

**LANA`I PLANNING COMMISSION
REGULAR MEETING
FEBRUARY 16, 2011**

APPROVED 05-18-2011

A. CALL TO ORDER

The regular meeting of the Lana`i Planning Commission (Commission) was called to order by Chair Gerald Rabaino at approximately 6:00 p.m., Wednesday, February 16, 2011, in the Lana`i High & Elementary School Cafeteria, Lana`i City, Hawaii.

A quorum of the Board was present (see Record of Attendance.)

Mr. Gerald Rabaino: Meeting come to order, 6:00 p.m. Just for the record, Shelly Barfield will be tardy. She's coming a little late. She's tied up with something. And David Green is returning from vacation so he will not be attending. We're waiting for Letty Castillo. Hopefully she reaches here, so she's going to be tardy just like Shelly.

Okay, has any distribution from the Corporation Counsel handed out to the Commissioners, except for that strip that you sent out? Okay, so right now we have a quorum. We're waiting for the two, Shelly and Letty. Note that David Green is not present. He's not going to be attending.

B. APPROVAL OF THE NOVEMBER 17, 2010 MEETING MINUTES

Mr. Rabaino: According to the agenda, we're going to approve the minutes of November 17, 2010. For those who have read it, any changes, suggestions, comments on the minutes of the meeting of November 17th? Commissioners?

Ms. Lisa Kaniho: I move that we approve it.

Mr. Rabaino: Any second?

Ms. Alberta de Jetley: I second.

Mr. Rabaino: So noted. Moved by Lisa Kaniho and second by Alberta de Jetley. Item C on the agenda, public hearing. By the way, Shelly just walked in, so that's for the record. Waiting for Letty. And the time would be when Shelly walked in is 6:01 p.m.

It was moved by Commissioner Lisa Kaniho, seconded by Commissioner Alberta de Jetley, and without any opposition by the Commission, the November 17, 2010 Lana`i Planning Commission meeting minutes were approved as written.

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

APPROVED 05-18-2011

1. **MR. WILLIAM SPENCE, Planning Director, proposing various amendments to Chapter 19.31 of the Maui County Code relating to Public/Quasi-Public Districts. (J. Alueta)**
 - a. **Public Hearing**
 - b. **Action**

(Chair Gerald Rabaino read the above project description into the record.)

Mr. Rabaino: Item A, public hearing. Oh, you go first. Sorry.

Mr. Joseph Alueta: Good evening members. Again, my name is Joe Alueta. I'm your administrative planning officer. The bill before you is for the 19.31 of the Maui County Code, Public/Quasi-Public Districts. As you know we're going through chapter by chapter amending and updating the entire Maui County Code Title 19. And so we're trying to modernize it, standardize the areas from one chapter to another as far as uses and the structure of the code. We're trying to use tables and graphics wherever applicable, to make it easier to understand. This particular chapter, I believe, was last amended back in 1986, so right when I graduated high school. So it's been several years since it's been reviewed and updated.

And so I'll be primarily working from exhibit 1 of the memo report. The memo report as you've all had some time to review has some of the points of changes, and I'll also go over it; and how it's being amended from what it is today as it currently exists in the County Code. As you can see from exhibit 1, the main difference has been to "tablelize" all of the allowed uses, and to update some things, and adding some uses. One of the unique things about the public/quasi-public district is that it never listed public facilities or public uses as an allowed use in the district. It would seem that's one of the main purpose for it. So we did that. One of the main reasons was that we do have a facility for a non-profit organizations. That seems like it should be pretty common sense that it should be located in that district.

Another update that you'll see is also the height in the P1 district. We're allowing for 40-foot currently in the public/quasi-public. There's only a P1 district and it has a maximum height of 35-feet. From the staff report, you can see all of the variances that the department has processed primarily for gymnasiums. And most of those have been in the area of like 38 or larger size.

And so we're also creating a new district. Not a new district, but a new development standard called the P2 district. And what that does is that it creates a larger lot, and allows for larger height in those districts. These are primarily for like large schools, universities such as University of Hawaii Maui Campus, Maui Memorial Hospital also to come in – has

APPROVED 05-18-2011

had several variances. And this would allow for those uses to basically be able to construct their modern facilities without having to constantly seek variances through the BVA (Board of Variances and Appeals) which they pretty much routinely have obtained.

As always, the department has encouraging small scale energy systems to provide for alternative energy. We've also created a standard for free standing antenna structures as well as wind turbines as an allowed use and under the development standards. And it pretty much mimics a lot of the similar bills that you've seen before. One of the changes or amendments that I'm going to talk about that is not on exhibit 1. The first change I'm going to note is on page 1, of exhibit 1, line 30. Where you see it says "the following uses, permitted uses are allowed in the" and then you're going to scratch out P1. Basically in the public/quasi-public districts. And there will be an "s" at the end of districts. Because basically there's going to be –. Just like you have in the residential district you have R1 where you actually have R0, R1, R2, R3, which you have different lot sizes. It's all the residential zoning categories. This is the same thing. We're going to have a P1 and P2 districts. All the uses are allowed in both districts. It's just the development standards are how tall, minimum lot size, and minimum width that will be required. Another change, more of a spelling correction. I misspelled principle, or I used the correct principle. But it should be down on the table where it says principal uses and structures and then it says criteria or limitation. Principle should be spelled how it is where I crossed it out. So it should be p, r, i, n, c, i, p, a, l.

And then the little fortune cookie slip that I passed out earlier. As you know we're on budgetary crisis so I tried not to waste money when I'm only trying to do one line. But if you look on page 3 and if you look at the development standards, the table, and you look under minimum lot area, that's your first one. And it says P1, 15,000; P2, 20,000; and then notes and exceptions, that little box. The text that I gave you is going to go in that box. And what this does is it allows the Planning Director to allow for – or the County I should say – to allow people who have private waste water systems that are part of a subdivision a private water system tank, or even a public water system tank or a pump station for a sewer pump station or anything like that. They don't necessarily need to have 15,000 square feet. They just need a 10,000 or 5,000 square feet to locate that on. But we have been designating those during the community plan process as a public/quasi-public use. And therefore, if there is a comprehensive zoning, we don't want to have like an existing non-conforming thing. We want to be at least say, hey, it's allowed under the zoning category and that's what that language is for. Just to make sure it's cleaned up and clear that the County could do something for a public utility purposes –create a lot for a public utility purposes.

Again, there wasn't much agency comments as you see through the variety of things. We did have Water Department talk about well head protection, but that's pretty standard. That's an overlay. It has nothing to do per se with the zoning categories. Again this is just an update and a clean up of the code, as well as modernizing it. If you have any questions,

APPROVED 05-18-2011

I'd be happy to take them at this time.

Mr. Rabaino: Commissioners, any questions? Or have you read the item? Kaniho? Alberta? John? Shelly? Letty? Matthew? Stanley? Do I have any other? Everybody, no questions? I have. Under public quasi, you scratched out on item 21, on the first page of exhibit 1. Your definition of public quasi since you scratched it out, I'm going to use a little item down Manele Bay Small Boat Harbor. I was reading under – where did it go? – under – Natural and Land Resources I believe was. No, not that one. Sorry, skip that one then. I can't find my notes in here. Okay. This is only for structured windmills, right, that you're referring to, as well as lot size?

Mr. Alueta: Which one are you talking about now?

Mr. Rabaino: Under 29. Item 29, 19.31.020, you scratched out P1, public/quasi-public district uses. My question is when you add things in that area, you're looking under the column P2. Is that what you're referring to? Where the property line sets back?

Mr. Alueta: Oh, you mean as far as crossing out the reference of P1?

Mr. Rabaino: Yes.

Mr. Alueta: Yeah. But just saying that the following uses are allowed in the public/quasi-public districts and not specifying P1, it's basically is referring – those are the principal uses, and . . . (inaudible) . . . because they are. And they're allowed in either P1 or P2. The only difference between P1 and P2 is the lot size. So all the uses that are listed in this ordinance can either be in the public/quasi-public district. And P1 and P2 are development standards. And the similarities are like your residential districts. In the residential district under 19.08, 19.09 excuse me, it lists out all the allowed uses in the single family districts. But they also have three or four different development standards which are R0, R1, R2, R3. The only difference between the two are lot sizes and setbacks and lot widths. Similar, that's what we're doing with this P1 is that all the uses listed would be allowed in either of the development districts of P1 or P2.

Mr. Rabaino: Yeah, because you look on the next page since you have this under public quasi under item "o," public quasi uses or facilities, you don't have anything written in the comment section under criteria or limitations.

Mr. Alueta: That is correct. There's no limitation. So it's only like –. So we only use that, the criteria limitation, if there's something that we wanted to spell out that we wanted to be different such as public utility substations. The existing code calls out that they allow that, but it say which are not hazardous or nuisance to the surrounding properties. So I carried that over and I put them in that column which is sort of like a criteria or limitations. Same

APPROVED 05-18-2011

thing with the accessory uses and structures, I used that to indicate on energy system small scale, they can have it, you can do an energy small scale provided there's no detrimental or nuisance affected upon the neighbors. As you know, small scale energy facilities can include, you know, nuclear power plants, biomass gasification, you know, all kinds of stuff. And depending on the lot size and the location, they may have detrimental affects or be a nuisance I should say, to the surrounding properties. So that's why we put that limitation on it. So we're saying you can do it, provided you met what the criteria or limitation that we set forth for that specific use.

Mr. Rabaino: Okay. Commissioners, anybody else? That's it? Can we move to – any questions for Joe? None. Okay. Shall we move it to public hearing? Okay. Okay, we'll now open it up for public testimony. First person is Ron McOmber, followed by Pat Reilly.

Mr. Ron McOmber: Good evening. My name is Ron McOmber, resident of Lana`i. Do we know how many quasi public properties there are on Lana`i, other than Hulopo`e Beach Park? I think we ought to know that, where are all the quasi public lands on Lana`i. Because I don't know any other than quasi public. The only one I know is Hulopo`e and Manele. And I think it would be smart for this group to tell us. Have you guys find out what are the quasi because I don't think we have any that I know of. I guess Hulopo`e is the only one. And how does it affect Hulopo`e? Because we've got this bill coming up that we're trying to run through the legislature right now to stop the boats from coming in here. And how is this quasi public thing going to affect maybe that bill that we're trying to get thru the legislature, 14.86? So, it's an important question we need to ask, and I don't know how that would affect us. And I look at this, I don't see really affecting anything because we don't have any height limit, unless they decide to put a windmill down here to run the park, or pump the water out of the – out of the middle of the bay, out in the middle of the park. Anyway, I don't know if we have any quasi public other than that. And how does that affect us at the beach park? Thank you very much.

Mr. Rabaino: Hold on. Commissioners, any questions for Ron? Any? No? None. Corporate Counsel, could you please answer that question by Ron McOmber because I list five over here, but maybe you can answer. Joe? Sorry Joe.

Mr. Alueta: This property, I believe, is public/quasi-public. The school is. If there's an existing church in town, any of the church facilities most likely were designated during your –. I believe that you had a comprehensive zoning map done that I provided with you long ago, that was done mostly for this area. Most of the area down in Manele and up here is project district, so it's not public/quasi-public. I doubt. I'm not sure if the harbor facility was ever actually zoned. I'm not familiar with the area enough to know that and I haven't looked at a zoning map recently. If it's a park, chances are it was zoned park, one of the PK. Either PK2 depending how big the park was. But in town when they zoned a lot of the property in town, most of the comprehensive zoning dealt with the BCT and some of the

APPROVED 05-18-2011

residential district and I believe the public/quasi-public may have been picked up such as the school and some of the existing churches.

Mr. Rabaino: Okay, so, Joe, I get four items here that I listed while Ron was giving his testimony. So I use the term Manele, we're referring to the Manele Small Boat Harbor/Hulopo'e Beach Park even though Hulopo'e Beach Park is privately owned, and maintained and controlled. Does that area fall under public quasi?

Mr. Alueta: I do not have a zoning map in front of me. I did not bring one. I did provide you one a while back, but I did not bring one tonight.

Mr. Rabaino: Okay, so our next month meeting can you come back with a clarification of the area, designation as public quasi or not?

Mr. Alueta: I can. I'm just trying to figure out how that – I just want to know how that relates into your decision making. I'm just trying to figure out. So if you bring it and you find out it is. I don't know. I can't tell you for certain. I don't see why it would be designated that or if any zoning was down there at all other than project district. Because if it was part of the Manele Project District, then it's part of Manele Project District. If it's a park, and it's separate from the project district, I have a hard time believing they would be designated or zoned public/quasi-public. It would normally be zoned a P1 or a P2. But like I said, I cannot say with certainty. I just don't know.

Mr. Rabaino: Okay, the next one is two, airport.

Mr. Alueta: Sorry, I was hearing rumbling in the back ground.

Mr. Rabaino: Airport would come under public quasi also?

Mr. Alueta: Does what now?

Mr. Rabaino: Airport? Because if harbor does, airport automatically falls in, right?

Mr. Alueta: No. Airport are zoned airport.

Mr. Rabaino: Okay. And then like you earlier, Kaumalapau you have no idea what it's designated.

Mr. Alueta: No.

Mr. Rabaino: What about where the old post office used to be, the flag pole, across the Dole Administration building, is that public quasi? No? Oh, BCT. Okay. Anyway, can you

APPROVED 05-18-2011

provide that on your next month clarification and the designated areas that is affected by public quasi?

Mr. Alueta: Okay. Am I taking it that there's going to be deferral tonight?

Mr. Rabaino: No. This is just making sure that we understand what this is referring to because many individuals may have a different interpretation. They view it as another outside area because of the BCT. So we just want to make sure that the jurisdictional boundary and clarification is presented in order to make the proper board decision.

Mr. Alueta: No, no. It's just that I did provide this Commission, or the previous Chair, I provided her with the zoning map for town, as well as your community plan map, as well as your comprehensive, the state land use zoning which showed all the rural areas, ag areas, conservation areas, to her. So I did provide but I'll bring another map. I'm not sure if I could get you a copy.

Mr. Rabaino: It would be easier Joe if you can tell us what month because I have some of my stuff all filed away. But if you can tell me what month you gave us, I can go back home tonight, and just pull it out and look at it.

Mr. Alueta: No, no. I gave her rolled maps, the big maps.

Mr. Ruidas: You get them.

Mr. Rabaino: Oh, the rolls. Okay, sorry. I didn't bring it tonight. Okay. Anyway, just update whatever you find especially for Kaunalapau and like you said other park projects, yeah? And if it connects with Lana`i City under the BTC if there anything that we need to know, then that would be helpful and then we can put that on the side on future meetings, yeah?

Okay, next person to testify is Pat Reilly. And by the way, for the record, Letty Castillo walked in at 6:03 p.m. Letty Castillo walked in at 6:03 p.m.

Mr. Fairfax "Pat" Reilly: Thank you. Pat Reilly. Yeah, it is because we're going to start our community plan pretty soon, it's really critical that we have an accurate zoning map at every meeting. So both the land use clarification that Joe provided and the zoning map for the whole island is absolutely critical. So I would encourage, if you don't have your Lana`i Community Plan book, that those maps that Joe provided, come to every meeting and actually be posted because that will clarify a lot of things. I'm not going to try to remember off the top of my head, but I do believe the Hulopo'e Beach Park is zoned public/quasi-public within the project district.

APPROVED 05-18-2011

If you look at exhibit-6, which is a response from DLNR, and I'm linking up this little slip of paper that talks about quasi-public utility purposes. You'll noticed that on exhibit-6 it says State Historic Preservation Division has no comments on the bills themselves, but – this is the but – would like the opportunity to review wind farm projects that may affect historic resources per Hawaii Revised Statutes 6E-42. Now the point I'm trying to make is that Hulopo'e Beach Park – I'm pretty sure I remember this – as a public/quasi-public is adjacent to a marine life conservation district. Now I'm surprised DLNR did not comment on that because to me, to put a utility adjacent to a marine life conservation district might kind of kill the whole purpose of creating that environment down there which was to protect the marine life conservation district on the land side. Right? To ensure that any structures in that public/quasi-public kind of fit into the purpose of the marine life conservation district.

You'll notice in here under the P2 that that could be a 100-foot tower down there. Under P2, it's allowed as a 100-foot tower with a 100-foot setback the way that reads. I'm not saying that's going to happen, but as we go ahead with a community plan, my next question is well, if we're going to re-zone parts of Lana`i into public/quasi-public as the community plan progresses, then we better realize that all this will apply to every parcel. And I don't think it's going to come back to you to make a decision. This is going to be – once this is passed, this is going to be made by the Planning Director. It will not come back to the Lana`i Planning Commission. Unless I'm wrong on that. So this ordinance will give the Director complete authority to decide one way or the other. So I think Chair Rabaino's question is quite appropriate as to be sure you know where they all are or where they all are and are we going to re-zone parts of Lana`i to public/quasi-public because then that will allow these utilities to go into those areas.

And I'm not sure how it works with the State Land Use classification. For example, because it's a project district, that's kind of a special – there's a special ordinance within Maui County Code, right? Special project districts. Initially, that was ag/rural. I think it was zoned ag and rural, then that project district was laid on top of it, and they converted those overlays. Remember, because we had to go before the Land Use Commission. The State Land Use Commission had to get permission for the project district because that converted that classification. So this is, when you look at the State Land Use classification, this ordinance and the project district ordinance and the upcoming community plan, this becomes a little complicated as to how will this impact Lana`i, and that's what I think you guys all worry about or be worried about is, okay, how does this impact Lana`i? So, the questions I would ask is what's the relationship to the State Land Use classifications and if we are going to re-zone certain portions of Lana`i in the next community plan, does anything come back to you? The community plan does, but do any of these individual projects come back to you, I don't think so. Thank you very much.

Mr. Rabaino: Commissioners, any questions for Pat? Letty? Matthew? Stanley? Shelly? John? Alberta? Lisa? None. Okay. Go ahead Joe. I keep on forgetting you.

APPROVED 05-18-2011

Mr. Alueta: That's okay. Let me try to filter out some of the mud that was thrown into our mix. This is dealing with the County zoned public/quasi-public districts. We are not zoning any property. P1 is a new district unless you're zoned, and there is nobody zoned P2 at this time. So as far as the height or development standards, they do not apply to anyone at this point. The only districts that do exist are existing public/quasi-public or P1. With regards to what he mentioned because he said the project district –. If that's the case – again, this does not apply to the project district. Our attorney showed me the ordinance that does deal with the public/quasi-public district for the project district, and it does allow for sewer treatment plants. That's the only thing that's listed in the zoning category. So this has nothing to do with –. If it's designated public/quasi-public on a project district map, this does not have anything to do with it. Project districts have their own zoning, and their own development standards separate from the County Title 19. They're listed in Title 19 as a chapter, and then all of the uses and development standards are listed separately. So this does not change. But again, and also, you normally can't get to public/quasi-public unless you are either in the State urban district, and on the rare occasion in the State rural district will you be able to obtain County public/quasi-public zoning. So you'd have to be urban which the only urban area, the primary urban areas, are here, right here in town.

Mr. Rabaino: So in other words, this is just referring to the County and that's their set of codes. And then you have the other, State Land Use, all follow from – go above in that ladder effect.

Mr. Alueta: Correct. You have a State –. Going back to Planning 101 is that, you know, the State has four designation: your State agricultural district, State rural district, State urban district, and the State conservation district. The County has sole jurisdiction over the urban areas that are designated in the State. Within the ag and rural, the County shares a joint responsibility for the administration of ag and rural. So the County has their ag standards, and the State has their agricultural standards. Within the conservation district, the Department of Land and Natural Resources has sole responsibility. The Department has no authority within the conservation district, nor do we have over DHHL, Hawaiian Homelands. The County has no jurisdiction. So again, this doesn't, and I was told that, Jerry, Chairperson, Rabaino, you do have the maps that I did provide you? Okay, I do not need to bring another set of the zoning maps? Okay. I just wanted to make sure.

Mr. Rabaino: Just check for written, verifying the project districts. And then I'll bring – it's my fault, I didn't bring the maps tonight, but I'll bring it the next month. Okay, that's all I need. Commissioners, any questions for Joe? If none, according to be, we're going to take action on this. Do I hear a –? Sorry, back up again. I'm going to close the public hearing for the record. Thank you Shelly. Okay, we're going to take action Commissioners. Any suggestions? Motion? Silence is noted. None. Any motion to accept as read in this proposal bill for ordinance amendment title 19.31 for Maui County Codes relating to public/quasi-public district? Do we have a motion to accept? Go ahead

APPROVED 05-18-2011

John. Go ahead. John, you have the floor.

Mr. John Ornellas: What's the deadline? Is there a drop dead date for this?

Mr. Alueta: For tonight 8:30 p.m., but no. This is part of our County initiated changes that we're updating the title 19. And probably next month, or the next month after that, I'll have other ordinances, so we're just trying to move along. But did you have questions or concerns that you need addressed, I can try to address them at the next meeting if need be.

Ms. Shelly Barfield: I mean, referring to SHPD's comments. I mean, if we had – if we could have the opportunity to review, as saying, as their comments, can we add that too?

Mr. Alueta: With regards to DLNR's comments. Yes, any project that comes in for a building permit, they are going to review it. The State Historic Preservation does. So regardless of the zoning, yeah, if this is passed. This has nothing to do with –. Their comments is a generic comment, but they do review all of them. And again we're not zoning anything tonight. We're just amending the existing zoning code, and a lot of the uses that you may have concerns are already probably allowed under the thing. Let's see. I see, yeah, antennas would be something new, but I don't think they're going to put, unlikely, they're going to put windmills in a public/quasi-public district. They're probably looking at –. You never know. But if you look at the way it's set up, the windmills is listed as an accessory use to something that's been allowed. And you would still need to get a building permit. And if you look under, I should say that it's listed as a – it qualifies as a small scale utility, if there's an existing, to subsidize their electrical bill. And as far as, under – with the exception of special uses, so right now there's no listing for special uses.

Ms. de Jetley: Mr. Chair?

Mr. Rabaino: Go ahead.

Ms. de Jetley: So Joe, so any project, we would still be able to review if a project came before–? Like if something came, if somebody in this category wanted to do like, say, a freestanding antenna, say in the middle of Dole Park, which is public/quasi-public and still Country Town zoning district, would it still come before us or not come before us? Would we still be able to review it, a request?

Mr. Alueta: A freestanding antenna in Dole Park.

Ms. de Jetley: Yes because Dole Park is used by the public right, but it's privately owned.

Mr. Alueta: I believe it is, isn't it?

APPROVED 05-18-2011

Ms. de Jetley: It's in Country Town zoning now.

Mr. Alueta: Yeah. This is public/quasi-public zoning. So CTB is a different zoning category. And you did amend your Country Town Business District to allow for freestanding antennas and windmills already.

Mr. Rabaino: We did?

Mr. Alueta: Yes. So you did amend that. All of the business districts you did recommend that they would be allowed to do. But they would have setbacks of one foot for every foot they are from the property line.

Mr. Ornellas: Isn't that considered small scale?

Mr. Alueta: They could be considered small scale energy facilities. But I believe that we listed it if it was an accessory to something. But if you wanted to do it as the principal use, it would require a special use permit, okay, in most districts. But in this, we do not have it listed as a stand alone. Antennas are listed only as for development, but it's not listed as a principal use. So, it would probably, if they had a utility facility, like a generation facility, and they wanted to add more alternative energy, or if at the waste water treatment facility, they wanted to have a windmill to use to off set some of the electrical pumping situations, it would be an accessory to that and they would have to meet the setback requirements as allowed. That's the only place. Like if you look at Kahului, you know, the waste water treatment plant here or in Kahului, it's pretty windy in Kahului and they could potentially install one of those at that time. But I'm not sure if Dole Park is BCT or is it -? And I don't have the zoning maps in front of me. PK. Okay, so if it's PK, then we have not amended that district yet.

Mr. Rabaino: Joe, would it be -? My question to you would be, would it be - is this time critical for you, for this thing? Because I would like to suggest and if the Commissioners don't mind my saying so, can we defer this till next month until we have all the proper maps and stuff, in the next meeting before we can make -? Is this critical for your department to have some kind of action for this?

Mr. Alueta: It's critical that I have to have your review and your comments before I can go back to Council to get this adopted. There are projects that are waiting for this ordinance to be adopted so that they can move forward. Primarily there is the Old Maui High School is trying to do a redevelopment, and it's a non-profit organization that's trying to take over that facility. But if you look, non-profit - if you look at it, educational or general specialized or facility for non-profit organizations, it says offices from non-profit, charitable organizations, but it doesn't talk about overall facilities. And so we're trying to clarify for them so that these non-profits can take over these historic sites and operate from those

APPROVED 05-18-2011

historic sites that have been designated public/quasi-public. So no, if you feel you need to defer I'd like to defer for a good reason because again it does cost us a lot of money to fly over here and we want to be able to get, you know –

Mr. Rabaino: Okay, Joe, on your page 3 on this Title 19.31, okay, you have over here listed Kamehameha School. That's on Maui right. Is that Lahaina side?

Mr. Alueta: Kula.

Mr. Rabaino: Kula side. Okay. And then the other one, you have the Department of Safety, and Maui Memorial Hospital, Maui Lani Elementary, Kihei and Maui Community College. That's all on Maui. I think if the Commissioners are comfortable because this listing here is just referring to Maui, right? Will our decision hinder by deferring this to next month? Would our decision affect this listing right here?

Mr. Alueta: These listing are a sample of variances that have been applied for and received in the public/quasi-public district or uses that are public/quasi-public uses. So they've already been granted with regards to the height. As you know, if you build a gymnasium, if you throw a basketball or volleyball, you need a good roof clearance and normally that's greater than 35-feet. And so as a result they've had to get variances. I'm not sure what the existing gymnasium. So they may have gotten a variance for the gymnasium here at some point in time to meet the height requirements.

Mr. Ornellas: Mr. Chair, can I ask a question? Joe, if something was to come up, and we defer this, and if something was to come up, it's always possible to get a variance.

Mr. Alueta: Correct. The criteria is harder to do, it's just that it takes longer. And because of the number of variances that have been applied for, for these types of uses, it kind of gives you prudence to say, hey, they're granting variances for this district or these uses. It makes sense to change the code to match what's today the standards. But, again, like I said, I'm trying, if you're deferring, I'd like to know what the reason is so that I can be better prepared. Like I said, I did provide you with the zoning maps and all the maps that you're saying, and so it's not something that I'm going to provide at the next meeting. But again it just costs a lot of money for us to defer for –. I want to have a real reason so I can go back and tell my boss that we deferred and we're going to spend another \$1,200 or \$1,500 to fly over here. And I want to just make sure that I don't get chewed out for nothing.

Mr. Stanley Ruidas: Joe, how about the other commissions? Did they get to see this?

Mr. Alueta: Yeah. They've all approved it.

APPROVED 05-18-2011

Mr. Ruidas: Okay.

Mr. Rabaino: So Maui and Molokai approved this Title 19?

Mr. Alueta: Yeah.

Mr. Rabaino: Go ahead Alberta.

Ms. de Jetley: Mr. Chair, one of the reasons that this is now before us is the County is making a push to make it easier for projects to be approved and it simplifies the language. It makes it clearer. And as Joe said, you know, the original goals was already – what 1986 was the last time it was reviewed? So I really think that we should allow it to move forward and recommend approval of it. When we get to our own community planning process it is very doubtful that we will have these issues presented to us other than for a really special cases like Hulopo`e Beach Park, but that is already a conservation district. It will be covered by SMA. It would be covered by other regulations. So I strongly think that we should let it go through and the people can always ask for variances if need be. So I move that we recommend approval of the proposed bill to the Maui County Council.

Mr. Ornellas: I second.

Mr. Rabaino: John, you wanted something or you going second?

Mr. Ornellas: I'll second.

Mr. Rabaino: Okay. So motion made by Alberta to move this Title 19, and John Ornellas approves.

Mr. Ornellas: Second.

Mr. Rabaino: I mean seconded. Excuse me. All those in favor?

Mr. Alueta: Mr. Chair, just to clarify, it is with the three amendments that talks about the spelling mistake, crossing out the P1 and the little fortune cookie.

Mr. Rabaino: Yeah. Okay, so be it. All those in favor say aye.

Planning Commissioner: "Aye."

Mr. Rabaino: Any opposed? None. So be it. Approved. Smile Joe.

Mr. Alueta: Thank you.

APPROVED 05-18-2011

It was moved by Commissioner Alberta de Jetley, seconded by Commissioner John Ornellas, then unanimously

VOTED: to recommend approval of the proposed bill to the Maui County Council with the three amendments as noted.

D. COMMUNICATIONS

- 1. November 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.

Mr. Rabaino: Okay, item D, communications, item #1, November 2010 semi-annual report submitted by Castle & Cooke. And have everyone got their report in their docket jacket, or have you printed it out? I didn't print out the whole thing. There's too much paper so to speak.

Mr. Ornellas: Which one is this? The November 3rd memo?

Mr. Rabaino: This is the November –? Well, I have over here –.

Mr. Ornellas: The water?

Mr. Rabaino: This is the one you email me, right, Lei? No, that's different. Okay, sorry. We're looking at February 2, 2011. Excuse me, November 3rd, sorry, from Kathleen Ross Aoki, special management use permit project phase II, five-year extension request for residential and multi-family development at Manele Bay, Lana`i. Got it John?

Mr. Ornellas: Yeah, it's the water.

Mr. Rab: Any comments Commissioners? You want to discuss? Discussion?

Ms. de Jetley: Mr. Chair, several meetings ago we heard about the efforts being made to change the landscaping when they were talking about, they came in and talked about all the frogs that are down in the Manele area. Where's that going? Are they reducing water use by changing the landscaping?

APPROVED 05-18-2011

Mr. Rabaino: Can someone from Castle & Cooke verify that for Alberta? John? Ron? And Clay?

Mr. Clay Rumbaoa: Good evening Commissioners. Commissioner de Jetley can you repeat that question again?

Ms. de Jetley: I don't know if it was in this meeting or in another meeting, but there was a lot of talk about reducing the amount of water needed for the tropical landscaping and changing it to other plants. And by doing so you would be decreasing the water usage, and you'd also be helping to stop your frog problem. So has anything happened in that direction where we can see lower water usage?

Mr. Rumbaoa: Yes. At the hotel site, water usage for the irrigation has gone down. We brought onboard an irrigation specialist or horticulturist that was able to guide us in terms of irrigating the landscaping at the hotel, and that has helped us immensely. And in terms of the common areas in Manele, the homeowner's association is adopting a zeroscape type of a landscaping. So they're going through that process right now and that will, again, help the decrease in terms of the brackish water usage in that area. In terms of the frog, I'm not familiar with that situation so, you know, I defer, or –. I can't answer that question.

Mr. Rabaino: Go ahead John.

Mr. Ornellas: Do you have the same memo in front of you? The 3rd?

Mr. Rumbaoa: Yes.

Mr. Ornellas: Okay. On the first page you talk about – I think, yeah, you signed this didn't you? Okay. The non-potable brackish sources I see that the well is being dug now by the piggery. So you guys are working on that now?

Mr. Rumbaoa: That's correct.

Mr. Ornellas: And so are you still confident with the new well being operational by first quarter of 2012?

Mr. Rumbaoa: Yes.

Mr. Ornellas: Go to the second page please. Okay, the non-potable water use reporting period February 17, 2010 to July 29, 2010, or 161 days. The first part you have special – I'm sorry, single-family, 19-units sold so far out of a 166. Is that correct?

Mr. Rumbaoa: That's 19 developed with water meters. There's other sold land that doesn't

APPROVED 05-18-2011

have meters because it's not developed.

Mr. Ornellas: Okay. But the 166 is your total build out?

Mr. Rumbaoa: That's the approved build out for this particular permit, this SMA permit, for single-family.

Mr. Ornellas: Oh, for single-family in the project district, within the Manele Project District.

Mr. Rumbaoa: Correct.

Mr. Ornellas: Okay, and then it says 9.3 million gallons or 58,019 gallons per day, or 3,000 per unit. Isn't the DCCR's state a 1,000 gallons of non-potable per day is suppose to be used?

Mr. Rumbaoa: That's correct.

Mr. Ornellas: And so you're using right now twice that, three times that?

Mr. Rumbaoa: That's the average for those 19-units. It's stated in the DCCR is correct.

Mr. Ornellas: Okay, so the DCCR's states it's 1,000 gallons per day, and presently for 19-units you're using –. I'm sorry, maybe I shouldn't use the word "you," but they're using 3,054 gallons per day.

Mr. Rumbaoa: Yes. Again, that's an average. There's some units that's right at that, and then obviously others that exceed that.

Mr. Ornellas: Okay. And for the DCCR is 1,000 gallons per day. That would be considered an average too, right?

Mr. Rumbaoa: Yeah. Average or per unit.

Mr. Ornellas: So you're not holding the tenants down there to, or the homeowners down there to – after a 1,000 gallons you're cut off?

Mr. Rumbaoa: No, we don't cut them off. We've implemented some criteria. Not criteria, but roadblocks to hopefully curtail some of that which is the rate case that was implemented that charges them a lot more per gallon if they exceed that. And I think that helped in certain cases, but we have no mechanism to shut of the water if they exceed the 1,000 gallons per day.

APPROVED 05-18-2011

Mr. Ornellas: Are there penalties for, obviously you say that there's penalties for the homeowners if they use more than.

Mr. Rumbaoa: It's built into the rate case. It's a tiered rate case that –

Mr. Ornellas: Tiered rate case. Okay. So it's basically a penalty if you use more than what you're allotted.

Mr. Rumbaoa: That's correct. Yes.

Mr. Ornellas: Is there any penalty for the water company if they don't follow what they agreed to?

Mr. Rumbaoa: No and I don't see why there would be penalties for the water company.

Mr. Ornellas: Okay. If you kind of, for 19-units, and they're using 3,000, so if you do the build out, a 166-units, and you kind of times it, just round it off at the average of 3,000, that goes way, way over your 400,000 gallons per day allotment.

Mr. Rumbaoa: Well, I think it's unfair to project it that way. This semi-annual report was to July, February to July. The next, jumping kind of ahead, to kind of give you an example, the next report that we provided, the annual report, for all of 2010, if you see in those numbers for the year end 2010, the usage for single-family actually went down by about 500 per day. So the education that's being done by John, the water company to the single-family residence in terms of giving them ideas how to use less tolerant plants. I think it's helping to a certain extent, and hopefully, you know it's not going to happen over night. We hope to get that down close to 1,000 gallons per day. And with the, again, the zeroscape push by the homeowners, not just for the individual lots but also in the common areas, again, that would contribute to bringing this whole thing down. So I think to project this 3,000 to the whole build out of 166-units is unfair and not accurate.

Mr. Ornellas: Okay. The next is, the next line is multi-family 53-units. Isn't it 54?

Mr. Rumbaoa: The permit allowed us to build 54, but we ended up only building 53-units.

Mr. Ornellas: So for that permit you're not building anymore.

Mr. Rumbaoa: Yeah, we're one under the limit for multi-family units.

Mr. Ornellas: Okay. And I just wanted to reiterate because if you add up these numbers, if you add up these numbers and going under the assumption that even if you've reduced to 500 gallons from 3,000 gallons, to 2,500, you're still 1,500 gallons over per unit per day.

Mr. Rumbaoa: Yeah.

Mr. Ornellas: But if you start adding out all these numbers that you've provided us, then you're still looking at water use, a non-potable source, over 400,000 gallons over a period of time. How do you –? And what you're telling me is that you're trying to use education as part of the conservation efforts to reduce?

Mr. Rumbaoa: That's correct.

Mr. Ornellas: Does well 15 is going to play into this? Will it help you with –

Mr. Rumbaoa: Well 15 helps distribute the pumping for brackish water to allow us to, you know, rest some of the wells. So it's just a matter of distributing. Well 15 doesn't increase, you know, the approved limit.

Mr. Ornellas: Alright, thank you. Oh, and are you aware of where the Lana`i Water Use and Development Plan draft is right now?

Mr. Rumbaoa: All we know it's with the – it left the Board of Water Supply and with the County staff.

Mr. Ornellas: With Mike Victorino's Water Committee.

Mr. Rumbaoa: I don't know. I'm not sure if it's with him. I know it left the Department. It left the Board of Water Supply. I think it went to the Director, so that's all I know.

Mr. Ornellas: December. And I did some research and it is with Mike Victorino's committee so that was just an update. So hopefully within the – before the budget take full on the Council's time resource, we might get a hearing with that before the budget consumes all their time, so I just want to left everybody know.

Mr. de Jetley: Okay, I have one more. I'm just looking at these figures. What is the Manele Palms, what are they doing differently from the 53-units up above because this is on all non-potable water usage, right? So it doesn't matter how many people are using, it's just this water is being used for landscaping. So how are they getting such a wide difference from 97 gallons per day, per unit at the Manele Palms, or right above it they're using 737 gallons per day? What's causing that great difference?

Mr. Rumbaoa: It could be several factors. It could be they have smaller common areas, and their roadways is much less. They just have that one roadway that leads to the Palms, Waialo Road, I think. And then the other units, the 53-units, which are the Terraces, if you've been down there, they have, their roadways are much longer and wider so that's

APPROVED 05-18-2011

counted in that. So that's probably is the reason why they're so much higher. And also in the Terraces, Terraces I, they've approached us in terms of trying to redo their landscape to go to zeroscape. But, again that's a good sign and that's part of the education that was done and they seemed like to be heading to that and are willing to decrease their non-potable usage.

Mr. Ornellas: Clay, go to the last page, the Manele Project District water third quarter usage report. And then we'll go down to single-family potable for Manele, other Manele potable uses, and it states annual daily average is 17,346. For the units that are down there, doesn't that kind of average out to 913 gallons per day, per unit, down there at Manele?

Mr. Rumbaoa: This is under the potable usage?

Mr. Ornellas: Yeah. This is the second paragraph. It says other Manele potable water usage, and then you look down the second line, it says single-family potable. And then you go all the way across in the last, you see, annual daily average, and it's 7,348. So based on the units, doesn't that kind of average out to about 913 gallons per unit?

Mr. Rumbaoa: I don't know. Is that what you come up with?

Mr. Ornellas: Uh-huh.

Mr. Rumbaoa: I mean, if that's what it is.

Mr. Ornellas: But isn't true that the city average is about 215 gallons per? So what I'm hinting at is I think you've got to spend a lot more time with these homeowners down there to explain to them how important our water resource here is on Lana`i, and reducing this 913 down is a must for potable water. I mean, we've just survived a pretty major drought, but who knows it may come back very, very soon. So this is just looking out for ourselves in the future. Can you guys look at that and see what else you guys can do with that?

Mr. Rumbaoa: Sure. Yes.

Mr. Ornellas: All right. Thank you John.

Mr. Rabaino: Commissioners, any other questions for Clay? Letty? Matt? Stan? Shelly? Lisa? Okay, Thank you Clay. Go ahead John.

Mr. Ornellas: Maybe you're not the one to ask, but isn't it also in the DCCR's that those units down at Manele are not be rented to people other than the people that actually live there? Because I do know for a fact that a lot of those homeowners down there rent their units out to other people. And so if they weren't part of the equation, if these guests that

APPROVED 05-18-2011

were renting these units weren't part of the equation, then there's a good possibility your potable usage would also go down too. You know, as part of when I worked for Castle & Cooke, when they developed down there and that was one of the issues about expanding the hotel by renting out all these units, single-family, multi-family units down there. And Castle & Cooke said no they're not. That's part of the rules, the DCCR. But I know for a fact that there's a lot of people down there that rent these things out for an exorbitant amount of money. And of course, cars come with them and families come in, so they use a lot of water too, especially with the large families. Can you? I don't know if you –

Mr. Rumbaoa: Yeah, you're right. I'm not the person to ask for that, but if you want to put it in writing and we can respond accurately on that.

Mr. Ornellas: Okay. We may just run this through the Water Committee and see.

Mr. Rumbaoa: That's probably in Planning.

Mr. Ornellas: It's Planning?

Mr. Rumbaoa: If it's a rental type of question.

Mr. Ornellas: Okay. We may just copy the Water Board, the Water Department too. All right. Thank you.

Mr. Rabaino: Okay, thank you Clay. By the way, I have one question though. I was reading the other one over here about the – well, that's coming up on the next, under other business. Okay, that's alright, I'll wait until the other business. Item number two, under communication, 2010 annual report submitted by Castle & Cooke regarding condition 24 as associated with residential and multi-family development at Manele.

Mr. Michael Hopper: I don't know, we allow public testimony. Usually it's done item by item. At least once. Just as a reminder.

Mr. Rabaino: Oh, public testimony.

Mr. Hopper: I mean, I suppose you could take both items after the questions and then the testifier could testify on each of the items, or usually after each item you would have testimony. It's up to you. I just wanted, as a reminder.

Mr. Rabaino: Thank you. Open it up to public testimony. Ron?

Mr. McOmber: Not on this item.

APPROVED 05-18-2011

Mr. Rabaino: Pat? Anybody else in the room wants to come up? Butch? Any? None? Okay. Close the public testimony. Next item. Move on, yeah? Right, Corporate Counsel? Next item? Yeah. You shaking your head over there, so I don't know, I cannot read the language over there. Item number two as I said earlier, *(Chair Gerald Rabaino read the following project description into the record.)* Commissioners?

- 2. 2010 Annual Report submitted by Castle & Cooke Resorts, LLC regarding Condition #24 as 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.

Mr. Rabaino: Any questions? Remarks? Comments? Lisa? Alberta? John? Shelly? Matt? Letty? Where did Stanley go? I'll wait till Stanley comes back. Let's open this up to – is it reasonable to call for public testimony? Anybody wants to testify? Ron?

Mr. McOmber: Not on this item.

Mr. Rabaino: Pat?

Mr. Reilly: Pat Reilly. Thank you Mr. Chair. The only –. These letters are coming to you as a result of a required reports to you, to inform you about water use. Commissioner Ornellas raised the issues of this average use of water at 3,000 gallons per day, per unit. Do you know what an average is? You add up all the numbers, divide by 19. There are some that are above that – got to be way above it – and some that are below it. Now it's not the middle one, but when you add it all up, 3,000 gallons per day is a lot of water to go to Manele. That's a lot of water. You couldn't use that much water in that much time. So my only point is that you can't do anything about it. You're just receiving the report. But there doesn't seem to be any control other than the pricing to reduce water use except suggestions to conserve or do that. But it just doesn't –. You know, if somebody says to me, well, how are you going to reduce the water and there's no agent that says we got to. That's not you. I don't know. It's just going to keep going because the can afford to use the water. Price is no issue. So it's a concern. I just raise that as a concern. That's a lot of water down there, and it's your little house. There's no way you could use 3,000 gallons. There's no way. Per day, 3,000 gallons, that's a lot of water. Thank you.

Mr. Rabaino: Thank you Pat. Any questions for Pat, Commissioners? Anybody else from the public who wish to testify? Butch Gima? None. Okay, since you were gone Mr. Vice-Chair, do you have any comments on this item number two? No comment? Okay, so

APPROVED 05-18-2011

close the public. I'm moving to the next item, E, other businesses (*Chair Gerald Rabaino read the following project description into the record.*)

E. OTHER BUSINESS

- 1. Lanai Planning Commission's LWAC representative(s) to provide a brief update on the Lanai Water Advisory Committee (LWAC) meeting held in October. (Commissioners John Ornellas/David Green)**

Mr. Ornellas: I just did the update.

Mr. Rabaino: Oh, you just did the update. Okay. Did you guys meet in October by the way?

Mr. Ornellas: No, we just met about two weeks ago. We just met about two weeks ago.

Mr. Rabaino: What was the date?

Mr. Ornellas: The last Friday of the month. We were at the last meeting, John –. Was that the meeting, John, you had another prior commitment?

Mr. John Stubbart: . . .(inaudible) . . .

Mr. Ornellas: The last one we had you weren't there.

Mr. Stubbart: . . . (inaudible) . . .

Mr. Ornellas: Okay.

Mr. Rabaino: Is that February the 4th? Last Friday or the 11th?

Ms. Barfield: End of the month.

Mr. Rabaino: Oh, the month. January. Sorry. 28th. Okay.

Mr. Ornellas: Does that sound right Butch? The 28th? Okay.

Mr. Rabaino: Any other?

Mr. Ornellas: The only update I can say is that, you know, we're still anxious about what's going to happen to the water use and development plan draft. We're very concerned that

APPROVED 05-18-2011

there might be some adverse comments about that over on Maui, so we're doing our best to write to Mike Victorino, the Water Department and that kind of stuff to help us – also our Council Members – to help us to get that plan from there back over to Lana`i so that the Council Committee meetings can hear the community about the water use and development plan. We're hoping that when the Council comes for their budget meetings here on Lana`i that they can kill two birds with one stone and have a water committee meeting during the same day, so save them a lot of money.

Mr. Rabaino: Okay. I have one question. Can I direct this question to John? There was a past newspaper article that says that made Maui News front headline that the County was going to buy company water. Have any decision or outcome come from that article or any discussion for that article? The Maui County Council proposing buying water from Castle & Cooke? Could you enlighten us over here on that article?

Mr. Stubbart: Yes.

Mr. Rabaino: Thank you.

Mr. Stubbart: John Stubbart, Director of Utilities, Castle & Cooke. The County commissioned an appraisal of the Lana`i water system, and this was about the time when Moloka`i Ranch had stepped away from their operations and so the County was concerned as to what it would take for them to purchase the utilities here on Lana`i. That kind of fell apart. The investigation – they hired consultant Brown and Caldwell who has an office on Maui, Ray Matassi, and he started that project and it didn't, after the change of administration because the previous Mayor, or current Mayor, was very interested in taking over all private utilities – Kaanapali, Kapalua, Lana`i, Moloka`i. And towards the end of the last administration, they were encouraged to finish that project and that's when the report came out. So it was an analysis done by a consultant to determine the cost, what the cost could be to the County to purchase the water system. I've made some inquires. Right now I don't think the County is interested in making the purchase of the Lana`i Water System. That could change with the Mayor's efforts over the next four years. But we've made an official inquiry to ask for a response on that report, and I haven't received anything official back from the Department of Water. Of course, they have a new Mayor, new Director, so we're waiting to hear what their intent is.

Mr. Rabaino: Thank you John. So in other words, it's not going to happen.

Mr. Stubbart: I'm not saying it's not ever. I'm just saying that right now, it's not on the priority list. . . (inaudible) . . .

Mr. Rabaino: Okay. Thank you. Commissioners, any other questions? No. Thank you John. Moving on to item –

Mr. McOmbler: Wait.

Mr. Rabaino: Sorry. Public. Go ahead Ron.

Mr. McOmbler: Ron McOmbler. At least the Company has the common courtesy to come and meet you guys face to face. The Water Working Group, we don't seem to see these guys. They make up all these excuses not to come to our meetings so that we can ask them questions. We can do it by e-mail, but I'd rather ask them to their face, and we're not getting that response. And they've got a whole month to plan this, to meet with us, and all at once they can't be there. That upsets me. That should not happen. But I noticed the common courtesy they were all here tonight so you guys carry a lot more weight than we do. Just to let you know, I'm not happy about that. There are questions and things like how much water did they move from the Manele sewage treatment plant up to Koele during that time they were having the drought? How much water? We never saw that on a report. Nobody told us they were even doing it. We had to hear it from the local people driving the trucks. I understand their need for the water, but it was unaccountable for. We don't have any idea how many gallons was pumped at Koele, and they're going up there and dumping it on the grass. And then we had people that lived up there saying where's that water going or where is it coming from. So we had to investigate where the water was coming from first off. But not one clear indication from the Company. And those are the kind of things . . . (inaudible). . . We have too many eyes on this island and that's not right. We couldn't even ask them because they couldn't come to the meeting. Thank you.

Mr. Rabaino: Thank you. Commissioners, you get any questions for Ron? John? Okay, Commissioners, none? Okay. Anybody else want to testify? Okay. When you guys have the LWAC meeting, for my curiosity because I'm too busy, workaholic. When you guys meet, is it at the end of the month? Okay. And usually how many of the Company's representative meet with you folks? Have they met with you folks?

Mr. Ornellas: John Stubbart is a sitting member, the Director.

Mr. Rabaino: Just him, nobody else from the Company.

Mr. Ornellas: No. It's mostly just John. Clay, when Clay's on island, he'll come too, but mostly John is there.

Mr. Rabaino: Okay, so has anything been recorded from there?

Mr. Ornellas: Yeah, we have minutes.

Mr. Rabaino: And does James go over there and do his thing too, the recording?

APPROVED 05-18-2011

Mr. Ornellas: He has, but he hasn't been lately. But maybe we should let him know, or let John know and then John can let James know.

Mr. Rabaino: Okay, so you guys are fine with the LWAC and the Company, but you guys have –

Mr. Ornellas: I'm not saying it's fine. We still have questions and John tries to do his best by answering them, but some of these questions are very, very difficult to answer. And water is an emotional topic.

Mr. Rabaino: Understood. Okay. With that said, we're going to close public testimony. Moving on to the next item, F, Director's Report. *(Chair Gerald Rabaino read the following project description into the record.)*

F. DIRECTOR'S REPORT

1. Clayton Yoshida's, Planning Program Administrator, comments to questions raised by the Lanai Planning Commission dated November 17, 2010.

Mr. Rabaino: And would be Stanley's e-mail, yeah? Okay, Joe? Okay Stanley, it's your show.

Mr. Alueta: The letter is provided to you by Mr. Yoshida. If you guys have any comments or you want me to go back and get clarification on.

Mr. Stanley Ruidas: Gee, where for start? Where Yoshida? He still with you guys?

Mr. Alueta: Mr. Yoshida?

Mr. Ruidas: Yeah.

Mr. Alueta: Yes.

Mr. Ruidas: Same position?

Mr. Alueta: Yes. Planning Program Administrator for Current Division.

Mr. Ruidas: Okay. I just wanted to ask Leilani, what happened to the e-mail from me to Kathleen. That got forwarded to Spence? Did he make any comments? Well, I still waiting for comments on that.

APPROVED 05-18-2011

Mr. Alueta: Okay.

Mr. Ruidas: But, yeah, this one was the one we got that day that we had the meeting which was real late and I never get chance to ask Clayton because you guys wasn't here. So you going answer for him?

Mr. Alueta: Pardon me?

Mr. Ruidas: You going answer this for him?

Mr. Alueta: I'm just here to take any questions that I get. I think the letter, he's provided the letter of all the questions. I think I was here at that meeting when all these questions came up and so we forwarded it to Clayton and so, again, the attendance report that was asked, that's been provided to you. Then you had Mr. Cerizo with regards to the Lana`i flood maps.

Mr. Ruidas: Yeah, you know this 300 shoreline setback for the SMA, I couldn't find that in the HRS. Can you guys print it out and show me where it is because I never find them? I heard only numbers. There's a number here, but I didn't find it.

Mr. Alueta: Oh, where the minium setback was established at 300-feet?

Mr. Ruidas: Yeah.

Mr. Rabaino: The one that would come closely to it, Joe, would be the one in the telephone book.

Mr. Alueta: No, no, but he's asking where that came from within the authority, and normally that was done at the time when the maps were adopted. And your maps, I believe, were adopted somewhere '71. '79. So at the time when the public hearings were held, and you got to understand that these maps, most of the maps were used with USGS quads which are huge maps. And so where they couldn't define, they just came up and said, it's either follow the highway or then they said the 300-foot inland. But I'll follow up with him as to whether or not it's written somewhere in a report or that was reported to Office of State Planning, the CZM program there.

Mr. Ruidas: Yeah cause I looked all over, I couldn't find it even though they gave us, you know, Kathleen wrote a number here.

Mr. Hopper: Just as a comment, I think, do you need to know if something is in the SMA, if that's an issue, then you need to look at the specific map that's been adopted and is on file and see is there something that's in the SMA. If you're talking about a shoreline

APPROVED 05-18-2011

setback line –

Mr. Ruidas: Okay, the SMA area, okay, where does it say it's 300-feet from the shoreline?

Mr. Hopper: It's wherever the map says it is.

Mr. Ruidas: Well, if you look at the map, there's only a single line. There's no scale to the line and I cannot find anywhere which has a number on it.

Mr. Hopper: Yeah, it's not necessarily going to be 300-feet in every area. I mean certain areas it's bigger, certain areas it's smaller, depending on where the map is. Now if there's a problem with reading the map, then if there's a specific TMK or parcel that you have a question on, Joe can go into the details of how you get that verified. But SMA maps are adopted for each island separately and in some cases it can be, for example, I don't know if you're familiar with Kihei where the SMA line goes all the way up to Piilani Highway all the way down to the shoreline. And that's a much bigger SMA than you usually have in other areas. And so it's going to vary based on, you know – it's not necessarily a rule it's always going to be 300-feet or something like that.

Mr. Ruidas: So it's according to where the line is?

Mr. Hopper: Here, let me give you the HRS section that deals with the SMA maps.

Mr. Ruidas: Because on the maps that you guys provided, it showed like, with the exception of Hulopo'e, Kaunalapau area, there's only a line the whole way, all the way around the island.

Mr. Alueta: My understanding of how that map was drawn going around is that it was suppose to have represented a 300-foot setback from the shoreline going all the way around Lana`i.

Mr. Ruidas: Yeah, but I cannot find where it's written. . . (inaudible) . . .

Mr. Alueta: But you also can scale it from –.

Mr. Ruidas: Yeah. So if it's not scaled, then I want to know where it's written, so that, you know, there's clarification.

Mr. Alueta: Okay. And as Mr. Hopper said, it may be in some areas, they may be greater than 300-feet, but the understanding is – let me find out whether or not that was written somewhere where it says 300-feet, or we have to go purely by the scale of the map.

APPROVED 05-18-2011

Mr. Rabaino: Joe, yeah, this is not finger pointing you, but I'm going to figure point Clayton. He had from November 17th to respond to this, and he has all the accessibility within the department to come up with some kind of answer or map. And we need the update because we're moving forward. And I think in fairness to both parties, the existing Commissioners now and for our future Commissioners that we need to know this information map wise where in the area of – what is the word he said? – SMA, shoreline management language wise. We're looking for the language that will accompany the map with the scale around the island of Lana`i.

Mr. Alueta: The map does exist. It was distributed. According to his letter, he said it was previously distributed to the Commission. And the map is on a blue print sized map, and it's built on a USGS quad where one inch equals 2,000 feet. So for each point where you want to know where the SMA line is, you need to scale off using a ruler as one inch being 2,000 feet. You can also go online to the State of Hawaii, Office of State Planning, and the Office of State Planning also has the digital maps online. But the official maps, to my understanding, is within our department.

Mr. Ruidas: Actually, Clayton made this as a last minute cover up in November to cover his, whatever, because the questions arise back in June and July of last year. So he's been sitting on it since that time, and it's on the records, in the minutes, and I wrote that letter with no response from Kathleen because she was going out. And then Clayton still didn't respond so I asked Leilani last month since we didn't have another meeting to forward that Spence which I haven't gotten an answer from him yet. So, we got a meeting now and still no answer. And there's a lot of items on there that I pointed out that, you know, the Planning Department failed to help us with.

Mr. Rabaino: Well, Joe, what I'm going to do is I'm going, tomorrow, I'm going to look at my June/July packet that I still have at home and see if it's there. If it's not there, I'm going to e-mail Lei and let you know if it's in the packet or not if that was provided in that meeting of those months.

Mr. Ornellas: Mr. Chair, may I? Mr. Chair, may I?

Mr. Rabaino: Go ahead, I was looking at him.

Mr. Ornellas: Is the Lana`i Community Plan, the 1998 plan, that I guess, was approved, gives 300-foot setbacks in the plan. Is that where the County would get their –? I mean, once it becomes adopted, isn't the County have to follow that? I mean, because I remember conversations that the Lana`i CAC was talking about doing 500-foot setbacks. And of course, there was a lot of roar to that, but it ended up back to 300. But once they adopt it doesn't it become somewhat law?

APPROVED 05-18-2011

Mr. Hopper: To help clarify, and Jerry, or sorry, Stanley wanted an HRS reference. Special Management Area is defined in the State law – it says – it means:

“the land extending inland from the shoreline as delineated on the maps filed with the authority as of June 8, 1997, or as amended pursuant to section 205A-23.”

They’re specific maps. This 300-foot minimum seems like, based on the history that Joe maybe giving here, something that basically when the maps were drawn, everybody said we’re going to go at least, you know, 300-feet in, and then in certain areas goes more than that. And I think that’s what Joe is saying.

As for the Community Plan, that is essentially a policy document that it wouldn’t have a direct legal effect until someone came in and amended the map under the state process. Because these are maps that you have file with State, that the State have to have on record, and that determines where your SMA is. And State law says if you’re in the SMA, this applies to you. If you’re not in the SMA, it doesn’t apply to you. So the maps that are filed defines what the SMA is. It’s not a bright line that says, if you’re this far in. You know, it could be a lot further in than 300-feet in certain cases.

Mr. Ornellas: Okay. So if by chance, say, the Lana`i CAC changes it to 500-foot setback, then the County adopts that? And then does the County then send that information to the State?

Mr. Hopper: Actually, the Planning Commission have to amend the maps. You’re the authority in Lana`i. Your rule rules have a process for changing the SMA maps. There has to be a study done and stuff. And there’s a process for that in your rules. If you’ve got a copy of your SMA rules, that process is actually in there and it’s set forth.

Mr. Ornellas: Thank you.

Mr. Rabaino: What was the year again? June 8, 1997?

Mr. Hopper: 1977.

Mr. Rabaino: 1977?

Mr. Hopper: Yeah. Basically, the law came out and said we’re going to adopt maps every where, and if you’re in the SMA then you’ve got to get an SMA permit to do a development.

Mr. Rabaino: Okay. Thank you. Any Commissioners, any other questions? Stan?

APPROVED 05-18-2011

Mr. Ruidas: And part of that letter, on the back page, was that County area for the affordable public housing. Who is responsible for that land as of now? And he said you could ask, in his statement from Clayton, but he didn't say who those two staff members were. And he said they could ask. So we got to ask them for ask the other guys or is that coming from the Planning Department?

Mr. Alueta: I'm confused as to what the question. His answer relative to your –. I'm not sure if he's answering a question you didn't ask, or –. Oh, I see, as far as being, as far as the responsibility for who to take care of the land. It looks like, according to his letter, Mr. Yoshida, it's DHHC is the responsible party. They are the responsible party. So Mr. Yoshida is suggesting that they could ask County Public Works for assistance but that's not –. Again, to answer your question, it's DHHC's responsibility.

Mr. Ruidas: And who is the DHHC?

Mr. Alueta: Department of Housing and Human Concerns.

Mr. Ruidas: And who is the one here?

Mr. Alueta: I would not know.

Ms. de Jetley: Stan, it's probably Maggie Masicampo and Yvonne Alboro, and they certainly are not going to go out there to clean that up.

Mr. Ruidas: That's my point.

Ms. de Jetley: Yeah, so it has to be –

Mr. Ruidas: So, it's like passing the buck. So I wanted to know the determination from Clayton as to who is responsible. He said they could ask, you know, the Public Works to clean it up, but out of who's budget and all that?

Mr. Alueta: I guess the issue that Clayton is bringing up as far as passing the buck. He's provided the answer. It's not Planning Department. It was never Planning Department's land and we don't have control over it. And I understand you have a concern over it, but the Department of Housing and Human Concerns is the responsible party. He's just making a suggestion that they could, if they wanted to, ask Public Works for assistance or DHHC could always go out and get a private contractor to clean the site. But the bottom line is that it's not Planning. The answer is DHHC. It's not our land. I mean, it was never donated to Planning.

Mr. Ruidas: Okay, if DHHC don't do anything about it, then what do we do?

APPROVED 05-18-2011

Mr. Alueta: We can ask, if you want us to write a letter to DHHC. It's just you're going beyond –

Mr. Ruidas: Yeah, that's what I wanted. I wanted a letter to them.

Mr. Alueta: Okay. I guess it's going beyond the scope that would normally fall under the functions of the Planning Commission. But if you want us to write a letter on your behalf, we will, to issue your concerns with regards to the site.

Mr. Ruidas: At that time that place was a fire hazard, but anymore. I guess the forest has it now.

Mr. Rabaino: Well, just to add there's a lot of dumping of unnecessary items there – you know, trash, stoves, cars – you know, you get kids running behind there as a safety thing. So the bottom line is who is liable once they cross the jurisdictional boundaries?

Mr. Alueta: Again, all we can do is write a letter on behalf of the Planning Commission and inform the Department of Housing and Human Concerns that the Commission has some concerns over it, although we do not have any power or the ability to force them to do anything about it.

Mr. Ruidas: Okay, coming back to the first one. How do we go about, and this is what I asked a long, long time ago, making the SMA, as far as elevation, instead of the footage because on the Keomoku side, you've got archeological sites that's not within the SMA?

Mr. Alueta: That could be a criteria for you during your SMA process to review and to amend the SMA maps. So within your own rules you have a procedure to amend the SMA maps, and you have to have a justification as to why and do an impact as to why. And if you know of archeological sites, and also coastal resources that are within, that you feel need to be protected, then most definitely the vehicle to protect those coastal resources would be to amend the SMA boundaries so that they do get an extra review if they're not already being protected under some other conservation district or registered state historic site. I mean, that might be.

Mr. Hopper: Just to be clear, in your SMA rules, if you look at the rule, the number is 12-402-22. It's called adoption and amendment of Special Management Area boundaries and maps, and it talks about amending your SMA maps and things like that. It requires a study and this goes over the process, so you can check it out in your SMA rules. It's a way that you could have the Director initiate changes if you feel there's an area that needs to be expanded.

APPROVED 05-18-2011

Mr. Ruidas: Okay. Yeah, that's in my letter that I forwarded the other month. I guess I'll wait for the Director's response.

Mr. Alueta: I think what we're trying to say is review your rules so that you have a better idea that needs to be done so if you want to go ahead and initiate a change to the SMA boundaries. Because there's a process and procedure that goes well beyond the, hey, Will, can you –? You know what I mean, it takes a little more than that.

Mr. Rabaino: Can you put that on next month's agenda?

Mr. Alueta: Discussion about amending the SMA maps?

Mr. Rabaino: Yeah.

Mr. Alueta: Yes.

Mr. Rabaino: And this SMA too, regarding the boundary. Was that –? Counsel, try repeat that number again? Was it 12-402-24?

Mr. Hopper: 12-402-22. The page I have it on is 402-22. Some of my things a bit, it says:

“the Commission by a two-thirds vote of it's total membership may direct the Director to initiate a comprehensive review and amendments to the Special Management Area boundaries.”

And if you go into more detail you would have to have a basis which typically is justified by a study done by somebody showing the justification for expanding the boundary. Moloka`i has made inquires into that and I think there's been a study done in Kihei as well.

Mr. Rabaino: Okay. Thank you.

Mr. Matthew Mano: Question.

Mr. Rabaino: So we want it for next month if can. Go ahead Matt.

Mr. Mano: I've got a question. You know your shoreline. What you guys mean by shoreline? Is it the high water mark? Because State has high water mark, and the high water mark depicts what is State and what is private.

Mr. Hopper: Well, for SMA purposes, the definition of shoreline it says, it means:

“the upper reaches of the wash of the waves other than storm and seismic

APPROVED 05-18-2011

waves at high tide during the season of the year in which the highest wash of the waves occurs usually evidence by the edge of vegetation growth or the upper limit of debris left by the wash of the waves.”

That’s for the SMA purposes so that’s kind of what you said.

Mr. Mano: Thank you.

Mr. Alueta: And Commissioner Mano that’s typically where the Department of Land and Natural Resources will certify your shoreline. So everything below it is, you know, from that line, is conservation district is under DLNR’s purview, and then we take care everything above it. And again, there’s a minimum setback requirement based on the lot, and the higher threshold for those developments within that setback area – what we call shoreline setback area – has a higher standard or review. That’s also within your SMA rules. If you look under the Special Management Area rules, and you have a separate section for shoreline setback area rules.

Mr. Ruidas: Joe, can you also make sure you get a response from the Director, the new Director, as to my letter?

Mr. Alueta: I can make the inquires as I’ve been told by Mr. Yoshida I cannot assign work upward the chain. Only down on the chain I can do it.

Mr. Ruidas: Only down.

Mr. Rabaino: I think the Director should also visit. Okay, moving on, Director’s Report, item number two, open Lana`i application report. Any questions Commissioners? Alberta?

2. Open Lana`i Applications Report.

Ms. de Jetley: Yes, I would like to direct our staff to find out what is going on with No Ka Oi Grindz? What’s happening there is just absolutely shameful. Why can’t this poor woman get her permits done so that she can move on with her life and move on with her business? The last variance – no it’s still outstanding here. It’s shown as an open status.

Mr. Rabaino: Well, the last time I talked to her was two weeks ago. She said she’s getting hard time too because she has to do some more stuff.

Ms. de Jetley: When they had the public hearing, you know, with the variance board, when they came?

Mr. Rabaino: Right, and we all went there to testify.

APPROVED 05-18-2011

Ms. de Jetley: It was a whole big deal, and they approved it. So we really need to direct staff to figure out what is going on with this and to help her process her permits or get her on. No it's not. It's still open.

Mr. Alueta: Again, I'll double check to see whether or not it's actually been. It may have been completed already. I did not have time today to meet with all the individual staff, but I'll double check to see whether or not that permit is actually issued. But many times once the permit in person gets a permit – you know speaking from past experience – you get the permit then you're like okay now I've got to build it and then you sometimes run into financial issues or some other issues outside of the permit issuing process. But hopefully we're not the hold up, and I'll follow up with Ms. Wade.

Ms. de Jetley: Okay, while you're doing that, I'd also like to suggest that you find out what's happening with Richard's Wholesale. Why we can't convert that space, that dormitory space that they want into a storage facility is beyond me. Any person with any sense could walk through the backs of all of our retail stores and see how desperately their storage situation is. So this is another permit that is, yeah, a no brainer where we need to expedite rather than delay.

Mr. Rabaino: Yeah, that's for Richard's. I agree. So those two items. No Ka Oi, because the last time she said she had to put in a grease trap. And behind Richard's, yeah, there's a lot of open things over there that they do need that space. They need that storage space, so your department better come over and start walking the streets.

Ms. de Jetley: Mr. Chair, I see Castle & Cooke representatives.

Mr. Rabaino: Go ahead.

Mr. Kristofer Baptist: Kris Baptist. I can speak a little bit on both. I talked to Naomi recently and she just got her decision and order letter from the Planning Department, so I think now she's in the process. She's going to finalize her building permit to move on – finally. And then for Richard's Wholesale, the issues with that building was, I guess, distances because they way that Lana`i was designed in the beginning they're large lots. You need to have like a minimum space between the buildings. So they had to put, we had to work with the Planning Department to put like imaginary property lines basically between the buildings to make sure they would have enough space for fire protection. And I recently got – well, Planning Department is the last section to sign off on the permit and it's ready to be approved. It says so on the permit summary so we're just waiting for the final approval from the Building Department. And we're just in the process of picking up the permit now. So we're moving on with that too.

Mr. Rabaino: Any other questions Commissioners? Alberta?

APPROVED 05-18-2011

Ms. de Jetley: Can I ask staff to – I recommend to the staff that they send a letter to the powers that be that we would like to see these two projects continue to be fast tracked so that we can expect to have them done within the next two to three months rather than another six or seven or eight months.

Mr. Rabaino: Okay. So Curtis since you're there, the last item is the Palms. I was reading an article. I forgot to bring the article. I mean, Kris. Sorry, I give any kind name. That's alright. But anyway, there was an article I forgot to grab it off my table about the Palms, something about height that you guys have with the variance on March, was it March 13th?

Mr. Baptist: March 10th.

Mr. Rabaino: 10th. What's that about?

Mr. Baptist: It's a height variance for the building permits for the Palms Phase II application. And we had previous approval for building permits. And we had some changes to the wall structure. We had to shrink the lot sizes. And I guess even though the buildings were previously approved, they went back with the height requirements and required us to comply again with the height, the 30-foot height restriction, although we've previously had building permit approvals. So we're applying for variances for that project.

3. Agenda items for the March 16, 2011 meeting.

Mr. Rabaino: Commissioners, any questions for Curtis? Kris? I don't know. I'm stuck with Curtis. Okay. Corporate Counsel? Joe? Anything? Okay, item number three. Thanks Kris. Any other agenda items for March 16th? The SMA is number one, and I shall bring the maps for all that stuff. And number two is the response to Stan's e-mail and questions. And number three would be the No Ka Oi and Richard's letter to fast track, and copies of it for the Commissioners. Any other items Commissioners?

Mr. Alueta: So far I've got like you want us to write a letter to DHHC about clearing the lot on Lana`i with the housing. You want on – check on Stan's e-mail. And then you want to have a discussion item, on the agenda, to discuss amending SMA maps for Lana`i.

Mr. Rabaino: A big roger, 10-4. Yup, that what we want. Lastly on this one, attendance report. Any discussions, Commissioners, on the attendance report? Lisa? Alberta? John?

Mr. Ornellas: . . .(inaudible) . . .

Mr. Rabaino: Well, it was requested by one of the Commissioner members.

APPROVED 05-18-2011

Mr. Alueta: You requested it so if you want to waste paper let me know.

G. NEXT REGULAR MEETING DATE: March 16, 2011

H. ADJOURNMENT

Mr. Rabaino: Okay with that said, do I hear a motion to adjourn? Okay, we're done at 7:51 p.m.

There being no further discussion brought forward to the Commission, the meeting was adjourned at approximately 7:51 p.m.

Respectively transmitted by,

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

RECORD OF ATTENDANCE

PRESENT:

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

EXCUSED:

David Green

OTHERS:

Joseph Alueta, Administrative Planning Officer
Michael Hopper, Deputy Corporation Counsel