: Yes, Mr. Chair, I'd like to move forward on this because we are under time constraints this evening. So I would like to make a motion to redraft resolution 10-17 from Title 19 to Title 16, and to follow the Planning Department's staff recommendations to clarify the resolution's issues and concerns from page 3 and 4, of the memo report dated June 1<sup>st</sup>.

Mr. Rabaino: Okay, any other? Is that a motion? Commissioners?

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Mr. Green: I second the motion.

Mr. Rabaino: Okay, so it's been – the motion has been accepted and second, so it's carried. Oh, the vote. Excuse me, I'm jumping ahead. See everything is rushing already. Okay, all votes in favor, Commissioners, all those in favor, say aye.

Mr. Mano: Of what?

Mr. Rabaino: Of the motion that Alberta has proposed which is? You want to repeat it Alberta?

Ms. de Jetley: Okay, the motion is I make a motion to redraft resolution 10-17 from Title 19 to Title 16, and to follow the Planning Department's staff recommendations to clarify the resolution's issues and concerns from page 3 and 4 of the memo report to us dated June 1, 2010.

Mr. Rabaino: Okay, all those in favor say aye.

Planning Commissioners: "Aye."

Mr. Rabaino: Letty, I didn't hear anything from you. Are you in favor? Abstain. Okay. We have one no, one abstain and six ayes. So the motion is carried.

Mr. Alueta: Thank you very much.

Ms. de Jetley: Mr. Chair, retake the vote by a show of hands because I only counted two ayes. So please restate by a show of hands on the vote so there's no misunderstanding.

Mr. Rabaino: Thank you Commissioner de Jetley. Okay, the raise of hands for those who say aye. For those for say aye, we have two, four, six for ayes right? Okay, any nos? One. And one abstain for the record. Okay. So be it.

**It was moved by Commissioner Alberta de Jetley, then seconded by  
Commissioner David Green, then**

**VOTED: to recommend approval of the Planning Department's  
memo report to County Council as discussed.**

**(Assenting: Commissioners Gerald Rabaino, Stanley Ruidas, Matthew  
Mano, Alberta de Jetley, David Green and Shelly Barfield)**

**Dissenting: Commissioner John Ornellas**

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**Abstaining: Commissioner Lettica Castillo)**

**D. UNFINISHED BUSINESS**

- 1. MS. KATHLEEN ROSS AOKI, Planning Director, requesting concurrence from the Lanai Planning Commission pursuant to their Special Management Area Rules, as amended, that an Special Management Area (SMA) exemption can be issued for the following:**

**MR. FERDINAND CAJIGAL, Maui District Engineer of the STATE DEPARTMENT OF TRANSPORTATION requesting a Special Management Area (SMA) Assessment for the proposed maintenance of a 2.25 mile stretch of Kaunalapau Highway from Kaunalapau Harbor to the entrance to the Lanai Landfill, Island of Lanai. (SMX 2010/0173) (D. Dias) (Project valuation: \$800,000) (Reviewed by the Lanai Planning Commission at their May 19, 2010 meeting.)**

**The Commission may take action on this request to concur or not concur with the recommendation for SMA exemption.**

Mr. Rabaino: Next on the agenda is unfinished business regarding Kathleen for the Special Management rules. Kathleen, you have the floor. Sorry, Danny.

Mr. Danny Dias: Good evening Chair Rabaino, members of the Lana`i Planning Commission. This item was brought before you at the last meeting. It's the resurfacing project for the Kaunalapau Highway that's proposed by the State Department of Transportation. Last meeting there were some concerns from the Commissioners, and subsequently there are about four questions that the Commission requested the State DOT answer before you folks made a determination. So I'll just briefly go over the questions and the response that they provided.

The first question was the start date. The State DOT anticipates that this project will start on October 1<sup>st</sup> of this year. The second question has to do with the completion date or the amount of time that the State DOT anticipates this project will take. They responded that they anticipate that this will take 45 working days which would make the completion date around December 15<sup>th</sup> of this year. The third question had to do with work on Wednesdays and the concern was that that's when the barge comes in and, you know, the large trucks and so forth having to restart from a stand still. The State's response basically they didn't commit eliminating work completely on Wednesdays, but what they did do or what they have committed to is that they will prioritize the transportation of those large trucks. And what I anticipate is they'll – you know, normally when you have road construction on an

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existing road, you know, generally there's the flag men, and they're placed say a 100 yards apart. What the State will probably do is just really, you know, set that distance a lot further and that way the trucks can travel the whole length with having to stop. And the last question came from member Ruidas. Would any special consideration be given to Lana`i based companies, and the State's response is basically – and I believe that is a State law that they have to put the project out for bid on a competitive basis. You know, it's open to anybody. So in essence, the bid is going to go out. You know, anybody can bid on it. If a Lana`i company happens to be, you know, the cheapest or the best company to do it, then they'll get the job. But they stated that they can't give, you know, special consideration to companies purely based on Lana`i. So, that's – .

Mr. Rabaino: One question for you.

Mr. Dias: Okay.

Mr. Rabaino: Okay, it's just a request now yeah. My request is to petition the State Department of Transportation to coordinate with the County Highway and State Highway to do maintenance for both the State and County roads which is more sensible to have this kind coordination done for the island of Lana`i being that the State will have all of their equipments on Lana`i. So if they can coordinate with the County as well with the State together so that way equipment is here being that they're going to do road repair. As a request.

Mr. Dias: Yeah, we can give them that comment, but, yeah, no guarantees.

Ms. de Jetley: Mr. Chair, I have a comment. In the meeting where we discussed this highway, we were pretty adamant that we did not want the road closed one lane, two-lanes. We did not want the road under construction on Wednesday because that is the most important day for the businesses in this community. So they can work on Saturday and they can work on Sunday, but we don't want them working and closing our road on Wednesday. Them closing half the highway is not an option here. We specifically asked that they respect the merchants of this community and give us our barge day.

Mr. Dias: Well, we gave them that message, and you know, we couldn't get them to commit to that.

Ms. de Jetley: Well, I think you should go back to them and restate it that we were pretty adamant about wanting our road left open for the barge. The barge leaves town at three o'clock. Three o'clock they are out of here. Most of the traffic for the freight – most of the freight is already out by two o'clock so they can work in the evening. But we wanted that road open just for that day. We understand they have schedules, so I don't see why it's such a problem for them not to consider our businesses in this community.



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Mr. Dias: Well, I don't know if they're not considering it. I think they didn't want to commit because the wording used at that meeting was, you know, no work on Wednesdays. They were hesitant to commit to that and I can understand because you know there's 24-hours in the day. I don't know if you're going to say we'll we won't work on it completely. You know, if the bulk of the traffic to the harbor is say from six in the morning to three o'clock, I mean, you don't want to eliminate work that you could do, you know, say in the afternoon or the early evening. But they did commit to making sure that traffic, you know, would go through and that the large trucks going up the hill would have priority. But that's what all they could commit to.

Mr. Ornellas: I agree with Alberta. I mean, we were adamant. So what you came up – I don't want to kill the messenger – but what they basically said was the same thing that was said the last one. So I'm going to vote against it only because of the safety issue. You cannot expect these big diesel rigs to share. If they're going to pave half the road, there's not enough road to share with another, to extend the two lane highway because you've got cliff on one side and barriers on the other side, so you just can't do it.

Mr. Dias: No, what I think –. What I'm trying to say is what I would anticipate that what they would do is you're going to have traffic, you know, going up and down the same time. Generally you stop traffic going say down, you let the traffic go up. After all those cars are done, then you open it up for the cars waiting to go down. So there's not going to be back and forth.

Mr. Ornellas: Have you been down there?

Mr. Dias: I'll be honest, no, I haven't.

Mr. Ornellas: Now, this is not a straight road. This is very unsafe and I do not want any of our residents here on Lana`i to die over some State thinks that they can do this without that so I'm going to vote against it. And that is the only reason why I'm voting against it.

Ms. de Jetley: I have another comment for you too is that many of the businesses make several trips. So if there's stop on the down hill trip that might another hour, hour and half to their run. Some of them have to make three trips up and down that hill with the equipment that they have. So you delaying them saying you're only going to stop the truck on their way down, that will really hinder their business.

Ms. Shelly Barfield: Is it on now. I have a question. Okay, I read the HRS 205A. So say we vote against saying that it's not exempted, we're not for, you know, all of this. What is the repercussion?

Mr. Dias: I will attempt to answer or I might have to hand it over to James at some point.

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But, basically you would have to come up with findings of fact and conclusions of law as to why this doesn't meet the requirements for this to be an exemption under Hawaii Revised Statutes. So I don't think you could just say well I don't want them to do it on Wednesdays. You would have to tie it in to the Hawaii Revised Statutes. So –.

Mr. James Giroux: Hello, James Giroux with Corporation Counsel. Danny is basically correct is what you have to do is you have to look at your own rules which guides you in reviewing an exemption. Basically the way the process works is that the Director reviews it per the standards in your own rules, and then makes a recommendation to you. You need to look at those recommendations and you need to see what recommendations you disagree with, within what category. There's about 10 things that he has to go through to say it passes this factor, it passes that factor, it passes that factor. You would have to look within those rules, or within those factors, and point to something that you say I disagree with the Director's findings on this point. And by disagreeing with that factor, then you can get to the next level of analysis that says that there's a significant of potential environmental and ecological effect. So you have to work that in.

There's a case, and I went over with you guys called the Topliss Case. This was an SMA major. An SMA Major. Where the Commission found that traffic would be impacted. There was no findings of facts that tied it in to an ecological effect or an environmental effect because of the impact of that project. So what happened is the Supreme Court sent it back and said the Commission, you didn't do the analysis that you needed to do. And without that analysis, you haven't met with your jurisdiction within 205A. 205A specifically requires that whoever is going to do a development needs to go through the permitting process. If it's not a development, it's exempted, unless you can disagree with something within the report. And you're open to. This is why we're here. We want to see where you disagree and how that factor goes into a determination that there is a possibility, a potential, for an environmental and ecological effect on Lana`i. So if you can do that, then that's part of your discussion. That's part of your motion that you're going to do that because we have to produce findings of facts, conclusions of law and serve that on the Director.

Mr. Ornellas: You said there's 10 items. Is one of them safety?

Mr. Giroux: I'm going to point you to the rule. It should be in the report. I don't have the report right in front of me. I'm still scrolling down through mine now. I believe it's 402-12 and then you go to subsection (e), I believe. It's difficult for me to see –

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

Mr. Giroux: No, no. It's in your own rules, the Lana`i Planning Commission Rules.

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Mr. Ornellas: It's in the binder.

Mr. Giroux: Danny, do you have a hard copy?

Mr. Ornellas: Mr. Chair, another question.

Mr. Rabaino: Go ahead.

Mr. Ornellas: Go ahead.

Mr. Giroux: It's 402-12, and then you go to subsection (e). It's a a little (e). (*Changed Cassette Tapes*) That's about three pages later. And then it's says that under section (2), "involves an irrevocable commitment to loss or destruction of any natural or cultural resource. Significantly curtails the range of beneficial uses of the environment. Conflicts with the County's or the State's long term environmental goals – policies or goals. Substantially effects the economic or social welfare and activities of the communities." I think that's what you're trying to talk about.

Mr. Ornellas: You can stop there.

Mr. Giroux: There's eight more, but I think, you know, if you want to discuss that, then that's open for discussion.

Mr. Ornellas: So it's an economic and –

Mr. Giroux: Substantially effects the economic or social welfare and activities of the community, County or State.

Mr. Ornellas: Is there anything about safety in there, in the other eight?

Mr. Giroux: You know, a lot of times the word welfare is broadly interpreted to include safety.

Mr. Ornellas: Okay. So what do you do – if we're going to and say economic welfare of this community that this is detrimental too. I mean, we're still just talking about one day, Wednesdays, so –.

Mr. Giroux: Well, I think the issue maybe substantial. Substantial is, you know, relative, debatable, open to interpretation, but that is one of the factors. It's got to be substantial.

Mr. Ornellas: Could the Lana`i Planning Commission ask the Director to create a study as far as the traffic pattern between Kaunalapau Harbor, to the city, but only do it to basically

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where this project is expected to happen? Can we ask for that?

Mr. Giroux: A possible reasonable request would be to have a traffic plan. I know that in the industry, a lot of times construction because of their insurance situation are suppose to have a safety plan. How are you going to deal with traffic, how are you going to cone it off. You know, but that would be something you would need to ask the State. I mean, we don't have that information.

Mr. Ornellas: But you just read from the County, the County –

Mr. Giroux: That's your rules.

Mr. Ornellas: That's our rules in the County, so we would have to the State here to ask that from them, or does the Director have the authority to create one of those?

Mr. Giroux: I don't think the County would go out and do the study. I mean, this is an exemption determination.

Mr. Ornellas: You know this thing is turning –. And I appreciate you James. I appreciate, but, you know, this is not rocket scientist, you know. We know our traffic pattern. We only have one road up and down from Kaumalapau Harbor. And we've got, I can see, three or four people here in this that use that more than once a day on Wednesdays. So, to me, why does it need to be this hard? I mean, why can't the State –? I mean, can we deferred it again and get the State in here to talk to us? Or better yet, instead of talking to us, have them come out on Wednesday and we'll take them down there. In fact, he can ride with Alberta because he can off load some of the produce and stuff at the harbor.

Ms. de Jetley: Mr. Chair?

Mr. Rabaino: John?

Ms. de Jetley: Mr. Chair? I have a request. We have a merchant who transports on Wednesday. I'd like to see what if Andrew Dela Cruz would be willing to tell us how he feels about the road being partially closed on Wednesday. So we actually have someone in the audience who will be financially impacted by the closure.

Mr. Rabaino: Andrew, would you be –?

Mr. Andrew Dela Cruz: . . . (Inaudible. Did not speak into the microphone.) . . .

Mr. Rabaino: We need you on the microphone.

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

Ms. Aoki: We need this on the record. If you could please use the mic. Thank you.

Mr. Dela Cruz: If you want my opinion on that one of closing the highway on the Wednesdays. If we do it like the way they did Manele, you know where you close half the highway, for us, for that two mile stretch, I would say, you know, like you're going one way once, and the other way once, I would say that stretch normally driving that's about 10 minutes of that two miles. So I would think that would add an hour per way. And like those of us who have only pick up trucks and you can only carry two skits at a time, an average person will have maybe about 10 to 20 trips yeah. So that's about that 20 to 40 trips. So that's about 40 hours yeah. It's kind of hard to squeeze in one Wednesday. So it will be hard, but if you're depending on your time like I – I depend on my time. You know, I don't charge myself. I charge myself by the hour. I mean, what I can do in a set amount of hours. And I would imagine because they have done this before, yeah, that it's almost like double or triple your time.

Mr. Rabaino: Go ahead John.

Mr. Ornellas: No. Thank you, I appreciate it. I did have a chance to talk to Manny Amaral who is the owner of Lana`i Trucking and Waste Removal. And on an average Wednesday, he pulls about 12 to 17 trailers up the hill. That's 20 footer, as well as 40 footers. Now, I didn't ask anybody from Castle & Cooke, but I think, I know, there's about five or six that comes up for the hotels, and the food, and construction. So, you know, you're going to be putting 25, at least 25 trailers, 20 footer as well as 40 footers up that hill. And especially with the 40's with construction materials in there stopping even unintentionally, stopping on the grade up, is going to cause some problems. Safety problems, for one, and trying to get that truck, if it's loaded to the hill and it's heavy, trying to stop it and then get it going on that grade. We may have some problems there. And I'm just looking out for the State and their bank books since they're crying that they're broke.

Ms. Aoki: Chair, if I would just like to provide some comments to the Commission. With all due respect with you know the concerns, you know, the department doesn't see this as a development. We have ruled it exempted under the category that are provided for an exempted status. It is your purview as a Commission to either accept that and move it on as an exemption. If you do not rule tonight, it will be deemed exempted due to the deadlines provided in your rules that you have 60-days to make that determination. If the Commission rules that they've denied the exemption, what that means, is that the State could come back and apply as a major SMA. They could, they may not. You know, it's pure speculation. I'm not the DOT, but they may decide that the time frame that it's going to take to do the major SMA, they may decide to use those funds else where. And I'm not just saying after Lana`i. They've made those kinds of comments on Maui for other projects.

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You know, they're under guidelines or federal funds or what have you. I just wanted to let the Commission know that there are these other considerations to think about. But it's ultimately your decision and we'll respect that. But just understand that if you don't – if you're not going to accept it as an exemption, they could either come back in and do it as a major. Or if they disagree with you, they could take it to Court. It wouldn't be an intervention or an appeal to the Department because you are making that decision, so the appeal is on the Planning Commission. So that goes directly to Court. Now whether or not they'll do that, I can't say either. Just to let you know that's what the potential process could be.

Ms. Castillo: We're just voicing up our concerns, a safety of our community. It's very – that we voice up our concern so we all know that we have some concern. And if there's something going to happen, the State cannot say that we didn't look at that. So, you know, we just wanted to let the State to know that we are concerned of our safety of our community. Thank you.

Ms. Aoki: And I can very much appreciate that.

Mr. Ruidas: Danny, thanks for getting back with us. What is that one you said the one I was asking you. What question did I ask you?

Mr. Dias: Sorry. About whether or not they could give like preference to companies based on Lana`i.

Mr. Ruidas: Okay. Yeah, thanks for getting back to us. I feel although you know one barge day is going to let this road last eight years, that's kind of a minimal sacrifice, you know, in the end. And if they take away the money, you not going get the road fix any way, then it would be a greater safety concern. And for those CC&R's guys out there, \$800,000 you better put your bids in.

Mr. Rabaino: Commissioners, any other? Alberta?

Ms. de Jetley: I'm looking at this as the road isn't going to be closed just one Wednesday. It's going to be closed for almost, between 10 and 12 Wednesdays during this construction period. So what I'd like the other Commissioners to consider is that maybe we should make a motion – I'm not making the motion – I just want you guys to think about this, that we ask the planners to draft a letter telling them what our concerns are, and that if need be, we will deny it and put them through the whole process of coming back in with an SMA. Unless they agree with us to close the roads on Wednesdays. They still have six other days to work. And on Wednesdays if they like, the contractor who gets the permit, could still work after three o'clock. After the barge goes out, he could still put his crew up and still get some day light hours. So I think that we should try to solve this by writing them a letter

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and telling them what our concerns are. And then we'll use this substantially effects economic welfare community. We can type that in the letter.

Mr. Matthew Mano: Danny, I got a question Danny please? What's the time frame on this?

Mr. Dias: As far as?

Mr. Mano: How many days will it take to do the road?

Mr. Dias: The entire project, they said they wanted to start like October 1<sup>st</sup>, and they're anticipating to end in the middle of December. 45-days. 45 working days.

Mr. Mano: And they're planning on doing it seven-days a week?

Mr. Dias: They didn't specify that. I would assume it's five.

Mr. Mano: So could they start it on Thursday, and end on Monday? And Tuesday and Wednesday they have the two days off, and start again on Thursday. I mean, they're not paying overtime, it's 40-straight hours. There's no overtime involved.

Mr. Dias: I can't really speak on behalf of DOT requirements.

Mr. Mano: Well, it's just a suggestion because, you know, this thing is flying up the handle. I've been hearing a lot of arguments. I've been hearing law coming in and I hear we might have to go to court and stuff. I cannot understand why we cannot start on Thursday and end on Tuesday, or Monday. And Tuesday and Wednesday, they can have the day off. Come back on Thursday, do the work. It's 40-hours a week. There's no overtime. But it's just a suggestion. If you can go to the State and ask them, why can't they do it that way because our barge day is critical on Lana`i. And the barge can only stay so long. And if we have south swells come in, west swells come in, that barge will not come in. And if it doesn't come in it delays the process for the food to get to the island. That's the bottom line. That's our only way to get food to the island. So I think the suggestion of starting Thursday and ending on Monday is a great idea instead of we hashing about Wednesday. I mean, it's still five days, it's it's still 40-hours. Thank you.

Ms. Aoki: Commissioners, just to address that, and maybe in the last meeting, what we explained was that the Department and the Commission, when you're granting an exemption, you cannot place conditions on an exemption. It's either an exempted or it's not. However, we can inform the State DOT all of your concerns and let them know what you've voiced, but it's just not a condition of the permit. So we would be happy to let them know, they suggested, you know, can you not do it on Wednesdays? Can you do it on Wednesday nights? Can you work Sunday through et cetera? But it's just – as long as the

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Commissioners understand that it's not a condition of the permit. But we can provide your comments to them.

Mr. Mano: I'm sorry. I didn't mean to put a condition, but it's a suggestion. Because if not, we're going to keep hashing out on this stuff. And I think the State would see it because you guys are saying that they're putting it out to the lowest bidder right? And these are private companies. They come in and bid. I know that there was a suggestion that if the County and the State can do it. The County and State don't do it because they don't have the equipment to do it with. I know on Maui County does not have it. So to get the County and State to do it is pretty much they're going to have to rent the equipment and train the people to do it. But it's just a suggestion. Thank you.

Mr. Rabaino: Danny, if I remember correctly last month, we made the request when we deferred it that the State Department head of Department of Transportation be on Lana`i. Okay, prior to that, this past week I called Lei to see if any of the head people from the State would come in to give a proper answer for tonight. No return calls. Okay, so now you see and I would like to suggest as a request also that any future agenda if we need the key players for whatever projects coming into play, their key players, whether it's State, County or otherwise be present on Lana`i. Because this is only a one time deal it comes to the Commissioners. And I think it's fair and reasonable request to have that implemented. On the other fact because of the unanswered calls, when we deferred this highway thing last month, I talked to Lei telling her is there any other head coming to the island of Lana`i for tonight to answer each Commissioner's concern. So now, this is taking longer. I know you guys got to go home, but that's what's happening. So take heed very closely, any future things that come on the agenda, I would like the heads to at least, in a reasonable fashion, to come to Lana`i because we all individually have concerns. And some of you folks cannot answer it. And it's like dumbfounded because we over here saying what for have a meeting then if they don't have the proper people here. You know what I mean?

Mr. Dias: We understand that, but you know, we can't force anybody to come. You know, we can request them to show up, but if they don't, I mean, you know, we have no authority to force them.

Mr. Ornellas: Okay, so is there a deadline for this? Was today the day? Okay. So if we accept then it just goes on, and with the recommendations. And if we deny it, then they can't go over our heads can they? Alright. Mr. Chair, because of the safety issues that have been noted and us asking for the small, just a small request that Wednesdays they don't shut down our road for freight, that I move that we deny this motion, this item because of that fact.

Mr. Rabaino: Are you making a motion?



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Mr. Ornellas: Yes I am.

Mr. Rabaino: Anybody want to second that motion? Or somebody has another?

Ms. de Jetley: Could I amend that?

Mr. Rabaino: You want to amend it to the motion?

Ms. de Jetley: Yes.

Mr. Rabaino: Go ahead.

Ms. de Jetley: I'd like to amend the motion by adding unless they agree not to work on Wednesdays while the barge is in the harbor. No, but it's going to be an amendment to this motion. So it's not a condition.

Mr. Rabaino: Okay, so it's an amendment to the motion what John has proposed.

Ms. de Jetley: Would that be legal?

Mr. Giroux: I believe as proposed the amendment, it would be seen as a conditional denial which would be interpreted as you're failing to act on the exemption of whether or not it is an exemption or it is not.

Ms. de Jetley: I'll withdraw the amendment.

Mr. Rabaino: John, you still want to cling to your motion that's on the floor?

Mr. Ornellas: Yes.

Mr. Rabaino: Wholeheartedly?

Mr. Ornellas: Yes.

Mr. Rabaino: Commissioners, any other discussion before we take a – I need a second on that too. Go ahead David, speak your mind now. You want to do some discussion. We got to watch the time because they've got to leave. Okay, you want a discussion, go ahead.

Mr. Green: I just want to make one point.

Mr. Rabaino: There's no second to motion. You want to discuss? No second to the motion

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by Commissioner Ornellas.

Ms. de Jetley: So we have to have a second before we can do a discussion?

Mr. Rabaino: Yes.

Ms. de Jetley: Okay, I second the motion.

Mr. Rabaino: Okay, you have a second by Alberta to John's motion, correct? Okay, David, discussion.

Mr. Green: Could you, I believe, what we're missing here, potentially missing is the State haven't said they wouldn't do what we requested. They just didn't say that they would do what we requested. So I would like to ask if you would read what the State said one more time and I would hope that people would take, that the State, maybe this is hoping beyond what's realistic to expect, but that the State would use some common sense. And if there's a safety hazard that they wouldn't do a stupid thing. And if they did, we could always picket the road or something like that.

Mr. Rabaino: Okay Danny.

Mr. Dias: Thank you Commissioner Green. The State's response to our question on whether or not, you know, they can eliminate work on Wednesday so it's basically that the contractor will be notified that on Wednesdays trucks traveling up hill from the harbor will be given the right of way.

Ms. Aoki: Do you want to hear their entire response? Just because I think it's important that you hear exactly what they said. "Slurry seal work typically consists of closing only one lane of travel therefore alternating traffic will occur. However contractor will be notified that on Wednesdays trucks traveling up hill from the harbor will be given the right of way." And then it gets –. I'll read the whole answer. "For your information, slurry sealing consists of applying thin membrane made up of fine aggregates and emulsions. It set rapidly. Traffic and travel on finish product two hours after application. We anticipate that impacted traffic will be minimum." That was their complete response.

Mr. Rabaino: Okay, Commissioner, any other discussion since they read the response from the State Department? Okay, call for the question to vote. All those – and by raise of hand please – all those in favor of the motion that John presented to defer right John? To deny the SMA, exemption, et cetera, et cetera. Okay, all those in favor say aye to deny. Two. All those oppose, raise your hand. One, two, three, four. Letty?

Ms. Barfield: Five.

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Mr. Rabaino: Five. Sorry. Six then. Correct.

Ms. Barfield: Raise your hands again.

Mr. Rabaino: Six. And one no. Two nos, excuse me, for the record.

Mr. Giroux: It would probably, for the Chair, to open up the floor for further motions so you can get an affirmative vote. Failure to do so would run your time into the 60-day period where it would be automatically exempted.

Mr. Rabaino: Alberta?

Ms. de Jetley: I move that we grant this exemption, but we ask staff to send a letter of recommendation voicing our concerns on the Wednesday closure.

Mr. Rabaino: Okay. David?

Mr. Green: Second.

Mr. Rabaino: Can you repeat the motion Alberta, being that David seconded it?

Ms. de Jetley: I move that we approve the exemption request but ask staff to send a letter voicing the concerns expressed this evening with the approval.

Mr. Rabaino: Is that fine Danny?

Mr. Dias: That's okay.

Mr. Rabaino: Okay. One more. From the time we denied it last month, is that counting the days of the 60-days?

Mr. Dias: Yeah. Well, first of all it was deferred not denied just for the record. And that 60-day clock starts when you folks first hear the time so that was, I believe, May 19<sup>th</sup>. So 60-days from May 19<sup>th</sup>.

Mr. Ornellas: Mr. Chair?

Mr. Rabaino: So how soon we going get a respond then being that we made this motion?

Mr. Dias: You would get no response.

Mr. Green: I second the motion.

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Mr. Rabaino: That's what I said earlier.

Mr. Ornellas: Can I ask what we just did? Didn't we just – my motion was to deny?

Mr. Dias: And it failed.

Mr. Ornellas: So we turned it around and said to approve. I thought the vote would automatically kind of tell you that. Oh okay.

Mr. Rabaino: You got it John? Everybody in sync right now before I get more dizzy over here? Danny, you have the floor.

Mr. Dias: A vote. You've got to vote on the motion.

Mr. Rabaino: Okay, call for the question. We're going to vote. Those in favor of the request to defer.

Ms. Barfield: No! To accept.

Mr. Dias: No, to approve.

Mr. Rabaino: Request to accept, with the recommendation of our concerns, the Lana`i Planning Commission. All those in favor, raise your hand. One, two, three, four, five, six, seven. And opposed? One. Okay, seven yays and one oppose, one no. Motion carries.

Mr. Dias: Motion carries.

**It was moved by Commissioner Alberta de Jetley, seconded by  
Commissioner David Green, then**

**VOTED: to approve the exemption as discussed.**

## **E. COMMUNICATIONS**

- 1. May 25, 2010 Semi-Annual Report submitted by Castle & Cooke Resorts, LLC regarding the project irrigation demand associated with the Residential and Multi-Family Development at Manele, TMK: 4-9-017:001, 002, 003, 004, 005, and 4-9-002:049, Manele, Island of Lanai. (95/SM1-015) (95/PH2-001) (D. Dias)**

**The Commission may provide comments on the report.**

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Mr. Rabaino: Next item, under the unfinished business. (E) Communication, May 25, 2010 semi report by Castle & Cooke Resorts. According to Shelly, we have 20 minutes to discuss. Danny?

Mr. Dias: Okay, this is Castle & Cooke's response to a condition that's part of an SMA permit and Project District Phase II approval. So this is very similar to the last meeting where this is the Commission's opportunity to review their report and to provide comments if there are any.

Mr. Rabaino: The clock running Danny. It's your floor. You have the floor.

Mr. Dias: Well basically I just said that this is a report, a semi-annual report, that Castle & Cooke is required to provide, and so this time is basically very similar to the item that was before the Commission last month where you folks review it and make any comments as you feel necessary.

Mr. Rabaino: Commissioners, any comments? Stanley?

Mr. Ruidas: Was there any feedback from what the questions I asked you last month?

Ms. Aoki: I can answer, I think, one of them Stanley. You had asked what the purview was of the LWAC. That's the question I remember you asking me, and what I got, I requested information from Ellen Kraftsow who's the senior planner for the Water Department. And essentially she stated that the Department of Water Supply has continued to deal with the LWAC as an advisory committee. They want to be established by ordinance to have greater assurance of a general role. And there is a draft ordinance included in the Water Use Development Plan. However, it's kind of an older one. But essentially, for now, their role is advisory. However, it does include commenting on water aspects of Planning Commission items and making recommendations. So they do go, you know, they do ask for their comments and recommendations. But the LWAC doesn't have any legal authority if you will. It's pure advisory.

Mr. Ruidas: Thanks. And then, Danny, was the drought stuff, yeah?

Mr. Dias: Yeah, the additional questions that –

Mr. Ruidas: I see John out there. Maybe he wants to come front and center.

Mr. John Stubbart: John Stubbart, Director of Utilities, Lana`i Water Company.

Mr. Ruidas: Hi John. I had questions for Clay last month that he couldn't answer. Right?

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I think so. I wanted to know what your contingency plans for the drought season.

Mr. Stubbart: For the drought? We're in a drought now, and it's the worse in the last 30-years. Second worse in the last 50-years so far. I just got – Clay just showed me the letter that came from the staff here. The drought contingency plan I understand that there was one. I haven't found one written yet. And so what I would like to do on that is to respond back to you guys at your next meeting because I started looking for a drought plan. There's a record that there is one. I haven't found one, so I may have to write one. My feeling on that is that we would, a drought plan would follow a voluntary restriction. We would ask for a voluntary restriction for water use if we saw the water demands exceeding our capacities or reducing our aquifer or pumpage capabilities. Right now we have two wells that service the city. We have a backup capability from wells 2 and 4, so we actually have backup service coming this way into the city. On the Manele side, we can feed. There's wells 4 and 2 for portable water. And we can feed water from the city from well 8 to the Manele system. So we have backup both ways. Right now, we haven't seen heavy reductions in the water levels. We're maybe starting to see a little bit from our data. As the summer goes on, we don't know if the El Nino effect will make the summer a wetter summer like we saw last summer. Actually, the summer was a little wetter than the winter. I'm hoping, but you know, you don't know. We're into the summer now, and if it's as dry as what our winter has been, we have been pumping during the winter, actually less potable water from the potable wells up above town here. Wells 6, 8, 4, 2. Our potable consumption is down, and through conservation particularly at the Manele Hotel, so that's actually looking positive. We aren't using as much potable water overall.

On the brackish side because of the irrigation requirements, demands, the irrigation has been similar to what you would see in the summer months. And so we're watching that very closely. In fact, we have worked with Manele Golf Course on the restrictions and reductions. We've been heavily working with the homeowners associations on reducing their pumpage and we're seeing the impact of that now. There is decreased leaks have been repaired. We have been installing additional meters in systems so that we can, #1, bill for that irrigation water. And we're are seeing our better monitoring so that we can provide information back to homeowners and the associations down there. And the landscape, our own landscape road side irrigation. So to answer your question in the long way – I just did – you look at – right now we haven't seen a lot or watching carefully. It would be a voluntary restriction that we would put out to the public. We don't have a policy in that I have found yet on mandatory. What the point is for mandatory restrictions, but it would be based on water levels, and we haven't seen those water levels impacted yet. And we are working on, requested reductions for golf and brackish irrigation already.

Mr. Ruidas: How's well 3 doing?

Mr. Stubbart: Well 3 is dug. It's not being equipped at this point. We have a contract. We

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have a contract bid documents, but we haven't moved forward with the actually bidding of that.

Mr. Ruidas: Well actually do you foresee Koele Golf Course running into water problems? Because then you might come back and ask us, the Lana`i emergency note that you guys wanted to use potable water. So is that possible?

Mr. Stubbart: That, candidly, that discussion has come up. Right now the Koele Golf Course is only allowed to use R1 water which is reclaimed water from the County wastewater plant and take that from over there. We take, treat it to a Department of Health standard called R1 or reuse reclaimed one, and we pump it up the hill to the golf course. Because of the drought and because of higher the evaporation from the County plant and changes in population we have seen lesser flows coming from the County plant that we have been able to push up so double jeopardy. We're in the drought. We need more water. We don't have the normal rainfall in the summer, and we have less water to deliver to the golf course. This has been a constant conversation. My response to people in Castle & Cooke have been that there is no water, and I do not expect that I would be able to go get potable water for use on the Koele golf course. We're stuck with what we got, and we have to figure out how to do a better job. That does impact the turf, the turf management. I just talked to Doug today on this issue. But I am not – it has been discussed, but I haven't been requesting that.

Mr. Ruidas: Thanks John. I was just checking because that happened 14 years ago I think.

Mr. Stubbart: They did that, I understand. I asked. I heard about it and they did it when they did a grown in. It was for a turf grow in and they changed turf and they needed extra water. And it wasn't for a drought. It was specifically for a growing period. So like I said, I don't think that we would be –. I wouldn't say we would never, but I just don't see it happening.

Mr. Ruidas: Okay, thanks John.

Mr. Stubbart: I see on this letter I just got, there's a couple of other things you guys have. I'd like to be, perhaps, suggest at next meeting, I come back and talk to you about testing of the DOH and EPA requirements. I do have a listing of that, and I can provide it and maybe explain a little bit to you. And the fog drip study absolutely we'll make copy available to you.

Mr. Rabaino: Sure John, we'll be glad to have you back to explain some of those items. Thank you. Danny?

Mr. Dias: I'm just taking comments on the letter.

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Ms. Barfield: I had a question for Clay. Hi Clay. I had a question. It's something minor, but in the back where it says summary of Manele Project District development, it says the amount of units. The multi-family, shouldn't it be 54 not 53?

Mr. Clay Rumbaoa: Excuse me. Good evening Commissioners. No, there's 53. For this permit, it covers the Terraces. There's 26 and 27 in both terraces, one, two, three, four and five.

Ms. Barfield: Because I counted 54.

Mr. Rumbaoa: There's 53.

Mr. Rabaino: That's the only comment you have? Okay, any commissioners, any other questions? Okay, no questions, thanks Clay. John? Ron? No. Okay.

Mr. McOmer: Ron McOmer, Lanai, and also on the LWAC member. These reports that they just gave you really doesn't say much. It says a lot, but it doesn't say anything because you don't understand it. I'm sure you can't figure most of this out. The numbers they give you are just numbers. And in the back they give you this report, which is totally confusing because they don't tell you how much water they're pumping. They're telling you how much is being delivered, but not how much is being pumped out of the ground. So there is no way you can compare with what's coming out of the ground, and what they're putting on the ground. So this thing that they're giving you in this report is –. And I can't expect you to understand it unless you have all the information. We don't even get all the information from them. We've been asking to meter certain things. Like the last time we had John in front of us at LWAC, the question was why are you still watering the pine trees with irrigation when they're full grown now? They're wasting our drinking water. And that's drinking water folks. It's not R-1 water. It's not non-potable water. It is our drinking water they're watering those trees with. That's got to be stopped. We talk about conservation. And on the back here you have a map of the hale. Look at that really close. If you look at what they say on here, increment three, four miles is in survey. Well that means that they're still looking for some contractor to do them, and they're trying to survey the area. They're at least four years behind doing their fencing for their conservation. So these reports without explanation, without you guys actually asking the right questions, and it's not fair to you guys. It's not fair for you guys to ask. You need to know what's going on here and they're not giving a full explanation on this stuff.

Mr. Ornellas: I have a question for Ron. Ron, with your long standing with LWAC, was there ever a drought plan established?

Mr. McOmer: The drought plan comes into effect if Castle & Cooke declares a drought, the Water Commission has put restrictions on that. There are certain elevations that they



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have to cut back the golf course so much. They have to cut back other irrigation at a certain percentage. There is a plan, but it comes from quorum – one of the conditions when they didn't designate. So when they gave them that water to use, it was with the idea – there's about five conditions. One of the conditions is if we have a drought, then they have – they haven't declared drought folks.

Mr. Ornellas: I think we just heard it tonight.

Mr. McOmbler: Yeah, but you didn't hear official. If they declare drought, they got to cut back I think a certain percentage on their watering of their golf courses, and all their road side watering and everything before they ask this community to cut back on their water use. Remember that. So if they ask you to cut back on your water use, and they haven't done it on their golf course and other things, then it's not legitimate.

Mr. Ornellas: Do you have a copy of that?

Mr. McOmbler: It's in the regulation.

Mr. Ornellas: John, do you have that?

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

Mr. Ornellas; Okay.

Mr. McOmbler: Any way that's what the condition. It isn't with Health Department of anything. It's one of the quorums conditions when they did not designate Lana`i. And that was long before John go here. About seven other water directors since. So that's just the way it is folks. If he declares a drought, then they got to cut back. Thank you.

Mr. Rabaino: Ron, has our – the one our last meeting when they appointed John Ornellas and Green, have they been attending the LWAC meetings with the company?

Mr. McOmbler: We haven't had one. We were suppose to have one on the 14<sup>th</sup>, and we still haven't had one because Ellen is trying to lock up that thing. So we're going to have one next month. We better have one or somebody's head is going to roll. Because the water report has to get done so we can have it for the community plan. So we're working on it.

Mr. Rabaino: Thank you. Any other questions? John, any other questions? No? Commissioners, do we have a motion to adjourn. Okay, motion to adjourn.

## **F. DIRECTOR'S REPORT**

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- 1. Open Lana`i Applications Report.**
- 2. Agenda items for the July 21, 2010 meeting.**
  - a. Presentation by Castle & Cooke, LLC on project status and upcoming projects**

Mr. Rabaino: Open applications.

Ms. Aoki: As far as the open applications, the report is the same as it was last month.

Mr. Rabaino: Okay, thank you. So we shall adjourn. Time is 8:27 p.m. Thank you Commissioners.

**G. NEXT REGULAR MEETING DATE: July 21, 2010**

**H. ADJOURNMENT**

There being no further discussion brought forward to the Commission, the meeting was adjourned at approximately 8:27 p.m.

Respectively transmitted by,

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

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**RECORD OF ATTENDANCE**

**PRESENT:**

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

**OTHERS:**

Kathleen Ross Aoki, Planning Director  
Joseph Alueta, Administrative Planning Officer  
Danny Dias, Staff Planner  
James Giroux, Deputy Corporation Counsel